

Order for Enforcement of the Act Against Unjustifiable Premiums and Misleading Representations

(Cabinet Order No. 218 of August 14, 2009)

Article 1 The method for calculating the sales amount specified by Cabinet Order prescribed in Article 8, paragraph (1) of the Act Against Unjustifiable Premiums and Misleading Representations (referred to as "the Act" below), is to add together the amount of consideration for the goods delivered or services provided during the period subject to administrative monetary penalty prescribed in Article 8, paragraph (2) of the Act (simply referred to as the "administrative monetary penalty period"), excluding the method prescribed in the following Article. In such a case, if the case falls under any of the following items, the amount prescribed in that item is to be deducted:

- (i) if a full or partial deduction has been made from the amount of consideration due to shortage, inferior quality, or damage of goods, insufficiency or inadequacy of services, or other reasons during the administrative monetary penalty period: the amount deducted;
- (ii) if goods have been returned during the administrative monetary penalty period: the amount of the consideration for the returned goods; or
- (iii) if a contract clearly indicating that the person delivering the goods or providing the services is to pay a rebate in accordance with their performance in delivering or providing the goods or services, has been concluded (excluding a contract providing that a rebate will not be paid if the performance during a specific period does not reach a specific amount or quantity): the amount of the rebate calculated pursuant to the provisions of that contract for the performance during the administrative monetary penalty period (if the amount of the rebate is calculated using different percentages or amount in accordance with the performance during a specific period, the amount calculated using the lowest percentage or amount among them).

Article 2 (1) If the amount of consideration for the goods or services related to acts subject to administrative monetary penalty prescribed in Article 8, paragraph (1) of the Act (simply referred to as the "acts subject to administrative monetary penalty" below) is specified at the time of concluding a contract for their sale or provision, and it is found that there are circumstances causing a significant difference between the total amount of consideration for the goods delivered or services provided during the

administrative monetary penalty period and the total amount of consideration for the goods sold or the services provided specified in the contract concluded during the administrative monetary penalty period, the method for calculating the sales amount prescribed in that paragraph is the method of adding together the amount of consideration for the goods sold or the services provided specified in the contract concluded during the administrative monetary penalty period.

- (2) The provisions of the preceding Article (limited to the part related to item (iii)) apply mutatis mutandis when the amount of sales are calculated by the method prescribed in the preceding paragraph.

(Specifying General Consumers Prescribed in Article 10, Paragraph (1) of the Act)

Article 3 A general consumer who has conducted a transaction for the goods or services during the administrative monetary penalty period prescribed in Article 10, paragraph (1) of the Act and has been specified is a person for whom it has been specified that the day on which the goods or the services related to acts subject to administrative monetary penalty has been delivered or provided (when applying the provisions of paragraph (1) of the preceding Article to the method of calculating the sales amount prescribed in Article 8, paragraph (1) of the Act related to a person who has received a notice under the provisions of Article 15, paragraph (1) of the Act, the day on which the general customer has concluded a contract for the purchase of goods or provision of services related to the acts subject to administrative monetary penalty) to the general customer is within the administrative monetary penalty period by the receipt for the money used to pay the amount of consideration for the purchase of goods or the provision of the services, the written contract of the contract for the purchase of the goods or provision of the services, or other materials proving that fact (referred to as "specified consumer" in the following Article and Article 5, paragraph (1)).

(Method of Calculating the Purchase Price Specified by Cabinet Order Prescribed in Article 10, Paragraph (1) of the Act)

Article 4 The method of calculating the purchase price that is specified by Cabinet Order prescribed in Article 10, paragraph (1) of the Act is to add together the amount of consideration for the goods delivered or services provided during the administrative monetary penalty period to specified consumers who have made a request provided for in that paragraph, excluding the amounts provided for in the following Article. In such a case, if the case falls under any of the following items, the amount prescribed in that item is to be deducted:

- (i) if a full or partial deduction has been made from the amount of consideration due to shortage, inferior quality, or damage of goods, the insufficiency or inadequacy of services, or other reasons during the monetary penalty period: the amount deducted;
- (ii) if goods have been returned during the monetary penalty period: the amount of the consideration for the returned goods; or
- (iii) if a contract clearly indicating that the person delivering the goods or providing the services is to be paid a rebate in accordance with their performance in delivering or providing them has been concluded (excluding a contract providing that a rebate will not be paid if the performance during a specific period does not reach a specific amount or quantity): the amount of the rebate calculated pursuant to the provisions of the contract for its performance during the monetary penalty period (if the amount of the rebate is to be calculated using different percentages or amounts in accordance with the performance during a specific period, the amount calculated using the lowest percentage or amount among them).

Article 5 (1) When applying the provisions of Article 2, paragraph (1) of the Act to the method for calculating the sales amount prescribed in Article 8, paragraph (1) of the Act for a person that has received a notice under the provisions of Article 15, paragraph (1) of the Act, the method for calculating the purchase price provided for in Article 10, paragraph (1) of the Act is to be the method of adding together the amounts of consideration for the goods purchased or the services provided which are prescribed in the contracts concluded by specified consumers who have made the request referred to in that paragraph during the administrative monetary penalty period.

(2) The provisions of the preceding Article (limited to the part related to item (iii)) apply *mutatis mutandis* when calculating the purchase price by the method prescribed in the preceding paragraph.

(Application of Provisions of Article 8, Paragraphs (2) and (3), and Articles 9 through 11 of the Act in the Case Referred to in Article 12, Paragraph (3) of the Act)

Article 6 In the case referred to in Article 12, paragraph (3) of the Act, the transactions prescribed in Article 8, paragraph (2) of the Act conducted by the dissolved corporation (referred to as the "transactions conducted after the acts subject to administrative monetary penalty" below in this Article and Article 10) or the measures prescribed in that paragraph (referred to as "measures to eliminate the unfair inducement of customers" below in this Article and Article 10) are deemed to have been transactions conducted after the acts subject to administrative monetary penalty or measures to eliminate the unfair

inducement of customers conducted or taken by the corporation surviving the merger or established through the merger pursuant to the provisions of Article 12, paragraph 3 of the Act, and the provisions of Article 8, paragraph 2 of the Act apply.

Article 7 (1) In applying the provisions of Article 8, paragraph (3) of the Act to the case referred to in Article 12, paragraph (3) of the Act, the term "business operator that made the representation" in Article 8, paragraph (3) of the Act is deemed to be replaced with "corporation surviving the merger with a business operator that made the representation or corporation established by the merger of the business operator that made the representation with another business operator" and the term "the business operator" in that paragraph is deemed to be replaced with the "corporation surviving the merger or established by the merger", excluding the case prescribed in the following paragraph.

(2) In the case referred to in Article 12, paragraph (3) of the Act, in applying the provisions of Article 8, paragraph (3) of the Act when the dissolved corporation has received a request under the provisions of that paragraph to submit materials, the term "the business operator" in that paragraph is deemed to be replaced with "any of the business operator, or a corporation that survived the merger with the business operator, or a corporation established in the merger of the business operator and another business operator".

Article 8 In the case referred to in Article 12, paragraph (3) of the Act, a report under the provisions of Article 9 of the Act made by the dissolved corporation is deemed to be a report made under the provisions of that Article by the corporation that survived the merger, or established by the merger pursuant to that paragraph on the facts that fall under acts subject to administrative monetary penalty that is deemed to have been committed by the corporation that survived the merger, or established by the merger, and the provisions of that Article apply.

Article 9 In the case referred to in Article 12, paragraph (3) of the Act, the refund measures prescribed in the provisions of Article 10, paragraph (1) of the Act, the application for the approval referred to in that paragraph, the report under the provisions of paragraph (4) of that Article, the application for the approval of changes under the provisions of paragraph (6) of that Article, or the report under the provisions of Article 11, paragraph (1) of the Act (referred to as "application, etc. for the implementation plan for refund measures" below in this Article and Article 13) made or taken by the dissolved corporation, or the approval referred to in Article 10, paragraph (1) of the Act, the approval of

changes under the provisions of paragraph (6) of that Article, the revocation of the approval referred to in paragraph (1) of that Article (including the approval of changes under the provisions of paragraph (6) of that Article) under the provisions of paragraph (8) of that Article, or the notice under the provisions of Article 15, paragraph (1) of the Act (referred to as "approval, etc. of the implementation plan for refund measures" below in this Article and Article 13) received by the dissolved corporation, is deemed to be an application, etc. for the implementation plan for refund measures that the corporation that survived the merger or established by the merger has made, or approval, etc. of the implementation plan for refund measures received by the corporation that survived the merger or established by the merger, for the acts subject to administrative monetary penalty that is deemed to have been conducted by the corporation that survived the merger or established by the merger, and the provisions of Articles 10 and 11 of the Act apply.

(Application of the Provisions of Article 8, Paragraphs (2) and (3), and Articles 9 through 11 in the Case Referred to in Article 12, Paragraph (4) of the Act)

Article 10 In the case referred to in Article 12, paragraph (4) of the Act, the transactions conducted after the act subject to administrative monetary penalty and the measures to eliminate unfair inducement of customers which have been conducted or taken by the dissolved corporation are deemed to be transactions conducted after the act subject to administrative monetary penalty and measures to eliminate unjust inducement of customers which have been conducted or taken by the subsidiary, etc. succeeding to specified business prescribed in that paragraph pursuant to the provisions referred to in that paragraph (referred to as "subsidiary, etc. succeeding to specified business" below) for acts subject to administrative monetary penalty deemed to have been committed by the subsidiary, etc. succeeding to specified business, and the provisions of Article 8, paragraph (2) of the Act apply.

Article 11 (1) In applying the provisions of Article 8, paragraph (3) of the Act to the case referred to in Article 12, paragraph (4) of the Act, the term "business operator that made the representation" in Article 8, paragraph (3) of that Article is deemed to be replaced with "subsidiary, etc. succeeding to specified business prescribed in Article 12, paragraph (4)", and the term "the business operator" in that paragraph is deemed to be replaced with "the subsidiary, etc. succeeding to specified business (if there are two or more subsidiaries, etc. succeeding to specified business, any of the subsidiaries, etc. succeeding to specified business)", excluding the case prescribed in the following paragraph.

(2) In the case referred to in Article 12, paragraph (4) of the Act, in applying the provisions of that paragraph when the dissolved corporation has received a

request to submit materials under the provisions of Article 8, paragraph (3) of the Act, the term "the business operator" in that paragraph is deemed to be replaced with "all of the business operator or the subsidiary, etc. succeeding to specified business prescribed in Article 12, paragraph (4) (if there are two or more subsidiaries, etc. succeeding to specified business, all of the subsidiaries, etc. succeeding to specified business)".

Article 12 In the case referred to in Article 12, paragraph (4) of the Act, a report under the provisions of Article 9 of the Act which has been made by the dissolved corporation is deemed to be a report under the provisions of that Article which has been made by the subsidiary, etc. succeeding to specified business on the facts falling under the acts subject to monetary penalty that are deemed to have been committed by the subsidiary, etc. succeeding to specified business pursuant to the provisions of that paragraph, and the provisions of that Article apply.

Article 13 In the case referred to in Article 12, paragraph (4) of the Act, the application for the implementation plan for refund measures that has been made by the dissolved corporation, or the approval, etc. the implementation plan for refund measures received by the dissolved corporation is deemed to be an application for the implementation plan for refund measures that the subsidiaries, etc. succeeding to a specified business have made or the approval for the implementation plan for refund measures received by the subsidiaries, etc. succeeding to a specified business for the act subject to administrative monetary penalty deemed to have been committed by the subsidiaries, etc. succeeding to a specified business pursuant to the provisions of that paragraph, and the provisions of Article 10 and Article 11 of the Act apply.

(Authority Not Delegated to the Commissioner of the Consumer Affairs Agency)

Article 14 The authority specified by Cabinet Order referred to in Article 38, paragraph (1) of the Act is the authority under the provisions of Article 2, paragraphs (3) and (4), Article 3, paragraph (1) (limited to the part related to hearing of opinions from the Consumer Commission) and paragraph (2), Article 4, Article 5, item (iii), Article 6, paragraph (1) (limited to the part related to hearing of opinions from the Consumer Commission) and paragraph (2), Article 22, paragraph (2), and Article 26, paragraphs (3) and (4), of the Act (including as applied mutatis mutandis pursuant to paragraph (5) of that Article).

(Delegation of Authority to the Fair Trade Commission)

Article 15 Among the authority delegated to the Commissioner of the Consumer

Affairs Agency pursuant to the provisions of Article 38, paragraph (1) of the Act, the authority under the provisions of Article 25, paragraph (1) of the Act is delegated to the Fair Trade Commission; provided, however, that this does not preclude the Commissioner of the Consumer Affairs Agency from personally exercising that authority.

(Circumstances Specified by Cabinet Order Referred to in Article 38,
Paragraph (3) of the Act)

Article 16 The circumstances specified by Cabinet Order that is referred to in Article 38, paragraph (3) of the Act are those falling under any of the following items:

- (i) it is necessary to handle unjustifiable premiums or misleading representations in an urgent and focused manner;
- (ii) in addition to the preceding item, it is particularly necessary to make use of the expert knowledge of the minister with jurisdiction over the business of the business operator or the Commissioner of the Financial Services Agency, in order to effectively and efficiently handle unjustifiable premiums, or misleading representations.

(Delegation of Authority to the Minister with Jurisdiction over Business)

Article 17 (1) When delegating the authority under the provisions of Article 25, paragraph (1) of the Act pursuant to the provisions of Article 38, paragraph (3) of the Act, the Commissioner of the Consumer Affairs Agency is to establish the scope and the period of the affairs to be delegated, and delegate those affairs to the minister with jurisdiction over the business of the business operator or the Commissioner of the Financial Services Agency; provided, however, that this does not preclude the Commissioner of the Consumer Affairs Agency from personally exercising that authority.

(2) When establishing the scope and the period of affairs sought to be delegated pursuant to the provisions of the preceding paragraph, the Commissioner of the Consumer Affairs Agency must consult with the minister with jurisdiction over the business of the business operator, or the Commissioner of the Financial Services Agency in advance.

(Report on Results of Exercise of the Authority)

Article 18 The report under the provisions of Article 38, paragraph (4) of the Act is to be promptly made by using a document stating the following matters (including records created by electronic means, magnetic means, or other means that cannot be perceived by the human senses):

- (i) facts revealed as a result of an order to make a report or submit items, or an on-site inspection or questioning; and

(ii) other matters that should serve as reference.

(Delegation of Authority to the Heads of Local Branch Offices)

Article 19 (1) The Minister of Finance delegates the authority the Minister has been delegated pursuant to the provisions of Article 38, paragraph (3) of the Act and the authority under the provisions of paragraph (4) of that Article (excluding the authority under the jurisdiction of the National Tax Agency for both cases) to the Director General of a Local Finance Bureau with jurisdiction over the locality of the office, place of business, or other places where a specified business operator conducts their business (meaning the business operator prescribed in Article 25, paragraph (1) of the Act and a business operator that has a business relationship with that business operator; the same applies below in this Article) (if that locality is within the area under the jurisdiction of the Fukuoka Local Finance Branch Bureau, the Director General of the Fukuoka Local Finance Branch Bureau), or the Director General of the Customs; provided, however, that this does not preclude the Minister of Finance from personally exercising that authority.

(2) The Minister of Finance delegates the authority the Minister has been delegated pursuant to the provisions of Article 38, paragraph (3) of the Act and the authority under the provisions of paragraph (4) of that Article (limited to the authority under the jurisdiction of the National Tax Agency) to the Director-General of the National Taxation Bureau with jurisdiction over the locality of the office, place of business, or other places where a specified business operator conducts business (if that locality is within the area of Okinawa Prefecture, the Director-General of the Okinawa Regional Taxation Office), or the director of a tax office; provided, however, that this does not preclude the Minister of Finance from personally exercising that authority.

(3) The Minister of Minister of Health, Labour and Welfare delegates the authority the Minister has been delegated pursuant to the provisions of Article 38, paragraph (3) of the Act and the authority under the provisions of paragraph (4) of that Article to the Director of a Regional Bureau of Health and Welfare with jurisdiction over the locality of the office, place of business, or other places where a specified business operator conducts business (if that locality is within the area of the Shikoku Regional Bureau of Health and Welfare, the Director of the Shikoku Regional Bureau of Health and Welfare), or the Director of a Prefectural Labour Bureau; provided, however, that this does not preclude the Minister of Minister of Health, Labour and Welfare from personally exercising that authority.

(4) The Minister of Agriculture, Forestry and Fisheries delegates the authority the Minister has been delegated pursuant to the provisions of Article 38, paragraph (3) of the Act, and the authority under the provisions of paragraph

- (4) of that Article to the Director-General of a Regional Agricultural Administration Office with jurisdiction over the locality of the office, place of business, or other places where a specified business operator conducts business or the Director-General of the Hokkaido Regional Agricultural Administration Office; provided, however, that this does not preclude the Minister of Agriculture, Forestry and Fisheries from personally exercising that authority.
- (5) The Minister of Economy, Trade and Industry delegates the authority the Minister has been delegated pursuant to the provisions of Article 38, paragraph (3) of the Act and the authority under the provisions of paragraph (4) of that Article to the Director General of a Bureau of Economy, Trade and Industry with jurisdiction over the locality of the office, place of business, or other places where a specified business operator conducts business; provided, however, that this does not preclude the Minister of Economy, Trade and Industry from personally exercising that authority.
- (6) The Minister of Land, Infrastructure and Transport delegates the authority the Minister has been delegated pursuant to the provisions of Article 38, paragraph (3) of the Act and the authority under the provisions of paragraph (4) of that Article to the Director General of a Regional Development Bureau with jurisdiction over the locality of the office, place of business, or other places where a specified business operator conducts business, Director General of the Hokkaido Regional Development Bureau, Director-General of a District Transport Bureau, Head of Transport Supervision Department, Director of a Transport Branch Office, or the Director of a Regional Civil Aviation Bureau; provided, however, that this does not preclude the Minister of Land, Infrastructure and Transport from personally exercising that authority.
- (7) The Minister of the Environment delegates the authority the Minister has been delegated pursuant to the provisions of Article 38, paragraph (3) of the Act and the authority under the provisions of paragraph (4) of that Article to the Director General of a Regional Environment Office with jurisdiction over the locality of the office, place of business, or other places where a specified business operator conducts business; provided, however, that this does not preclude the Minister of the Environment from personally exercising that authority.

(Delegation of Authority to the Securities and Exchange Surveillance Commission)

Article 20 (1) The Commissioner of the Financial Services Agency delegates the authority the Commissioner has been delegated pursuant to the provisions of Article 38, paragraph (3) of the Act (limited to the authority related to transactions of goods or services related to the financial instruments business defined in Article 2, paragraph (8) of the Financial Instruments and Exchange

Act (Act No. 25 of 1948) conducted by a financial instruments business operator defined in paragraph (9) of that Article, transactions of goods or services related to the financial instruments intermediary services defined in paragraph (11) of that Article conducted by a financial instruments intermediary service provider defined in paragraph (12) of that Article, and transactions of goods or services related to the registered financial institution business prescribed in Article 33-3, paragraph (1), item (vi), sub-item (a) of that Act conducted by a registered financial institution defined in Article (2), paragraph (11) of that Act, and transactions of goods or services for the securities, etc. intermediary business prescribed in Article 11, paragraph (4) of the Act on the Provision of and the Development of Environment for Using Financial Services (Act No.101 of 2000) conducted by a financial service intermediary prescribed in paragraph (6) of that Article) to the Securities and Exchange Surveillance Commission; provided, however, that this does not preclude the Commissioner of the Financial Services Agency from personally exercising that authority.

- (2) Having exercised the authority that has been delegated pursuant to the provisions of the preceding paragraph, the Securities and Exchange Surveillance Commission must promptly report the results of the exercise of authority to the Commissioner of the Financial Services Agency.

(Delegation of Authority to Director Generals of Local Finance Bureaus)

- Article 21 (1) The Commissioner of the Financial Services Agency delegates the authority the Commissioner has been delegated pursuant to the provisions of Article 38, paragraph (3) of the Act (excluding the authority delegated to the Securities and Exchange Surveillance Commission pursuant to the provisions of paragraph (6) of that Article) and the authority under the provisions of paragraph (4) of that Article (excluding the authority delegated to the Securities and Exchange Surveillance Commission pursuant to the provisions of paragraph (6) of that Article) to the Director General of the Local Finance Bureau with jurisdiction over the locality of the principal office or place of business (referred to as "the principal office or place of business" below in this Article and the following Article) of the business operator prescribed in Article 25, paragraph (1) (simply referred to as "the business operator" below) (if the locality is within the area under the jurisdiction of the Fukuoka Local Finance Branch Bureau, the Director General of the Fukuoka Local Finance Branch Bureau); provided, however, that this does not preclude the Commissioner of the Financial Services Agency from personally exercising that authority.
- (2) The authority delegated pursuant to the provisions of the preceding paragraph over the office, place of business, or other places where the business operator conducts business other than their principal office or place of business

(referred to as the "secondary office, etc." below in this paragraph and paragraph (2) of the following Article) may be exercised by the Director General of a Local Finance Bureau with jurisdiction over the locality of the secondary office, etc. (if the locality is within the area under the jurisdiction of Fukuoka Local Finance Branch Bureau, the Director General of the Fukuoka Local Finance Branch Bureau), in addition to the Director General of a Local Finance Bureau or the Director General of the Fukuoka Local Finance Branch Bureau specified in the preceding paragraph.

Article 22 (1) The Securities and Exchange Surveillance Commission delegates the authority the Commission has been delegated pursuant to the provisions of Article 38, paragraph (6) of the Act to the Director General of a Local Finance Bureau with jurisdiction over the locality of the principal office or place of business of the business operator (if the locality is within the area under the jurisdiction of the Fukuoka Local Finance Branch Bureau, the Director General of the Fukuoka Local Finance Branch Bureau); provided, however, that this does not preclude the Securities and Exchange Surveillance Commission from personally exercising that authority.

(2) The authority delegated pursuant to the provisions of the preceding paragraph over the secondary office, etc. of the business operator may be exercised by the Director General of a Local Finance Bureau that has the jurisdiction over the locality of the secondary office etc. (if the locality is within the area under the jurisdiction of Fukuoka Local Finance Branch Bureau, the Director General of the Fukuoka Local Finance Branch Bureau), in addition to the Director-General of the Local Finance Bureau specified in the preceding paragraph or the Director General of the Fukuoka Local Finance Branch Bureau.

(Affairs Handled by Prefectures)

Article 23 (1) Among the affairs under the authority delegated to the Commissioner of the Consumer Affairs Agency pursuant to the provisions of Article 38, paragraph (1), the affairs under the authority under the provisions of Article 7 paragraph (1) and (2), and Article 25, paragraph (1) of the Act (for affairs under the authority under the provisions of that paragraph, limited to those found to be necessary for issuing the order under the provisions of Article 7, paragraph (1) of the Act) are to be conducted by the prefectural governor with jurisdiction over the area of the prefecture that includes the place or region where an unjustifiable premium is provided or a misleading representation is made; provided, however, that if there is a risk of hindering the voluntary and rational choice-making by general consumers over the areas of two or more prefectures and the Commissioner of the Consumer Affairs

Agency (if the authority under the provisions of Article 25, paragraph (1) of the Act is delegated to the Fair Trade Commission pursuant to the provisions of Article 38, paragraph (2) of the Act, the Fair Trade Commission, if it is delegated to the minister with jurisdiction over the business of an business operator or the Commissioner of the Financial Services Agency pursuant to the provisions of paragraph (3) of that Article, the minister with jurisdiction over the business of the business operator or the Commissioner of the Financial Services Agency, and if it is delegated to the Securities and Exchange Surveillance Commission pursuant to the provisions of paragraph (6) of that Article, the Securities and Exchange Surveillance Commission; the same applies below in this paragraph) finds it particularly necessary in order to appropriately and effectively handle the situation, or it is requested by the prefectural governors, this does not preclude the Commissioner of the Consumer Affairs Agency from personally undertaking those affairs.

- (2) A prefectural governor who has conducted the affairs prescribed in the main clause of the preceding paragraph pursuant to the provisions of the main clause of that paragraph must promptly report the results of the affairs conducted to the Commissioner of the Consumer Affairs Agency.
- (3) In the case referred to in the main clause of paragraph (1), the provisions concerning the Prime Minister related to the affairs prescribed in the main clause of that paragraph are to apply to prefectural governors as provisions concerning prefectural governors.