

# **Monopoly Regulation and Fair Trade Act (Republic of Korea)**

By Ministry of Legislation

## INTRODUCTION

### **Details of Enactment and Amendment**

- Enactment: This Act was enacted on December 31, 1980 as Act No. 3320, in order to encourage creative enterprising activities, to protect the consumers, and to strive for a balanced development of the national economy by preventing any abuse of market-dominating positions by enterprises and any excessive concentration of economic power, by regulating undue collaborative acts and unfair trade practices, and by promoting fair and free competition.
- Amendment: This Act was wholly amended in on January 13, 1990, and has arrived at its present form as the result of being amended 21 times thereafter. The latest amendment was on August 26, 2002.

### **Main Contents**

- A market-dominating enterpriser shall be prohibited against committing any act of abusing his market dominating position, such as the act of unreasonably determining/ maintaining/ changing the price, the act of unreasonably controlling the sale of commodities or provision of services, the act of unreasonably interfering with the business activities of other enterprisers, the act of unreasonably impeding the participation of new competitors, the act of effecting unreasonable transactions in order to exclude competitive entrepreneurs, or an act that might considerably harm the interests of the consumers, and a punitive surcharge shall be imposed in case of any violation.
- In order to prevent any act of practically suppressing competition, such act of combining enterprises either directly or by using a special interest as acquiring or owning stocks of other companies, merging with other companies, or effecting the concurrent holding of an officer's position in another company by own officer or employee shall be prohibited. And enterprises that are prohibited from the act of combining enterprises are classified into enterprise group subject to the limitations on mutual contribution, enterprise group subject to the limitations on gross amount of investment, and enterprise group subject to the limitations on debt guarantees by the form of the enterprises.
- A company that belongs to an enterprise group subject to the limitations on mutual contribution or an enterprise group subject to the limitations on gross amount of investment may not acquire or own stocks of another domestic company in excess of the amount that is the product of the net asset of the company concerned multiplied by the ratio of twenty-five hundredths and give debt guarantees to an affiliated domestic company. However, exceptions shall be made for the cases that meet certain standards and have the purpose of facilitating company reorganization and

strengthening cooperation in technology with a small or medium enterprise or industrial competitive position in world markets.

● When a company that belongs to an enterprise group subject to the limitations on mutual contribution or an enterprise group subject to the limitations on gross amount of investment intends to conduct a transactions of funds at or exceeding a certain level or transactions in assets, such as stocks and bonds or immovable assets, with a person with a special interest in the company in question, the company shall in advance put it to a resolution by the board of directors and announce it publicly.

● Performance compulsory money may be imposed on a person who fails to carry out a corrective order which is given by the Fair Trade Commission to a person who commits a restricted act of combining enterprises.

● Any act of an entrepreneur that unfairly restricts competition through joint engagement with other entrepreneurs by contract, agreement, resolution, or any other means shall be prohibited, and unfair trade practices, such as unfair refusal of transactions and unfair exclusion of competitors, shall be prohibited.

Wholly Amended by Jan. 13, 1990 Act No. 4198

Amended by Nov. 25, 1992 Act No. 4501

Dec. 8, 1992 Act No. 4513

Dec. 22, 1994 Act No. 4790

Dec. 23, 1994 Act No. 4831

Dec. 30, 1996 Act No. 5235

Oct. 30, 1997 Act No. 5403

Dec. 13, 1997 Act No. 5454

Dec. 31, 1997 Act No. 5491

Jan. 8, 1998 Act No. 5498

Jan. 13, 1998 Act No. 5503

Feb. 24, 1998 Act No. 5528

Feb. 28, 1998 Act No. 5529

Sep. 16, 1998 Act No. 5559

Feb. 5, 1999 Act No. 5813

Feb. 5, 1999 Act No. 5814

Feb. 8, 1999 Act No. 5825

Dec. 28, 1999 Act No. 6043

Jan. 16, 2001 Act No. 6371

Jan. 26, 2002 Act No. 6651

Aug. 26, 2002 Act No. 6705

## CHAPTER I GENERAL PROVISIONS

### ■ Article 1 (Purpose)

The purpose of this Act is to promote fair and free competition, to thereby encourage creative enterprising activities, to protect consumers, and to strive for balanced development of the national economy by preventing the abuse of market-dominating positions by enterprisers and the excessive concentration of economic power, and by regulating undue collaborative acts and unfair trade practices.

### ■ Article 2 (Definitions)

For the purpose of this Act, the definitions of terms shall be as follows:

1. The term "enterpriser" means a person who conducts a manufacturing business, service business, or any other business. Any officer, employee, agent, or other person who acts in the interest of the enterpriser shall be deemed as an enterpriser with regards to the application of provisions pertaining to the enterprisers organization:

1-2. The term "holding company" means a company that makes controlling any domestic company's business through the ownership of stocks (including equities. Hereinafter the same shall apply) as its primary business and whose total assets are above an amount determined by Presidential Decree. In this case, the standards for primary business shall be determined by Presidential Decree;

1-3. The term "subsidiary" means a domestic company whose business is controlled by the holding company under the criteria as prescribed by the Presidential Decree;

2. The term "enterprise group" means a group of companies whose businesses are substantially controlled by the same person according to the following distinction pursuant to the standards prescribed by Presidential Decree:

(a) Where the "same person" is a company, a group composed of such person and one or more companies controlled by him; and

(b) Where the "same person" is not a company, a group composed of two or more companies controlled by him.

3. The term "affiliated company" means that where two or more companies belong to the same enterprise group, each company is an "affiliated company" of the others;

4. The term "enterprisers organization" means a juristic person or federation that is organized by two or more enterprisers for the purpose of promoting their common interests, regardless of the organization's form;

5. The term "officer" means a director, representative director, managing partner with unlimited liability, auditor or person in a similar position, or a commercial employer, such as a manager, etc. who is capable of executing general business for the main or a branch office;

6. The term "resale price maintenance" means an act by which an enterpriser compels, in trading the goods or services, a counterpart enterpriser or an enterpriser by next stage of transaction to sell or provide them only at a price fixed in advance at each stage of distribution, or conducts transactions under any agreement or binding condition for that purpose;

7. The term "market-dominating enterpriser" means any enterpriser holding market dominance who can determine, maintain, or change the prices, quantity or quality of commodities or services or other terms and conditions of business as a supplier or customer in a particular business area individually or jointly with other enterprisers. In determining whether an enterpriser is "a market-dominating enterpriser", his market share, whether and to what extent any barriers to enter into his market exist, and the relative size of competitive enterprisers shall be comprehensively taken into account; *provided* that an enterpriser whose annual total sales or purchases are less than one billion won shall be excluded;

8. The term "particular business area" means an area in which any competitive relation exists or may exist, by the subject, stage, or geographical area of such trade;

8-2. The term "practices practically suppressing competition" means practices which impact or threaten to impact the determination of price, quantity, quality, or other terms or conditions of trading in accordance with the intent of a certain enterpriser or an enterprisers organization, because of reduced competition in a particular business area; and

9. The term "credit" means any loan and guarantee or acceptance of company obligation by domestic financial institutions.

## CHAPTER II PROHIBITION OF ABUSE OF MARKET-DOMINATING POSITIONS

### ■ Article 3 (Improvement, Etc. of Monopoly or Oligopoly in Market Structures)

(1) The Fair Trade Commission shall establish and implement action plans to promote competition in markets in which monopolies or oligopolies have existed for an extended period of time in relation to the supply or demand of goods or services.

(2) The Fair Trade Commission may give opinions to the chief-officers of the appropriate administrative authorities as to the introduction of competition or other measures necessary to improve market structures, where it appears to be necessary for the Commission to carry out action plans formulated under paragraph (1).

(3) The Fair Trade Commission shall research the market structures and announce the results in order to establish and promote the action plans referred to in paragraph.

(4) The Fair Trade Commission may request an enterpriser submit data necessary for the research and announcement of the market structure referred to in paragraph (3).

(5) The Fair Trade Commission may entrust the affairs referred to in paragraphs (3) and (4) to other agencies under conditions as prescribed by Presidential Decree.

### ■ Article 3-2 (Prohibition of Abuse of Market-Dominating Position)

(1) No market-dominating enterpriser shall commit acts falling under any of the following subparagraphs (hereinafter referred to as "abusive acts"):

1. An act determining, maintaining, or changing unreasonably the price of commodities or services (hereinafter referred to as the "price");
2. An act unreasonably controlling the sale of commodities or provision of services;
3. An act unreasonably interfering with the business activities of other enterprisers;
4. An act unreasonably impeding the participation of new competitors; and
5. An act unfairly excluding competitive enterprisers, or which might considerably harm the interests of consumers.

(2) Categories or standards for abusive acts shall be determined by Presidential Decree.

### ■ Article 4 (Presumption of Market-Dominating Enterpriser)

An enterpriser whose market share in a particular business area falls under any of the following subparagraphs shall be presumed to be a market-dominating enterpriser as referred to in subparagraph 7 of Article 2:

1. Market share of one enterpriser is 50/100 or more; or
2. The total market share of not less than three enterprisers is 75/100 or more; *provided* that those whose market share is less than 10/100 shall be excluded.

#### ■ Article 5 (Corrective Measures)

Where there exists any act violating the provisions of Article 3-2, the Fair Trade Commission may order the market-dominating enterpriser involved to reduce prices, to discontinue the act that is a violation, to announce its violation of the Acts, and to take other measures necessary for correction.

#### ■ Article 6 (Surcharge)

In the case of abusive acts by a market-dominating enterpriser, the Fair Trade Commission may impose upon such an enterpriser surcharges not exceeding an amount equivalent to 3 percent of the turnover determined by Presidential Decree (referring to profits of business particularly for the person designated by Presidential Decree. The same shall apply hereinafter); *provided* that under the Presidential Decree, where there is no turnover, or where it is difficult to compute the turnover (hereinafter referred to as "in the absence of turnover, etc."), surcharges may be imposed up to but not exceeding one billion won.

### CHAPTER III RESTRICTION ON

### THE COMBINATION OF ENTERPRISES AND

### REPRESSION OF THE ECONOMIC

### POWER CONCENTRATION

#### ■ Article 7 (Restriction on Combination of Enterprises)

(1) No one shall, directly or through a person determined by Presidential Decree as having special interest (hereinafter referred to as the "person with special interest"), practically suppress competition in a particular business area by conducting practices falling under any of the following subparagraphs (hereinafter referred to as "combination of enterprises"); *provided* that this shall not apply where a person other than a company whose total assets or turnover (referring to the sum of total assets or turnover of affiliated companies) meets an amount determined by Presidential Decree (hereinafter referred to as "large company"), performs an act falling under subparagraph 2:

1. The acquisition or ownership of stocks of other companies;
2. The concurrent holding of an officer's position in another company (hereinafter referred to as the "concurrent holding of an officer's position") by an officer or employee (referring to a person

who continues to be engaged in the affairs of the company, but is not an officer; hereinafter the same shall apply);

3. A merger with other companies;

4. An acquisition by transfer, lease or acceptance by mandate of the whole or main part of business of another company, or the acquisition by transfer of the whole or main part of fixed assets used for the business of another company (hereinafter referred to as the "acquisition by transfer of business"); and

5. Participation in the establishment of a new company; *provided* that this shall not apply to the following cases.

(a) Where a person other than persons with special interests (excluding those determined by Presidential Decree) does not participate in the establishment of a new company; or

(b) Where a person participates in the establishment of a company by division under Article 530-2 (1) of the Commercial Act.

(2) The provisions of paragraph (1) shall not apply where the Fair Trade Commission deems that a combination of enterprises falls under any of the following subparagraphs. In this case, the parties concerned shall prove that they meet the requirements:

1. Where the promotion of efficiency attainable through the combination of enterprises is greater than the negative effect produced by restricted competition; and

2. Where such combination is made with an inviable company, falling under the requirements determined by Presidential Decree, such as a company whose total capital in a balance sheet is less than its paid-in capital for a reasonable period of time.

(3) No person shall incorporate another company by a coercive or any other unfair method.

(4) If a combination of enterprises falls under any of the following subparagraphs, it is presumed that competition is practically suppressed in any particular business area:

1. In cases where the aggregate of the market share of a company taking part in a combination of enterprises (referring to the aggregate of market shares of the affiliated companies; hereafter the same shall apply in this Article) falls under any of the following categories: and

(a) In a case where the aggregate market share of the company concerned satisfies the presumptive requirements for a market-dominating enterprise;

(b) In a case where the aggregate market share of the company concerned is the largest in the business area concerned; and

(c) In a case where the aggregate market share of the company concerned exceeds the market share of the company with the second largest market share (referring to a company with the largest market share besides the company concerned) by not less than 25 percent of the aggregate market share.

2. In cases where a large company, directly or through a person with a special interest, combines enterprises satisfying the following requirements:

(a) In the case of a combination of enterprises in a particular business area where small-or medium-sized companies under the Framework Act on Small and Medium Enterprises occupy not less than two-thirds of the whole market share; and

(b) In the case of the combination of enterprises in which the combined company has a market share of not less than 5 percent.

(5) The Fair Trade Commission may determine and announce policies as to standards for the combination of enterprises that practically suppresses competition in a particular business area under paragraph (1), to which the provisions of paragraph (1) do not apply under paragraph (2), and which is made coercively or by an unfair practice under paragraph (3).

#### ■ Article 7-2 (Standards for Acquisition or Ownership of Shares)

The acquisition or ownership of shares under this Act shall be determined by the genuine ownership of shares, regardless of the names listed on the register.

#### ■ Article 8 (Report on Establishment of and Conversion into Holding Company)

Where a person has established a holding company or has converted a company into a holding company, he shall make a report to the Fair Trade Commission under the conditions as prescribed by Presidential Decree.

#### ■ Article 8-2 (Restrictions, etc. on Holding Company)

(1) No holding company shall perform an act falling under any of the following:

1. An act of holding obligations exceeding the total capitals (referring to an amount obtained by deducting obligations from the total assets on the balance sheet; hereinafter the same shall apply): *Provided*, That where it falls under any of the following items, it may hold obligations exceeding its total capitals for one year from the date on which it is converted into a holding company, or it establishes a holding company:

(a) Where a company is converted into a holding company by investing in kind all or part of its assets in another company;



(b) Where it is converted into a holding company or establishes a holding company by the division, merger through division, or real division under Article 530-2 or 530-12 of the Commercial Act; and

(c) Where it is converted into a holding company since the value of the subsidiary's stocks on the balance sheet is increased, which has been retained at the time of the end of the business year prior to it;

2. An act of owning less than 50/100 of the total number of its subsidiary's issued stocks [30/100 where the relevant subsidiary is a stock-listed corporation or an Association-registered corporation under the Securities and Exchange Act, and 20/100 where it is a subsidiary of the holding company which satisfies the standards as prescribed by the Presidential Decree, in terms of the holding company having the venture enterprise under Article 2 (1) of the Act on Special Measures for the Promotion of Venture Businesses (hereinafter referred to as the "venture enterprise") as a subsidiary]: *Provided*, That where it falls under any of the following items, with regard to the subsidiary's stocks which are retained at the time when it is converted into a holding company or it establishes a holding company, the same shall not apply for two years (in the case of item (d), one year from the end of relevant business year) from the date on which it has been converted into a holding company or has established a holding company:

(a) Where a company is converted into a holding company by investing in kind all or part of its assets in another company;

(b) Where it is converted into a holding company or it establishes a holding company by the division, merger through division, or real division under Article 530-2 or 530-12 of the Commercial Act;

(c) Where it is converted into a holding company since the value of the subsidiary company's stocks on the balance sheet is increased, which has been retained at the time of the end of the business year prior to it; and

(d) Where the holding company, which has fallen under the standard prescribed by the Presidential Decree for the whole one year or longer pursuant to the text of other portion than each item, has come not to fall under such standard;

3. An act of owning stocks of a domestic company other than those of a subsidiary for control purposes as determined by the Presidential Decree: *Provided*, That where it falls under any of the following items, when retaining the stocks of another domestic company at the time when it is converted into a holding company or it establishes a holding company, it may own the stocks issued by the relevant domestic company for two years from the date on which it has been converted into a holding company or it has established a holding company:

(a) Where a company is converted into a holding company by investing in kind all or part of its assets in another company;

(b) Where it is converted into a holding company or it establishes a holding company by the division, merger through division, or real division under Article 530-2 or 530-12 of the Commercial Act; and

(c) Where it is converted into a holding company since the value of the subsidiary's stocks on the balance sheet is increased, which has been retained at the time of the end of the business year prior to it;

4. An act of owning stocks of a domestic company other than those of a company conducting the financial business or insurance business (including a company meeting the standards as determined by the Presidential Decree such as companies closely connected with the financial business or insurance business) for a holding company which owns stocks of its subsidiary conducting the financial business or insurance business (hereinafter referred to as "financial holding company"); and

5. An act of owning stocks of a domestic company conducting the financial business or insurance business for a holding company which is not a financial holding company (hereinafter referred to as "general holding company").

(2) A general holding company's subsidiary shall not own the stocks of another domestic company (excluding companies as determined by the Presidential Decree such as companies closely connected with such subsidiary's business activities and other subsidiaries of the general holding company which controls such subsidiary) for control purposes as determined by the Presidential Decree: *Provided*, That where such subsidiary owns stocks of a domestic company at the time when it becomes a subsidiary of the general holding company, it may own stocks (including stocks acquired through the exercise of preemptive rights or stock dividends) of the domestic company for two years from the date of its becoming the subsidiary.

(3) A holding company shall submit to the Fair Trade Commission a report on its or its subsidiary's business contents, such as status of stock-holding and financial standing, under the conditions as prescribed by the Presidential Decree.

*[This Article Newly Inserted by Act No. 5813, Feb. 5, 1999]*

### ■ Article 8-3 (Restrictions on Establishment of Holding Company by Enterprise Group Subject to Limitations on Debt Guarantees)

Where the same person who controls a company belonging to an enterprise group subject to the limitations on debt guarantees designated under Article 14 (1) or the person with special interests in the same person intends to establish a holding company or convert the company into a holding company, he shall have the existing debt guarantees under Article 10-2, which fall hereunder, annulled:

1. Debt guarantees between a holding company and its subsidiary;

2. Debt guarantees between a holding company and other domestic affiliated companies (excluding a subsidiary controlled by the holding company);
3. Debt guarantees between subsidiaries; and
4. Debt guarantees between a subsidiary and other domestic affiliated companies (excluding a holding company controlling the subsidiary and other subsidiary controlled by the holding company)

#### ■ Article 9 (Prohibition, Etc. of Mutual Contribution)

(1) Any company belonging to an enterprise group whose total assets, etc. fall under the criteria as prescribed by the Presidential Decree, and thereby designated under Article 14 (1) (hereinafter referred to as an "enterprise group subject to the limitations on mutual investment") shall not acquire or own stocks of an affiliated company which acquires or owns its stocks: *Provided*, That this shall not apply to the case where it falls under any of the following subparagraphs:

1. A merger of companies, or the acquisition by transfer of a whole business; and
2. An enforcement of security rights, or the receipt of an accord and satisfaction.

(2) Any company that makes a contribution under the proviso of paragraph (1) shall dispose of stocks within six months from the day on which it acquires or holds them; *provided* that this shall not apply where an affiliated company acquiring or holding its own stocks disposes of them.

(3) Any company which belongs to an enterprise group subject to the limitations on mutual investment and which is also an investment company for the establishment of small and medium-sized enterprises under the Support for Small and Medium Enterprise Establishment Act, shall not acquire or hold stocks of a domestic affiliated company.

#### ■ Article 10 (Restrictions on Gross Amount of Investment)

(1) Any company belonging to an enterprise group, whose total amount of assets or financial structure, etc. falls under the standard prescribed by the Presidential Decree, and thereby designated under Article 14 (1) (hereinafter referred to as an "enterprise group subject to the limitations on total investment amount") shall be prohibited from acquiring or owning stocks of another domestic company in excess of an amount obtained by multiplying its net asset amount by 25/100 (hereinafter referred to as the "investment limit amount"); *Provided*, That the same shall not apply to the case falling under any of the following subparagraphs:

1. Where such company acquires or owns new stocks of another domestic company within the ratio of acquired or owned stocks against the gross number of stocks issued by the said company. In this case, the same shall be limited to within two years from the date of acquisition or owning;

2. Where such company acquires or owns stocks of another domestic company through the execution of collateral right or receipt of accord and satisfaction: *Provided*, That the same shall be limited to within 6 months from the date of acquisition or owning;

3. Where such company acquires or owns stocks of foreign-invested company under the Foreign Investment Promotion Act in order to induce foreign investments. In this case, the same shall be limited to 5 years from the date of acquisition or owning;

4. Where such company acquires or owns stocks of another domestic company with the aim of facilitating the corporate restructuring (hereinafter referred to as "corporate restructuring") to bolster the corporate competitiveness, promoting technological cooperation with small and medium businesses, or strengthening international competitiveness of the new industry under Article 7 of the Industrial Development Act and other industries prescribed by the Presidential Decree, and the Fair Trade Commission recognizes such acquisition and owning as consistent with requirements prescribed by the Presidential Decree: *Provided*, That the same shall apply to a period set by the Presidential Decree within the scope of 5 years from the date of acquisition and owning, but the Fair Trade Commission may, when it deems necessary, extend such period within the scope of 3 years;

5. Where such company acquires or owns the stocks in excess of the investment limit amount with the aim of converting into a holding company or of not becoming a holding company in the case of one which was a holding company by acquiring, owning or disposing of the stocks or by decreasing or increasing the assets, and where such acts satisfy the requisites as prescribed by the Presidential Decree: *Provided*, That the period for which such company may acquire or own the stocks shall be from the date of acquisition or owning to the end of relevant business year, but, if such conversion into the holding company or into the company other than a holding company takes considerable time and if there exist reasonable reasons therefor, the Fair Trade Commission may extend such period until the next business year; and

6. Where such company owns stocks of a company falling under any of the following items. In this case, when the procedures of each of the following items have been completed, the same shall be limited to within 6 months from the date of completion:

(a) Company for which the procedure for company reorganization has been initiated and is in progress under the Company Reorganization Act;

(b) Company for which the procedure for composition has been initiated and is in progress under the Composition Act;

(c) Company for which the procedure is in progress after sentenced to a bankruptcy under the Bankruptcy Act; and

(d) Company for which the procedure for management has been initiated and is in progress under Article 12 (1) 1 through 3-1 of the Corporate Restructuring Promotion Act.

(2) The net asset amount under the provisions of the main sentence of paragraph (1) except each subparagraph shall be an amount calculated according to the following methods:

1. An amount obtained by subtracting the amount of investment made by affiliated companies in the company (meaning an amount that derives from the multiplication of the number of stocks in possession by the per stock face value: hereafter in this paragraph, the same shall apply) as of the closing date of the immediately preceding business year from the larger amount between the capital sum, entered on the balance sheet of immediately preceding business year, and the equity capital;

2. In case that a newly incorporated company has no balance sheet of the immediately preceding business year, an amount obtained by subtracting the amount of investment made by affiliated companies in the company from the paid-in capital at the time of incorporation; and

3. In case of subparagraph 1 or 2, if the capital sum has been increased by the issuance of new stocks, a merger or the conversion of convertible bonds after the closing date of the immediately preceding business year or after the date of company incorporation, an amount obtained by subtracting the amount of investment made by affiliated companies in the company from the increased capital sum.

(3) The value of stocks acquired or owned under the provisions of the main sentence of paragraph (1) except each subparagraph shall be computed according to prices at the time of acquiring such stocks: *Provided*, That where the price at the time of acquisition contains the contribution to be paid to the Government, it shall be computed on the basis of the amount obtained by subtracting such contribution from the prices at the time of acquisition.

(4) In applying the provisions of paragraph (1), where the prescribed investment limit amount is exceeded due to a decrease of the net asset value of a company (excluding the case where the net asset value of the company is decreased by the acquisition of treasury stocks; hereinafter the same shall apply) or the already excessive amount increases, the small amount from among the amounts falling under each of the following subparagraphs shall be deemed the investment limit amount for two years from the date on which the net asset value decreases. The same shall also apply to the case where the net asset value of the company decreases again after the prescribed period elapses:

1. The amount of investment made to another domestic company as of the date on which the net asset value decreases; and

2. The investment limit amount calculated in case that the net asset value does not decrease.

(5) Where the investment limit amount increases in excess of the amount that is deemed the investment limit amount in paragraph (4) following an increase in the net asset value under the provisions of paragraph (2) 3, the provisions of paragraph (4) shall not be applied.

(6) Where the stocks acquired or owned by a company belonging to an enterprise group subject to the limitations on total investment amount fall under any of the following subparagraphs, such stocks shall not be deemed to be the stocks of another domestic company under the text of other portion than each subparagraph of paragraph (1):

1. Where acquiring or owning the stocks of a company operating a private investment project in the modes under subparagraph 1 or 2 of Article 4 of the Act on Private Participation in Infrastructure. In this case, the same shall be limited to within 20 years from the date of acquisition or owning: *Provided*, That it may be extended within the limit of 10 years, when the Fair Trade Commission deems it necessary, such as the period summing up the construction period of the said private investment project and the free-use period exceeds 20 years;

2. Where acquiring or owning the stocks of company falling under any of the following items in order to take over such company:

(a) Government-invested institution under Article 2 of the Framework Act on the Management of Government-Invested Institutions;

(b) Corporation under Article 2 of the Act on the Improvement of Managerial Structure and Privatization of Public Enterprises;

(c) Government-contributed organization as prescribed by the Presidential Decree; and

(d) Affiliated company of the company under items (a) through (c);

3. Where acquiring or owning the stocks of company falling under the standard as prescribed by the Presidential Decree, such as when carrying on the business identical with the company under the provisions of other portion than each subparagraph, or having a close relation with the business contents of such company; and

4. Where acquiring or owning the stocks of company in which the State or local government acquires or owns not less than 30/100 of the gross number of issued stocks. In this case, when the share ratio of the State or local government in the said company falls short of 30/100, it shall be limited to within 6 months from the said date.

(7) The provisions of paragraph (1) shall not apply to the company falling under any of the following subparagraphs:

1. Company carrying on the financial business or insurance business;

2. Holding company; and

3. Company for which the procedure for company reorganization under the Company Reorganization Act, or the procedure for composition under the Composition Act, has been initiated and is in progress, or the procedure for management under Article 12 (1) 1 through 3 of the Corporate Restructuring Promotion Act has been initiated and is in progress. In this case,

when each procedure has been completed, it shall be limited to within one year from the date of completion.

*[This Article Newly Inserted by Act No. 6043, Dec. 28, 1999]*

#### ■ Article 10-2 (Prohibition of Debt Guarantees for Affiliated Company)

(1) Any company (excluding a company conducting the financial business or insurance business; hereinafter the same shall apply) belonging to an enterprise group which falls under the criteria set forth in the Presidential Decree, such as the total amount of assets in excess of a specific scale, and thereby designated under Article 14 (1) (hereinafter referred to as an "enterprise group subject to the limitations on debt guarantees"), shall not give debt guarantees to its domestic affiliated companies: *Provided*, That the same shall not apply to a debt guarantee which falls under any of the following subparagraphs:

1. A guarantee made in connection with any obligation of a company, which is taken over according to the plan or criteria for rationalization under the Restriction of Special Taxation Act.
2. Deleted; and
3. A guarantee with respect to debts that is deemed necessary to enhance the international competitiveness of enterprises, or which are set forth by Presidential Decree.

(2) For the purpose of paragraph (1), the term "debt guarantee" means any guarantee to be made to a domestic affiliated company by a company belonging to an enterprise group subject to the limitations on debt guarantees in connection with the credit of a domestic financial institution falling under any of the following subparagraphs:

1. Financial institutions as prescribed by the Banking Act, the Korea Development Bank, the Export-Import Bank of Korea, the Long-Term Credit Bank, and the Industrial Bank of Korea;
2. Deleted;
3. Insurance companies as prescribed by the Insurance Business Act;
4. Securities companies as prescribed by the Securities and Exchange Act;
5. Merchant Banking Corporations as prescribed by the Merchant Bank Act; and
6. Other financial institutions as prescribed by Presidential Decree.

(3) and (4) Deleted.

#### ■ Article 10-3 Deleted.

#### ■ Article 11 (Limitation of Voting Rights of Finance or Insurance Companies)

No financial or insurance company belonging to an enterprise group subject to the limitations on mutual investment shall exercise its voting rights in stocks of domestic affiliated companies, under its acquisition or ownership: *Provided*, That the same shall not apply to the cases falling under any of the following subparagraphs:

1. Where acquiring or owning stocks in order to carry on the financial business or insurance business;
2. Where acquiring or owning stocks by obtaining an approval, etc. pursuant to the Insurance Business Act, etc. in order to efficiently operate and manage the insurance properties; and
3. Where the general meeting of stockholders of a relevant domestic affiliated company (limited to the stock-listed corporation or Association-registered corporation under the Securities and Exchange Act) passes a resolution for matters falling under any of the following items. In this case, the number of voting stocks from among those of the said affiliated company shall not exceed 30/100 of the gross number of stocks issued by the said affiliated company, including the number of stocks to be exercised by the persons other than those as stipulated by the Presidential Decree, from among the specially-related persons with the said affiliated company:

(a) Appointment or dismissal of officers;

(b) Alteration of the articles of incorporation; and

(c) Merger of the said affiliated company with another company, or transfer of the whole or part of business to another company.

#### ■ Article 11-2 (Resolution of Board of Directors and Publication on Large-Scale Internal Trading)

(1) When any company belonging to an enterprise group which falls under the criteria set forth in the Presidential Decree, such as the total amount of assets in excess of a specific scale, (hereinafter referred to as a "company subject to the publication of internal trading"), intends to carry out the trading act falling under any of the following subparagraphs (hereinafter referred to as "large-scale internal trading") with specially-related persons or for such specially-related persons beyond the business scale prescribed by the Presidential Decree, it shall publish such intention in advance after going through a resolution of the board of directors. The same shall apply to the case where such company intends to change major contents as prescribed in paragraph (2):

1. The act of channeling or trading funds, such as suspense payments and loans, etc.;
2. The act of offering or trading securities such as stocks and company bonds, etc.; and
3. The act of offering or trading assets such as real estate or intangible property rights, etc.



(2) Any company subject to the publication of internal trading, in making the publication pursuant to the provisions of paragraph (1), shall include the objective of trading, partners, scale, and terms of such trading in its publication, as prescribed by the Presidential Decree.

(3) The Fair Trade Commission may entrust business related to the publication as prescribed in the provisions of paragraph (1) to institutions in charge of receiving reports, which are established pursuant to the provisions of Article 186 of the Securities and Exchange Act. In this case, the Fair Trade Commission shall determine the methods, procedures, and other necessary matters relevant to the publication after consultations with such entrusted institutions.

(4) Any company subject to the publication of internal trading that runs a financial or insurance business, if it intends to carry out an trading act that is a fixed trading according to its clause and is consistent with the standards prescribed by Presidential Decree, may perform such trading act, notwithstanding the provisions of paragraph (1), without obtaining a resolution of the board of directors; *Provided*, That such company shall publish the contents of such trading.

## ■ Article 12 (Report on Combination of Enterprises)

(1) Where a company having a certain total value of assets or turnover (referred to the aggregate total value of assets or turnover of affiliated companies) determined by Presidential Decree (limited to large companies where a combination of enterprises falling under subparagraph 2 is made; hereafter in this Article referred to as a "company subject to reporting on the combination of enterprises"), or a person with special interests in a company subject to reporting on the combination of enterprises participates in a combination of enterprises falling under any of the following subparagraphs, he shall make a report to the Fair Trade Commission. This shall also apply where the combination of enterprises falling under any of the following subparagraphs is made between a company not subject to reporting on the combination of enterprises and a company subject to reporting on the combination of enterprises:

1. In the case of holding not less than 20 percent (15 percent for a stock-listed corporation or Association-registered corporation under the Securities and Exchange Act) of the total number of stocks issued by other companies (excluding non- voting stocks pursuant to Article 370 of the Commercial Act. Hereinafter the same shall apply);

2. In the case where officers hold concurrent positions;

3. In the case of conducting acts falling under Article 7 (1) 3 or 4 ; or

4. In the case of acquiring not less than 20 percent of stocks of a company to be newly established.

(2) Notwithstanding the provisions of the former part of the portion other than each subparagraph of paragraph (1), in the case of the combination of enterprises falling under any of the following subparagraphs, which falls under subparagraph 1 or 4 of paragraph (1), it shall be excluded from one subject to report:

1. Where the small and medium enterprise start-up investment company or the small and medium enterprise start-up investment association under subparagraphs 4 and 5 of Article 2 of the Support for Small and Medium Enterprise Establishment Act, has combined with the founder under subparagraph 2 of the same Article or a venture business; and

2. Where the venture capitalist or the venture business investment association under Article 41 (1) and (3) of the Specialized Credit Financial Business Act has combined with the new technology enterprise under subparagraph 1 of Article 2 of the Korea Technology Credit Guarantee Fund Act; and

3. Where the company subject to reporting on the combination of enterprises has combined with a securities investment company under the Securities Investment Company Act (excluding the securities investment company for acquisition of businesses under Article 79 (2) of the same Act).

(3) The provisions of paragraph (1) shall not apply where the head of the central administrative agency concerned has consulted in advance with the Fair Trade Commission regarding the combination of enterprises under the relevant Acts.

(4) In computing the rate of holding or acquisition pursuant to paragraph (1) 1 or 4, those stocks owned by a person with special interest in the company concerned shall be included.

(5) Reports on the combination of enterprises under paragraph (1) shall be made within thirty days after the date of such combination; *provided* that where one or more companies involved in a combination of enterprises falling under paragraph (1) 3 or 4 are larger companies, reports on the combination of enterprises shall be made within thirty days after the date of conclusion of the contracts for merger or takeover of business, or within thirty days after the date of resolution of the shareholders' meetings as to the participation in the establishment of a company.

(6) No one who has made a report under the proviso of paragraph (5) shall register the fact of a merger, execute the contracts for the takeover of business, or acquire stocks until thirty days after making such a report; *provided* that the Fair Trade Commission may, if necessary, shorten the period, or extend it up to not more than sixty days from the date following the expiry date.

(7) Where a person intends to combine enterprises under Article 7 (1), he may request the Fair Trade Commission determine whether such combination may be categorized as one which practically suppresses competition even before the period requiring a report under paragraph (5).

(8) Upon the request of a determination under paragraph (7), the Fair Trade Commission shall give notice of its decision to the requesting company within thirty days; *provided* that the Fair Trade Commission may, if necessary, extend such period up to not more than sixty days from the date following the expiry date.

(9) When the duty to file a report pursuant to paragraph (1) falls on two or more companies, these companies shall file the report jointly; *provided* that the foregoing shall not apply where the Fair Trade Commission has designated one of the companies belonging to an enterprise group

composed of the company obligated to file as the representative responsible for filing the report (hereafter referred to as the "representative" in this Article) under the conditions prescribed by Presidential Decree.

### ■ Article 13 (Report on Status of Stockholding)

(1) All companies belonging to an enterprise group subject to the limitations on mutual investments, an enterprise group subject to the limitations on the total investment amount, or an enterprise group subject to the limitations on debt guarantees shall submit to the Fair Trade Commission a report on the status of ownership of their stockholders, financial standing, and status of their ownership of other domestic companies' stocks under the conditions as prescribed by the Presidential Decree.

(2) All companies belonging to the enterprise group subject to the limitations on debt guarantees shall submit to the Fair Trade Commission a report on the status of debt guarantees issued in favor of domestic affiliated companies after obtaining confirmation from a domestic financial institution pursuant to the Presidential Decree.

(3) The proviso of Article 12 (9) shall apply *mutatis mutandis* to reports referred to in paragraphs (1) and (2).

(4) Deleted.

### ■ Article 14 (Designation, etc. of Enterprise Group, etc. Subject to Limitations on Mutual Investment)

(1) The Fair Trade Commission shall designate an enterprise group subject to the limitations on mutual investment, an enterprise group subject to the limitations on total investment amount and an enterprise group subject to the limitations on debt guarantees (hereinafter referred to as an "enterprise group, etc. subject to the limitations on mutual investment"), under the conditions as prescribed in the Presidential Decree, and shall notify companies belonging to such groups thereof.

(2) The provisions of Articles 9 through 11 and 13 shall apply from the date of the receipt of notification referred to in paragraph (1).

(3) Notwithstanding paragraph (2), where a company designated as an enterprise group, etc. subject to the limitations on mutual investment pursuant to the provisions of paragraph (1) and notified as a company belonging to an enterprise group, etc. subject to the limitations on mutual investment, or a company incorporated as an affiliated company into an enterprise group, etc. subject to the limitations on mutual investment pursuant to the provisions of Article 14-2 (1) and notified as a company belonging to an enterprise group, etc. subject to the limitations on mutual investment, is in violation of the provisions of Article 9 (1) or (3), 10 (1) or 10-2 (1) at the time of receiving such notice, such violation shall be dealt with according to the classification falling under each of the following subparagraphs:

1. Where the company violates the provisions of Article 9 (1) or (3) [including the case where the company issuing the stocks acquired or owned is newly incorporated as an affiliated company and comes to violate Article 9 (3)], the same provisions shall not apply for one year from the date of designation or affiliation;

2. Where the company violates the provisions of Article 10 (1), the total amount of investment on the date of designation or affiliation shall be deemed the investment limit amount for one year from the date of such designation or affiliation; *provided* that the same shall not apply to case where an investment limit amount exceeds the amount to be deemed an investment limit amount following an increase of the net asset value; and

3. Where the company is in violation of the provisions of Article 10-2 (1) (including the case where the company receiving debt guarantees is newly incorporated as an affiliated company and comes to violate), the same shall not apply for two years from the date of designation or incorporation: Provided, That where the procedure for company reorganization under the Company Reorganization Act or the procedure for company composition under the Composition Act (hereafter in this subparagraph, referred to as the "procedure, etc. for company reorganization"), has been commenced on the company under the provision of other portion than each subparagraph, not later than the end of the procedure, etc. for company reorganization, and where the company under the provision of other portion than each subparagraph renders a debt guarantee to the company for which the procedure, etc. for company reorganization has been commenced, not later than the end of the procedure, etc. for company reorganization on the company subjected to the debt guarantee, limited only to the said debt guarantee, the same shall apply.

(4) The Fair Trade Commission may request a company or person with special interest in a company provide documents necessary for evaluating the possible designation of an enterprise group as referred to in paragraph (1).

(5) A company belonging to an enterprise group, etc. subject to the limitations on mutual investment shall undergo an audit by a certified public accountant, and the Fair Trade Commission shall use the balance sheet revised according to the opinions on audit of the certified public accountant.

#### ■ Article 14-2 (Incorporation in and Exclusion from Affiliated Companies)

(1) Where a company is to be incorporated in or excluded from affiliated companies of an enterprise group, etc. subject to the limitations on mutual investment, the Fair Trade Commission shall, upon request by the company concerned (including a person with a special interest in the company; hereinafter the same shall apply) or *ex officio*, determine whether the company may be categorized as an affiliated company of a large enterprise group, and the Commission shall either incorporate the company in the affiliated companies, or exclude it from the affiliated companies.

(2) Where the Fair Trade Commission deems it necessary for the determination referred to in paragraph (1), it may request that the company concerned submit data on the composition of

stockholders and directors, status of debt guarantees, financial standing, transactions, and other related matters.

(3) Upon receiving request for determination as referred to in paragraph (1), the Fair Trade Commission shall notify the requesting person of the results of the determination within thirty days; *provided* that the Fair Trade Commission may, if deems necessary, extend such period up to but not more than sixty days.

#### ■ Article 14-3 (Presumption of Incorporation into Affiliated Company and Notification Date)

Where a company which receives a request under Article 14 (4) or 14-2 (2) refuses to submit data without any justifiable reason or submits false data, and thereby is not incorporated into an enterprise group, etc. subject to the limitations on mutual investment though it should be incorporated, the Fair Trade Commission deems that the company is incorporated into an enterprise group, etc. subject to the limitations on mutual investment and is given notification thereof on the date on which the Presidential Decree may determine.

*[This Article Newly Inserted by Act No. 5813, Feb. 5, 1999]*

#### ■ Article 14-4 (Requests for Confirmation of Documents before Competent Authorities)

The Fair Trade Commission may, if deemed it necessary for enforcing Articles 9 through 11 and 13 through 14-2, request any authorities falling under each of the following subparagraphs to confirm or investigate the data relating to the status of the ownership of stockholders of domestic affiliated companies belonging to an enterprise group, etc. subject to the limitations on mutual investment, the data relating to debt guarantees, the data relating to advanced payments, loans, or securities, the data relating to transactions or provision of immovable assets, and other necessary matters:

1. The Financial Supervisory Service, pursuant to the Act on the Establishment, etc. of Financial Supervisory Organization;
2. Deleted;
3. Domestic financial institutions pursuant to any subparagraph of Article 10-2 (2); or
4. Other institutions set forth by Presidential Decree as relating to financial transactions and the exchange of stocks.

*[This Article Newly Inserted by Act No. 5335, Dec. 30, 1996]*

#### ■ Article 15 (Prohibition of Evasion of Law)

(1) No one shall perform any act of evading the application of the provisions of Articles 7 (1) and (3), 8-2 (1) and (2), 8-3, 9, 10 (1), 10-2 (1), or 11.

(2) The categories and standards for acts of evasion of law under paragraph (1) shall be determined by Presidential Decree.

#### ■ Article 16 (Corrective Measures)

(1) Where any company has violated or is likely to violate the provisions of Articles 7 (1) and (3), 8-2 (1) and (2), 8-3, 9, 10 (1), 10-2 (1), 11, or 15, the Fair Trade Commission may order such a company (referred to the company involved in the combination of enterprises for a violation of Article 7 (1) 1 or 5) or violator to take one of the corrective measures falling under the following subparagraphs. Where the Fair Trade Commission shall receive the report under the proviso of Article 12 (5), it shall order the company or violator to take corrective measures within the period prescribed in Article 12 (6):

1. Cessation of the practice concerned;
2. Disposition of all or part of the stocks;
3. Resignation of officers;
4. Transfer of business;
5. Cancellation of debt guarantees;
6. Publication of the violation of the Act;
7. Restrictions on business method or business scope to prevent the negative effects of restricted competition pursuant to the combination of enterprises; and
8. Other necessary corrective measures to reprimand such a violation.

(2) The Fair Trade Commission may, where a company has been established or companies have been merged in violation of the provisions of Article 7 (1) and (3), 8-3, or 12 (6), file a lawsuit to nullify the said establishment of a company or the said merger of companies.

#### ■ Article 17 (Surcharge)

(1) The Fair Trade Commission may impose a surcharge on a company which has acquired or owns stocks in violation of Article 9 or 10 (1) up to but not exceeding ten percent of purchase price of stocks so acquired or owned.

(2) The Fair Trade Commission may impose a surcharge on a company that has guaranteed debt in violation of the provisions of Article 10-2 (1) up to but not exceeding ten percent of the value of the debt guarantee in question.

(3) Deleted.

(4) The Fair Trade Commission may impose a surcharge on a company that violates the provisions of Article 8-2 (1) or (2) up to but not exceeding ten percent of the following amount:

1. Obligations exceeding its total capital for a violation of the provisions of Article 8-2 (1) 1;
2. In the case of a violation of the text of the portion other than each subparagraph of Article 8-2 (1) 2, the amount computed by the following formula:

$$\begin{array}{ccccccc} \text{Total book value of} & & & & \text{Owning ratio of} & & \\ \text{stocks of its} & \times & \left( \begin{array}{c} \text{Ratio under each of} \\ \text{the following items} \end{array} \right. & - & \left. \begin{array}{c} \text{stocks of its} \\ \text{subsidiary} \end{array} \right) & & \\ \text{subsidiary} & & & & & & \end{array}$$

Owning ratio of stocks of its subsidiary

- (a) Where the said subsidiary is a stock-listed corporation or an Association-registered corporation under the Securities and Exchange Act: 30/100;
- (b) Where the said subsidiary is a subsidiary of the holding company falling under the criteria prescribed by the Presidential Decree pursuant to the text of the portion other than each item of Article 8-2 (1) 2: 20/100; and
- (c) Where not falling under items (a) and (b): 50/100;

3. The total book value of the violator's stockholdings for a violation of the main provision of Article 8-2 (1) 3, 4, 5 or the main provision of paragraph (2) of that Article.

#### ■ Article 17-2 (Special Case of Corrective Measures, etc.)

(1) Where an affiliate of an enterprise group designated as the enterprise group subject to the limitations on total investment amount, or a company incorporated as an affiliate into the enterprise group subject to the limitations on total investment amount, has violated Article 10 (1) by continually owning, until the date on which one year elapsed from the date of designation or incorporation, the stocks of another domestic company which are acquired and owned in excess of the investment limit on the date of such designation or incorporation, the Fair Trade Commission may order a prohibition of exercising its voting right, in lieu of the provisions of Articles 16 and 17.

(2) The company subjected to an order to prohibit any exercise of the voting right under paragraph (1) (hereinafter referred to as the "subject company") shall notify the Fair Trade Commission of the details of stocks subjected to an order to prohibit any exercise of the voting right, within the period prescribed by the Presidential Decree within the limit of one month from the date of receiving such an order of prohibition.

(3) Where the subject company fails to notify the details of stocks subjected to an order to prohibit any exercise of the voting right within the period under paragraph (2), the Fair Trade Commission may make ex officio a decision on the stocks incapable of exercising the voting right, under the conditions as prescribed by the Presidential Decree.

(4) The subject company shall make a public notification, under the conditions as prescribed by the Presidential Decree, of the details of stocks, which are to be notified to the Fair Trade Commission under paragraph (2), or which are to be subjected to an ex officio order of prohibition by the Fair Trade Commission under paragraph (3).

(5) Where a company has exercised the voting right in contravention of an order to prohibit any exercise of the voting right under paragraph (1), the Fair Trade Commission may levy on the company the penalty surcharge within the limit not exceeding the amount obtained by multiplying the acquisition price of stocks whose voting rights have been exercised by 10/100.

*[This Article Newly Inserted by Act No. 6651, Jan. 26, 2002]*

### ■ Article 17-3 (Compulsory Performance Money)

(1) The Fair Trade Commission may impose compulsory performance money(a fine) on a violator who fails to fulfill corrective measures within the specified period pursuant to Article 16 and in violation of Article 7 (1) or (3), up to but not exceeding the figure obtained by multiplying 3/10000 by the following amount per day; *provided* that the Fair Trade Commission may impose the fine on a person who makes a combination of enterprises in violation of Article 7 (1) 2 up to but not exceeding two million won per day:

1. The total amount of the book value of stocks acquired or owned and obligations accepted, for the combination of enterprises listed in Article 7 (1) 1 or 5;
2. The sum of the book value of stocks granted in compensation for a merger and obligations accepted, for the combination of enterprises listed in Article 7 (1) 3; and
3. The amount of business taken over from another company, for a combination of enterprises listed in Article 7 (1) 4.

(2) The policies relevant to the imposition, payment, collection, and refund of compulsory performance money shall be determined by Presidential Decree, *provided* that compulsory performance money in arrears shall be collected in accordance with the policies of the disposition of national taxes in arrears.

(3) The Fair Trade Commission may entrust the Commissioner of the National Tax Administration matters relevant to the collection or disposition of violators defaulting in payment compulsory performance money under paragraphs (1) and (2).

### ■ Article 18 (Enforcing Compliance with Corrective Measures)

(1) No company that has been ordered to dispose of stocks pursuant to Article 16 (1) shall exercise voting rights with respect to such stocks from the date of receiving such an order.



(2) No company that has made a cross-capital investment in violation of the provisions of Article 9 shall exercise voting rights with respect to such stocks from the date of receiving a corrective order, until the violation has been corrected.

(3) In giving an order to a company that has violated the provisions of Article 10 (1) to dispose of its stocks in accordance with the provisions of Article 16 (1) 2, where the Fair Trade Commission does not affirm stocks subject to such disposal, the company under such order shall notify the Fair Trade Commission of the details of those stocks for which no voting rights are exercised by the 10th day from the date of receiving such an order. In this case, the company shall be prohibited from exercising its voting rights on the stocks, of which it notifies the Fair Trade Commission, 10 days after receiving such an order.

(4) The Fair Trade Commission, where it is not notified within the period prescribed in paragraph (3), may designate stocks for which the company cannot exercise its voting rights as prescribed by Presidential Decree.

## **CHAPTER IV RESTRICTIONS ON UNFAIR COLLABORATIVE ACTS**

### **■ Article 19 (Prohibition of Unfair Collaborative Acts)**

(1) No enterpriser shall agree with other enterprisers by contract, agreement, resolution, or any other means to jointly engage in an act, falling under any of the following subparagraphs, that unfairly restricts competition (hereafter referred to as "unfair collaborative acts")

1. An act fixing, maintaining, or changing prices;
2. An act determining terms and conditions for transactions of goods or services, or payment of prices thereof;
3. An act restricting production, delivery, transportation, or the transaction of goods or services;
4. An act limiting the territory of trade or customers;
5. An act preventing or restricting the establishment or extension of facilities or the installation of equipment necessary for the production of goods or the rendering of services;
6. An act restricting the types or specifications of goods for the production or transaction of goods;
7. An act establishing a company, etc. to jointly carry out or manage the main parts of a business;  
or
8. Any practice that practically suppresses competition in a particular business area by means of interfering with or restricting the activities or contents of business by other persons.

(2) The prohibition of paragraph (1) shall not apply, where unfair collaborative practices are authorized as satisfying the requirements determined by Presidential Decree, where they are conducted for the purposes listed in any of the following subparagraphs:

1. Industry rationalization;
2. Research and technology development;
3. Overcoming economic depression;
4. Industrial restructuring;
5. Rationalization of trade terms and conditions; or
6. Enhancement of competitiveness small and medium enterprises.

(3) Any relevant policies with respect to the standards, methods, and procedures of authorization under paragraph (2) and modification of authorized matters shall be determined by Presidential Decree.

(4) Any contract, etc. stipulating to unfair collaborative acts listed in paragraph (1) shall be null and void between enterprisers.

(5) Where two or more enterprisers are committing any acts listed in the subparagraphs of paragraph (1) that practically restrict competition in a particular business area, they shall be presumed to have committed an unfair collaborative act despite the absence of an express agreement to engage in such act.

#### ■?Article 20 Deleted.

#### ■ Article 21 (Corrective Measures)

Where an enterpriser commits an unfair collaborative act violating the provisions of Article 19, the Fair Trade Commission may order at enterpriser to discontinue the act, publicly announce the violation, or take other corrective measures.

#### ■ Article 22 (Surcharge)

The Fair Trade Commission may impose, upon those conducting unfair collaborative acts in violation of Article 19, a surcharge not exceeding an amount equivalent to five percent of the turnover determined by Presidential Decree. In the case of an absence of turnover, etc. a surcharge may be imposed up to but not exceeding one billion won.

#### ■ Article 22-2 (Mitigations and Exemptions for Those who have Reported)

(1) With respect to the persons falling under any of the following subparagraphs, the corrective measures under Article 21 or the surcharge under Article 22 may be mitigated or exempted:

1. Persons who have reported on the fact of unfair collaborative acts; and
2. Persons who have cooperated for the investigations under Article 50 by means of furnishing the evidence, etc.

(2) Matters necessary for the scope of persons to be mitigated or exempted under paragraph (1) and the standard or extent, etc. of a mitigation or exemption shall be determined by Presidential Decree.

## CHAPTER V PROHIBITION OF

### UNFAIR TRADE PRACTICES

#### ■ Article 23 (Prohibition of Unfair Trade Practices)

(1) No enterpriser shall commit any act falling under any of the following subparagraphs and that is likely to impede fair trade (hereinafter referred to as "unfair trade practices"), or make an affiliated company or other enterprisers perform such an act:

1. An act which unfairly refuses any transaction, or discriminates against a certain transacting partner;
2. An act designed to unfairly exclude competitors;
3. An act unfairly coercing or inducing customers of competitors to deal with oneself;
4. An act making a trade with a transacting partner by unfairly taking advantage of his position in the business area;
5. An act of trade under terms and conditions which unfairly restrict or disrupt business activities;
6. Deleted;
7. An act assisting a person with a special interest or other companies by providing advanced payment, loans, manpower, immovable assets, stocks and bonds, or intellectual properties thereto, or by transacting under substantially favorable terms therewith; and
8. Any act that threatens to impair fair trade other than those listed in subparagraphs 1 through 7.

(2) The categories or standards for unfair trade practices shall be determined by Presidential Decree.

(3) If necessary for the prevention of acts violating the provisions of paragraph (1), the Fair Trade Commission may make and announce publicly guidelines to be observed by enterprisers.

(4) In order to prevent the unreasonable inducement of customers, the enterprisers or enterprisers organization may voluntarily write a code (hereinafter referred to as the "fair competition code").

(5) Enterprisers or an enterprisers organization may request that the Fair Trade Commission examine whether or not the fair competition code as referred to in paragraph (4) violates the provisions of paragraph (1) 3 or 6.

#### ■ Article 24 (Corrective Measures)

The Fair Trade Commission may, when an act in violation of the provisions of Article 23 (1) is committed, order the enterpriser concerned to discontinue those unfair trade practices, to delete any pertinent provisions from a contract, to publish notice of the violation, or to take any other necessary corrective measures against that act.

#### ■ Article 24-2 (Surcharge)

In the event of the occurrence of unfair trade practices in violation of the provisions of each subparagraph of Article 23 (1), the Fair Trade Commission may impose upon the person concerned a surcharge not exceeding the amount equivalent to two percent (five percent in case of violating the provisions of subparagraph 7) of the turnover determined by Presidential Decree. In the case of absence of the turnover, a surcharge may be imposed up to but not exceeding five hundred million won.

### CHAPTER VI ENTERPRISERS ORGANIZATION

#### ■ Article 25 Deleted.

#### ■ Article 26 (Prohibited Activities of Enterprisers Organization)

(1) No enterprisers organization shall commit any of the following acts:

1. Any act unfairly restricting competition including acts falling under any subparagraph of Article 19 (1);
2. Any act restricting the present or future number of enterprisers in any business area;
3. Any act unreasonably restricting the business matters or activities of member enterprisers (referring to an enterpriser who is a member of the enterprisers organization; hereinafter the same shall apply);

4. Any Act inducing a person to or assisting a person in the conduct of unfair trade practices under each subparagraph of Article 23 (1), or to conduct practices of resale price setting under Article 29; and

5. Deleted.

(2) The provisions of Article 19 (3) shall apply *mutatis mutandis* to the cases referred to in paragraph (1) 1. In this instance, the term "enterpriser" shall be read to mean "enterprisers organization".

(3) If it is necessary to prevent any act violating the provisions of paragraph (1), the Fair Trade Commission may establish and give public notice of any guidelines to be observed by the enterprisers organization.

(4) If the Fair Trade Commission wishes to establish such guidelines, as referred to in paragraph (3), it shall consider opinions from the heads of the related administrative agencies.

#### ■ Article 27 (Corrective Measures)

The Fair Trade Commission may, when an act violates of the provisions of Article 26, order the enterprisers organization concerned (if necessary, including the member enterprises concerned) to discontinue that act, to publish notice of the violation, or to take any other necessary corrective measures.

#### ■ Article 28 (Surcharge)

(1) With regard to violations of each subparagraph of Article 26 (1), the Fair Trade Commission may impose upon the enterprisers organization concerned a surcharge up to but not exceeding five hundred million won.

(2) The Fair Trade Commission may impose upon an enterpriser involved in practices violating any subparagraph of Article 26 (1) a surcharge up to but not exceeding an amount equivalent to five percent of turnover as determined by Presidential Decree. In the absence of turnover, a surcharge may be imposed up to but not exceeding five hundred million won.

### CHAPTER VII RESTRICTIONS ON

#### RESALE PRICE MAINTENANCE

#### ■ Article 29 (Restrictions on Resale Price Maintenance)

(1) No enterpriser shall engage in a resale price maintenance; *provided* that this shall not apply to the case where there exist justifiable reasons in terms of the maximum price maintenance preventing the transactions of commodities or services in excess of specified prices.

(2) The provisions of paragraph (1) shall not apply to literary works prescribed by Presidential Decree, or to those commodities that meet all of the following conditions and have been designated in advance by the Fair Trade Commission as being eligible for resale price maintenance:

1. The uniformness in quality of the commodity concerned is easily identifiable;
2. The commodity concerned is used daily by ordinary customers; and
3. Free competition exists with respect to the commodity concerned.

(3) In the instance an enterpriser desires to be designated as *provided* in paragraph (2), he shall apply to the Fair Trade Commission under the conditions prescribed by Presidential Decree.

(4) The Fair Trade Commission shall make it public whenever it designates a commodity as being eligible for resale price maintenance under paragraph (2).

#### ■ Article 30 (Modification of Resale Price Maintenance)

Where an enterpriser who produces or sells a commodity which the Fair Trade Commission designates and makes public under Article 29 (4) concludes a contract in order to determine and maintain the resale price of that commodity, but the contract threatens to cause serious injury to the interests of consumers or contradicts the public interest, the Fair Trade Commission may order modification of the contract.

#### ■ Article 31 (Corrective Measures)

The Fair Trade Commission may, when an act violates the provisions of Article 29 (1), order the enterpriser concerned to discontinue that act, to publish notice of the violation, or to take any other necessary corrective measures against that act.

#### ■ Article 31-2 (Penalty)

With regards to resale price maintenance in violation of Article 29, the Fair Trade Commission may impose upon the enterpriser concerned a surcharge not exceeding an amount equivalent to two percent of turnover as determined by Presidential Decree. In the instance of an absence of turnover, a surcharge may be imposed up to but not exceeding five hundred million won.

### CHAPTER VIII RESTRICTIONS ON THE

### CONCLUSION OF INTERNATIONAL CONTRACTS

#### ■ Article 32 (Restrictions on Conclusion of Unfair International Contracts)

(1) No enterpriser or enterprisers organization shall enter into an international agreement or international contract as prescribed by Presidential Decree, (hereinafter referred to as

"international contract") containing provisions concerning unfair collaborative acts, unfair trade practices, or resale price maintenance; *provided* that the foregoing shall not apply when the Fair Trade Commission deems the effect of said agreement upon competition in a particular business area to be negligible or deems that there are other unavoidable reasons to validate that contract.

(2) The definition of policies regarding unfair collaborative acts, unfair trade practices, and resale price maintenance as referred to in paragraph (1) may be determined and public notice given by the Fair Trade Commission.

#### ■ Article 33 (Request for Review of International Contracts)

Upon entering into an international contract, the enterpriser or enterprisers organization may request that the Fair Trade Commission determine whether the contract violates any provisions of Article 32 (1) in accordance with the procedure set forth by Presidential Decree.

#### ■ Article 34 (Corrective Measures)

The Fair Trade Commission may, when an international contract violates or is likely to violate the provisions of Article 32 (1), order the enterpriser or the enterprisers organization concerned to cancel the contract, to amend or alter the contract, or to take other necessary corrective measures.

#### ■ Article 34-2 (Surcharge)

In the case of the conclusion of international contracts in violation of Article 32, the Fair Trade Commission may impose upon the relevant enterprisers organization surcharges up to but not exceeding 500 million won, or upon the enterpriser concerned surcharges up to but not exceeding an amount equivalent to two percent of turnover as determined by Presidential Decree; *provided* that in the instance of an absence of turnover, surcharges may be imposed not exceeding 500 million won.

### CHAPTER IX ENFORCEMENT AGENCY

#### ■ Article 35 (Establishment of Fair Trade Commission)

(1) The Fair Trade Commission shall be established under the jurisdiction of the Prime Minister for the purpose of independently promoting the objectives of this Act.

(2) The Fair Trade Commission shall carry out its function as one of the central administrative organizations pursuant to Article 2 of the Government Organization Act (Establishment and Structures of Central Administrative Organization).

#### ■ Article 36 (Matters under Jurisdiction of Fair Trade Commission)

The following matters shall be under the jurisdiction of the Fair Trade Commission:

1. Matters relating to regulating the abuse of market-dominating positions;
2. Matters relating to restricting the combination of enterprises and preventing the concentration of economic power;
3. Matters relating to regulating unfair collaborative acts and anti-competitive behavior on the part of an enterprises organization;
4. Matters relating to regulating unfair trade practices and resale price maintenance;
5. Matters relating to preventing the conclusion of unfair international contracts;
6. Matters relating to competition-encouragement policies through consultation, and coordination with respect to Acts, subordinate statutes, and administrative measures which restrict competition; and
7. Other matters that other Acts and subordinate statutes determine are to be handled by the Fair Trade Commission.

**■ Article 37 (Composition of Fair Trade Commission and Related Matters)**

(1) The Fair Trade Commission shall be composed of nine commissioners, including a chairman, a vice-chairman, and four commissioners who shall be non-standing members of the Fair Trade Commission.

(2) The standing and non-standing commissioners of the Fair Trade Commission (hereafter referred to as the "Commissioners") shall be appointed from among those persons who meet any of the following qualifications. The President shall appoint the chairman and vice-chairman upon the recommendation of the Prime Minister, and the other commissioners upon the recommendation of the chairman:

1. Public officials of Grade II or higher with experience in monopoly regulation and fair trade;
2. Judges, prosecutors, or attorneys with a minimum of fifteen years experience;
3. Associate professors, professors, or the equivalent at certified research institutes with a minimum of fifteen years experience and who majored in law, economics, or business administration at their respective universities; and
4. Business managers or individuals engaged in consumer protection activities with a minimum of fifteen years experience.

(3) The chairman and the vice-chairman shall be considered political appointees, while other standing commissioners shall be considered public officials equivalent to Grade I.



(4) The chairman, the vice-chairman, and the chief-officer of the Secretariat under Article 47 (Establishment of Secretariat) shall be executive representative, despite the provisions of Article 10 (Executive Representative) of the Government Organization Act.

#### ■ Article 37-2 (Types of Meetings)

Meetings of the Fair Trade Commission shall fall into 2 categories: meetings comprising of all the members (hereinafter referred to as the "Plenary Session"), and meetings consisting of three members, including a standing commissioner(hereinafter referred to as a "Chamber").

#### ■ Article 37-3 (Subjects of Plenary Session and Chamber)

(1) The Plenary Session shall deliberate and determine matters falling within each of the following subparagraphs:

1. Matters as to an interpretation and application of Acts and subordinate statutes and public notices under the jurisdiction of the Fair Trade Commission;
2. Matters involving an appeal under Article 53;
3. Matters on which resolutions have not been made in a Chamber, or which a Chamber has decided to refer them to the Plenary Session;
4. Matters necessary to make or reform regulations or public notice; or
5. Matters having substantial economic impact or those recognized as necessary to being dealt with by the Plenary Session itself.

(2) A Chamber may deliberate or determine matters in addition to those falling within the subparagraphs of paragraph (1).

#### ■ Article 38 (Chairman)

(1) The chairman shall represent the Fair Trade Commission.

(2) The chairman may attend state council and take the floor.

(3) If the chairman is unable to carry out his duties due to poor health or an emergency, the vice-chairman shall act for him. If both of the chairman and the vice-chairman are unable to perform their duties due to emergency, the standing commissioners shall act for them in order of their seniority.

#### ■ Article 39 (Term of Office of Commissioner)

The terms of office of the chairman, vice-chairman, and commissioners of the Fair Trade Commission shall be three years and may be renewed only once.

#### ■ Article 40 (Guarantee of Commissioner's Status)

No commissioner shall be removed from his office against his will except in the following instances:

1. Where he has been sentenced to imprisonment without labor or a more severe punishment; and
2. Where he becomes incapable of performing his duties due to prolonged physical or mental illness.

#### ■ Article 41 (Prohibition of Commissioner's Political Activities)

No commissioner may enter a political party or participate in any political activity.

#### ■ Article 42 (Proceedings and Quorum of Meetings)

(1) Proceedings of the Plenary Session shall be presided over by the chairman. Resolutions shall be made in the presence of all members and by the vote of a majority of the members.

(2) Proceedings of a Chamber shall be presided over by one of the standing members, and resolutions shall be made in the presence of all of members by a unanimous vote of the members present.

#### ■ Article 43 (Disclosure of Trial and Resolutions and Confidentiality of Agreement)

(1) All trials and resolutions made by the Fair Trade Commission shall be disclosed; *provided* that this shall not apply where the Fair Trade Commission deems it necessary to protect trade secrets of an enterpriser or enterprisers organization.

(2) An agreement for resolution of a case by the Fair Trade Commission shall not be disclosed.

#### ■ Article 43-2 (Maintenance of Good Order in Venue of Adjudicatory Proceedings)

The chairman of the Plenary Session or a Chamber may give necessary orders to maintain good order in adjudicatory proceedings with respect to the parties, those having an interest in the outcomes of the proceedings, witnesses, and those attending.

#### ■ Article 44 (Challenge, Discharge, and Withdrawal of Members)

(1) Any member may be challenged with regard to the deliberation or resolution of cases falling within any of the following subparagraphs:

1. In cases where the challenged member himself, his spouse or ex-spouse is one of the parties or has rights or obligations held jointly with other persons;

2. In cases where the challenged member has a personal relationship with one of the parties, or a juristic person for which the member is working is involved in advisory or consulting services on legal or managerial matters to any parties;

3. In cases where the member or a juristic person for whom the member is working has testified or attested;

4. In cases where the member or a juristic person for whom the member is working has acted or is acting as an agent of one of the parties; or

5. In cases where the member or a juristic person for whom the member is working has participated in any act or its omission which has been the subject matter of cases.

(2) One of the parties may apply for the discharge of members, where it appears to him to be impossible that deliberations or resolutions may be fairly made. An application for the discharge of members shall be evaluated by the chairman without any resolutions from the Plenary Session.

(3) Any may withdraw himself from the deliberation and resolution of cases before him, where there are conflicts of interest falling within any of the following subparagraphs of paragraph (1) or under the causes of in paragraph (2).

#### ■ Article 45 (Signatures and Seals by Commissioners)

Where the Fair Trade Commission makes a decision on matters violating the provisions of this Act, it shall make a written decision specifying the reason thereof, and such a written decision shall be signed and sealed by the commissioners who have participated in the decision.

#### ■ Article 46 (Fictitious Public Officials in Application of Penal Provisions)

Any commissioner of the Fair Trade Commission who is not otherwise a public official shall be considered a public official for the purposes of the Criminal Act and penal provisions of other Acts.

#### ■ Article 47 (Establishment of Secretariat)

A secretariat shall be established in the Fair Trade Commission for the purpose of carrying out the affairs of the Fair Trade Commission.

#### ■ Article 48 (Provisions concerning Organization)

(1) Matters not provided for in this Act but which are necessary for the organization of the Fair Trade Commission shall be determined by Presidential Decree.

(2) Matters not provided for in this Act but which are necessary for the operation of the Fair Trade Commission shall be determined by the Rules of the Fair Trade Commission.

## CHAPTER X INVESTIGATION PROCEDURES

### AND OTHER RELATED MATTERS

#### ■ Article 49 (Identification and Report, etc. of Violations)

(1) The Fair Trade Commission may, if it deems that a suspicion of violating the provisions of this Act exists, make a necessary investigation *ex officio*.

(2) Any person who deems that a violation of the provisions of this Act has occurred may report it to the Fair Trade Commission.

(3) In the case of investigation under paragraph (1) or (2), the Fair Trade Commission shall give notice, in writing, to the parties concerned disclosing the results of the investigation (including any corrective measures that will be implemented as a result of investigation).

(4) If five years have passed since an act of violating the provisions of this Act was committed, the Fair Trade Commission shall not make orders for corrective measures or impose surcharges as prescribed by this Act against such an offense; *provided* that in case where a corrective measure or the imposition of surcharge is cancelled by a judgment of court, and where a new disposition is made under the relevant reasons for judgment, this shall not apply.

#### ■ Article 50 (Investigation, etc. of Violations)

(1) The Fair Trade Commission may, if it deems it necessary to enforce this Act, take the following measures in accordance with the procedures set forth by Presidential Decree:

1. Summon the parties concerned, interested parties, or witnesses to a hearing and elicit their testimony;
2. Designate and engage expert witnesses; and
3. Issue an order to an enterpriser, an enterprisers organization or, an officer or employee thereof to report on the business situation or to present other necessary information or materials, or to report on the detention of presented materials or information.

(2) The Fair Trade Commission may, where it deems necessary to enforce this Act, have a public official under its control (including those under the control of an agency as commissioned under Article 65) enter the office or business place of an enterpriser or an enterprisers' organization in order to examine the business and management situation, records, documents, electronic materials, voice-recording materials, video materials, and such other materials or things as prescribed by the Presidential Decree, and hear statements from the parties concerned, interested parties and witnesses at a designated place under the conditions prescribed by Presidential Decree.

(3) Any public official who conducts an examination under paragraph (2) may order an enterpriser, enterprisers organization, or officer or employee thereof to present materials or things necessary for such examination, or detain presented materials or things in accordance with the procedures set forth by Presidential Decree.

(4) Any public official who conducts an examination under paragraph (2) shall show to an appropriate person a certificate indicating his competence.

(5) Where it is deemed impossible to confirm whether to provide money or other assistances without any financial transaction-related information or data (hereinafter referred to as "financial transaction information") in connection with an investigation of a company subject to the publication of internal trading under heavy suspicion of violating the provisions of Article 23 (1) 7, the Fair Trade Commission may, notwithstanding the provisions of other Acts, request the head of any financial institution to provide financial transaction information by presenting the documents stating the following matters, and the head of the financial institution shall provide such information:

1. Personal data of the trader;

2. Purposes for use; and

3. The financial transaction information requested (limited to financial transaction information for persons deemed to be under suspicion in connection with unfair assistance activities with the financial institution).

(6) Where any financial institution provides financial transaction information to the Fair Trade Commission pursuant to paragraph (5), the financial institution shall notify the title holder in writing the major contents of financial transaction information provided, the purpose for its use, the person for whom it was provided, and the date of its provision within ten days from the date on which such financial transaction information is provided.

(7) The Fair Trade Commission, if it requests any financial institution provide financial transaction information pursuant to paragraph (5), shall record that request and keep the records for three years from the date of such request.

(8) No person for whom financial transaction information is provided pursuant to paragraph (5) shall provide or disclose it to others or use it for any purpose other than the purpose for which it was provided.

## ■ Article 51 (Recommendation for Correction of Violation)

(1) If a violation of the Act has occurred, the Fair Trade Commission may determine the standards for correction and recommend that the enterpriser or enterprisers organization concerned comply with those standards.

(2) Any person who has received such a recommendation under paragraph (1) shall notify the Fair Trade Commission within ten days of receiving the notice of recommendation for correction whether or not he will comply with the recommendation.

(3) If a person who receives a recommendation for correction under paragraph (1) complies with it, it shall be treated as a corrective measure has been taken under this Act.

#### ■ Article 52 (Opportunity to state Opinion)

(1) The Fair Trade Commission shall, before issuing corrective measures or levying surcharges in response to violations of this Act, provide the parties concerned and interested parties with the opportunity to state their opinions.

(2) The parties concerned and interested parties may attend a hearing of the Fair Trade Commission to state their opinions or present relevant materials.

#### ■ Article 52-2 (Request for Access to Data)

Any party or interested person may ask the Fair Trade Commission for access to or the ability to make copies of the data relating to measures taken under this Act. The Fair Trade Commission shall comply with such a request if it deems it necessary for the public interest or consent is granted by the person providing such data.

#### ■ Article 53 (Appeal)

(1) Any party who is dissatisfied with measures taken by the Fair Trade Commission pursuant to this Act may file an appeal stating the reasons thereof with the Fair Trade Commission within thirty days from the receipt of notification of said measure.

(2) The Fair Trade Commission shall make a decision with respect to an appeal under paragraph (1) within sixty days; *provided* that where it is impossible to make a decision within such period for unavoidable reasons, the period referred to above may be extended up to but not more than of thirty days.

#### ■ Article 53-2 (Suspension of Enforcement of Orders for Corrective Measures)

(1) Where an appeal under Article 53 (1) (Appeal) has been made by a person against whom corrective measures have been ordered by this Act, or where the Fair Trade Commission deems necessary to prevent irrevocable damage or harm caused by the enforcement of such orders or the continuance of procedures, the Fair Trade Commission may, at the request of one of the parties or *ex officio*, decide to suspend enforcement of such orders or a continuance of procedures (hereafter referred to as a "suspension of enforcement").

(2) The Fair Trade Commission may, at the request of one of the parties, or *ex officio*, revoke a decision granting suspension of enforcement, where the grounds for suspension of enforcement have disappeared since the decision of suspension of enforcement was made.

#### ■ Article 54 (Filing of Lawsuit)

(1) Where a person desires to file a lawsuit against any measure taken by the Fair Trade Commission under this Act, he shall do so within thirty days of the date of the receipt of a notice of the disposition in question or a written decision of the Fair Trade Commission against the appeal.

(2) The period as referred to in paragraph (1) may not be extended.

#### ■ Article 55 (Exclusive Jurisdiction over Lawsuits for Appeal)

The Seoul Appellate Court, having jurisdiction over the seat of the Fair Trade Commission, shall have exclusive jurisdiction over any appellate cases filed pursuant to Article 54.

#### ■ Article 55-2 (Procedures for Dealing With Cases, etc.)

Matters relevant to procedures dealing with cases in violation of this Act shall be determined by the Fair Trade Commission.

### CHAPTER X-2 IMPOSITION AND

### COLLECTION OF SURCHARGES, ETC.

#### ■ Article 55-3 (Imposition of Surcharges)

(1) In imposing surcharges under this Act, the Fair Trade Commission shall take into account factors falling in each of the following subparagraphs:

1. The nature and degree of the unlawful practice;
2. The duration and frequency of the unlawful practice; and
3. The benefit accrued by the unlawful practice.

(2) If a company merges with a company violating this Act, surcharges may be imposed or collected, on the ground that unlawful practices conducted by the company concerned have been conducted by the existing company.

(3) The standards for the imposition of surcharges shall be determined by Presidential Decree.

#### ■ Article 55-4 (Extension of Period of Surcharge Payment and Payment in Installments)

(1) The Fair Trade Commission may extend the period in which the surcharge payment must be made or allow the surcharge to be paid in installments, where a person on whom a surcharge has been imposed (hereafter referred to as a "person subject to surcharge payment") is believed to have difficulty in paying the surcharge as a lump sum because the sum of the surcharge is above

the amount determined by Presidential Decree and that persons situation falls under any of the following subparagraphs. In these circumstances, security, where necessary, may be required:

1. Where substantial damage has been caused to properties because of fire, theft, etc.;
2. Where a business is at considerable risk because of unfavorable business conditions;
3. Where a lump sum payment of the surcharge is likely to bring considerable financial difficulties;  
or
4. Where there are other relevant factors that fall under subparagraphs 1 through 3.

(2) In the case of application for the extension of the period of surcharge payment or for payment in installments, a person subject to the surcharge payment shall apply to the Fair Trade Commission within 30 days from the date of receiving a notice of surcharge payment.

(3) Where a person subject to a surcharge payment for whom the period of surcharge is extended or who is permitted to pay the surcharge in installments violates the contents of any of the following subparagraph, the Fair Trade Commission may revoke the decision to extend the period of the surcharge payment or accept the payment in installments, and collect such surcharge in a lump sum:

1. Where installments of a surcharge are overdue;
2. Where orders by the Fair Trade Commission with regard to the modification of or the preservation of security are not complied with; or
3. Where it appears to be impossible to collect all or the remaining amount of a surcharge with enforcement, the commencement of an auction, a declaration of insolvency, the dissolution of a juristic person, or national or local taxes are in arrears.

(4) In relation to the extension of the period of the surcharge payment, or payment in installments pursuant to paragraphs (1) through (3), relevant policies shall be determined by Presidential Decree.

#### ■ Article 55-5 (Collection of Surcharge and Surcharge in Arrears)

(1) The Fair Trade Commission may collect an additional or extra surcharge, the amount of which is to be determined by Presidential Decree, for the number of days from the day after of the expiration of the period for the surcharge payment to the date of payment inclusive, unless the person subject to surcharge payment pays the sum of the surcharge within the period of payment.

(2) The Fair Trade Commission may give notice with the period of payment specified, unless a person subject to the surcharge payment pays the sum of surcharge within the period of payment, and collect surcharges similar to national taxes in arrears, unless original and additional surcharges under paragraph (1) are paid within the period of payment.



(3) The Fair Trade Commission may delegate to the Commissioner of the National Tax Office its functions relating to surcharges, the collection of additional surcharges, and the procedures for surcharges in arrears under paragraphs (1) and (2).

(4) The Fair Trade Commission may, in case where deemed necessary for the collection of deferred surcharges, request the Commissioner of the National Tax Office to furnish the information on the imposition of national taxes on persons who failed to pay the surcharges.

(5) The public officials in charge of the affairs of surcharges may, in case where necessary for the collection of surcharges, request the heads of registry offices and other relevant administrative agencies to allow them to have access to required documents, or to deliver their transcripts or abstracts, without compensation.

(6) All relevant matters concerning the collection of surcharges shall be determined by Presidential Decree.

#### ■ Article 55-6 (Additional Payment for Refund of Surcharge)

The Fair Trade Commission shall, in case where it makes a refund of surcharge on account of the adjudication of appeal or the ruling of court, make the additional payment of refund for the period from the date of paying the surcharge to the date of refund, under the conditions as prescribed by Presidential Decree.

### CHAPTER XI DAMAGES

#### ■ Article 56 (Liability for Damages)

(1) If an enterpriser or an enterprisers organization violates the provisions of this Act, and thereby inflicts on a person any damage, he or the organization shall be liable for compensation of such damage to the person.

(2) No enterpriser or enterprisers organization liable for damages under paragraph (1) may excuse himself from such liability by proving that he or the organization did not act intentionally or negligently against the person concerned.

#### ■ Article 56-2 (Transmission of Records)

Where a lawsuit for liability for damages is instituted under Article 56, the court may request that the Fair Trade Commission transmit the records of the particular case (including protocols and stenographic records of examination of persons concerned, references and expert witnesses, and all judicial evidence).

#### ■ Article 57 (Limitations on Claims for Damages and Related Matters)

(1) The right to claim damages as provided for in Article 56 may not be exercised until the corrective measures as provided for in this Act have become final and conclusive; *provided that*

this paragraph shall not limit claims for damages pursuant to Article 750 (Subjects of Unlawful Practices) of the Civil Act.

(2) The right to claim damages under paragraph (1) shall expire three years after the date it becomes possible to exercise the right.

## CHAPTER XII EXEMPTIONS

### ■ Article 58 (Legitimate Actions Taken Pursuant to Acts and Subordinate Statutes)

This Act shall not apply to the acts of an enterprise or an enterprisers organization conducted in accordance with any Act or any decree to such an Act.

### ■ Article 59 (Exercise of Right to Intangible Property)

The provisions of this Act shall not apply to any act which is deemed to be an exercise of rights under the Copyright Act, the Patent Act, the Utility Models Act, the Design Act, or the Trademark Act.

### ■ Article 60 (Act of Specified Associations)

The provisions of this Act shall not apply to any acts of an association (including a federation of associations) established in accordance with the following requirements; *provided* that this shall not apply to unfair trade practices or price hikes by unfairly restricting competition:

1. It shall be aimed at mutual aid among small-scale enterprisers or consumers;
2. It shall be established voluntarily, and its members may enter and withdraw voluntarily;
3. Each member shall have an equal voting right; and
4. Where profits are distributed to members, the limits thereof shall be determined by the Articles of Incorporation.

### ■ Article 61 Deleted.

## CHAPTER XIII SUPPLEMENTARY PROVISIONS

### ■ Article 62 (Duty to Preserve Confidentiality)

No commissioner or public official who performs or has performed his duties under this Act shall divulge any secrets of an enterpriser or an enterprisers organization that he learned in the course of carrying out his duties, or use it for a purpose other than to enforce this Act.

### ■ Article 63 (Consultation on Enactment of Acts which Restrain Competition)

(1) The chief-officer of the competent administrative authority shall seek, in advance, consultation with the Fair Trade Commission, where he wishes to propose legislation or amend enactments containing anti-competitive regulations such as restrictions on the fixing of prices or the terms of transaction, entry to markets, business practices, unfair collaborative acts, prohibited practices of an enterpriser or an enterprisers organization, etc. and where he wishes to approve or make other measures involving anti-competitive factors against an enterpriser or an enterprisers organization.

(2) The chief-officer of the competent administrative authority shall give, in advance, notice to the Fair Trade Commission when he intends to enact or amend any rules or regulations involving anti-competitive factors.

(3) With regard to approvals or other measures involving anti-competitive factors under paragraph (1), the chief-officer of the competent administrative authority shall give notice to the Fair Trade Commission regarding the contents of the approval concerned or other measures.

(4) In relation to notice under paragraph (2), where it is recognized that rules or regulations to be enacted or amended contain anti-competitive provisions, the Fair Trade Commission may give advice to the chief-officer of the competent administrative authority as to the modification of such anti-competitive provisions. This paragraph shall also apply to enactments made or amended without to the Fair Trade Commission as prescribed by paragraph (1), Acts and subordinate statutes enacted or amended without notice, approvals or other measures given without notice.

#### ■ Article 64 (Cooperation from Chief-Officer of Competent Authority, etc.)

(1) If it deems it necessary for the enforcement of this Act, the Fair Trade Commission may solicit the opinions of the heads of the relevant administrative authorities, other authorities, or associations.

(2) If necessary for the enforcement of this Act, the Fair Trade Commission may entrust the heads of competent administrative authorities, other authorities, or associations with necessary investigations, or request relevant materials.

(3) If necessary for securing compliance with a corrective measure under this Act, the Fair Trade Commission may request all necessary cooperation from the chief-officers of the competent administrative authorities, other authorities, or associations.

#### ■ Article 65 (Delegation and Entrustment of Authority)

The Fair Trade Commission may delegate a part of its authority as prescribed by this Act to the head of an agency under its control, The Seoul Special Metropolitan City Mayor, a Metropolitan City Mayor, or Do governor, or entrust it to the head of another administrative agency in accordance with the procedures set forth by Presidential Decree.

## CHAPTER XIV PENAL PROVISIONS

### ■ Article 66 (Penal Provisions)

(1) Any person who falls into any of the following categories shall be punished by imprisonment for not more than three years or a fine up to but not exceeding two hundred million won:

1. A person who has committed an abusive act in violation of the provisions of Article 3-2;
2. A person who has combined enterprises in violation of Article 7 (1) or the provisions of Article 7 (3);
3. A person who has violated the provisions of Article 8-2 (1) or (2);
4. A person who has established a holding company or converted a company into a holding company in violation of Article 8-3;
5. A person who has acquired or owned stocks in violation of the provisions of Article 9 or 10 (1): *Provided*, That the person subjected to an order of prohibition under Article 17-2 (1) (including the case applied under Article 4 of the Addenda), from among those violating Article 10 (1), shall be excluded;
6. A person who has guaranteed a debt in violation of the provisions of Article 10-2 (1);
7. A person who has exercised his voting rights in violation of the provisions of Article 11 or 18;
8. A person who has evaded the law in violation of the provisions of Article 15;
9. A person who has conducted unfair collaborative practices in violation of any of the subparagraphs of Article 19 (1); or
10. A person who has conducted prohibited practices involving enterprise organization in violation of Article 26 (1) 1.

(2) The punishments of imprisonment and fine as referred to in paragraph (1) may be imposed concurrently.

### ■ Article 67 (Penal Provisions)

Any person who falls into any of the following categories shall be punished by imprisonment for not more than two years or a fine up to but not exceeding one hundred fifty million won:

1. Deleted;
2. A person who has committed an unfair trade practice in violation of Article 23 (1);

3. A person who has violated the provisions of Article 26 (1) 2 through 5;
4. A person who has committed resale price maintenance in violation of Article 29 (1);
5. A person who has concluded an international contract in violation of Article 32 (1);
6. A person who has failed to comply with corrective measures or an order of prohibition, etc. under Articles 5, 16 (1), 17-2 (1), 21, 24, 27, 30, 31 or 34; and
7. A person who has failed to undergo an audit by a certified public accountant in violation of the provisions of Article 14 (5).

#### ■ Article 68 (Penal Provisions)

Any person who falls into any of the following categories shall be punished by a fine up to but not exceeding one hundred million won:

1. A person who fails to make a report on the establishment of or conversion of existing company into a holding company, or makes a false report in violation of Article 8;
2. A person who fails to make a report on the business activities of a holding company or subsidiary, or makes a false report in violation of Article 8-2 (3);
3. A person who fails to make a report on the status of stockholdings or the debt guarantee, or makes a false report in violation of Article 13 (1) and (2);
4. A person who has refused to submit data requested under Article 14 (4) without any justifiable reason or submitted false data;
5. A person who has made a false appraisal in violation of the provisions of Article 50 (1) 2;
6. A person who has failed to make a notification under Article 50 (6);
7. Deleted; and
8. Deleted.

#### ■ Article 69 (Penal Provisions)

(1) A person who has violated the provisions of Article 50 (8) shall be punished by imprisonment for not more than three years or a fine not exceeding twenty million won.

(2) A person who violates the provisions of Article 62, shall be punished by imprisonment for not more than two years or a fine up to but not exceeding two million won.

#### ■ Article 69-2 (Fine for Negligence)

(1) An enterpriser or enterprisers' organization shall be punished by a fine for negligence not exceeding 100 million won in the case falling under subparagraphs 1 through 6 and 8, and not exceeding 200 million won in the case falling under subparagraph 7, and the officers, employees and other interested parties of a company or enterprisers' organization shall be punished by a fine for negligence not exceeding 10 million won in the case falling under subparagraphs 1 through 6 and 8, and not exceeding 50 million won in the case falling under subparagraph 7:

1. In making the publication required by Article 11-2, a party that has not obtained a resolution of the board of directors or has failed to make such publication, or a person who has omitted major contents of such publication or published false information;

2. A person who fails to make a report on the combination of enterprises as required by Article 12 (1) or (5), or who makes a false report, or a person who violates paragraph (6) of that Article;

3. With regard to a request for documents under Article 14-2 (2), a person who fails to submit the documents requested without any justifiable reason, or who submits false documents;

4. A person who has violated the provisions of Article 17-2 (4);

5. A person who has failed to attend without any justifiable reason in violation of the provisions of Article 50 (1) 1;

6. A person who has failed to make a report or present necessary materials or things as prescribed in Article 50 (1) 3 or (3), or made a false report or who presents false materials or things;

7. A person who has refused, interfered with or evaded the investigation as prescribed in Article 50 (2); and

8. A person who has refused to submit financial transaction information under Article 50 (5).

(2) A person who has not complied with orders for the maintenance of good order in violation of Article 43-2 shall be punishable by fine for negligence up to but not exceeding one million won.

(3) The fine for negligence referred to in paragraph (1) shall be imposed and collected by the Fair Trade Commission in accordance with procedures set forth by Presidential Decree.

(4) Any person who wants to contest the disposition of a fine for negligence referred to in paragraph (2) may file an objection with the Fair Trade Commission within thirty (30) days after receiving notice of the fine.

(5) If a person subject to disposition of a fine for negligence makes an objection under paragraph (3), the Fair Trade Commission bring it without delay to the competent court, which shall, upon receiving the notification, bring the issue regarding the fine for negligence to trial under the Non-Contentious Case Litigation Procedure Act.

(6) If no objection is made and no fine for negligence is paid in the period referred to in paragraph (3), the fine shall be collected in accordance with to the procedures for collecting national taxes in arrears.

#### ■ Article 70 (Concurrent Punishment)

If the representative of a juristic person (including an unincorporated association. The same shall apply in this Article hereinafter), or an agent, employee or any other person working for a juristic person, or an individual has committed an offense prescribed by Articles 66 through 68 with respect to business of the juristic person or individual, a fine as prescribed by the corresponding Article shall be imposed on the juristic person or individual as well as on the person who actually committed the violation.

#### ■ Article 71 (Filing of Complaint)

(1) Any offense in violation of Articles 66 and 67 shall be prosecuted by public action only after a complaint is filed by the Fair Trade Commission.

(2) The Fair Trade Commission shall file complaints with the Prosecutor General in cases involving offences listed in Articles 66 and 67, where it deems necessary because the degree of violation is so gross and considerable that the violation may substantially suppress competition.

(3) The Prosecutor General may give notice to the Fair Trade Commission of the existence of factors requiring filing under paragraph (2) and may request the Fair Trade Commission file a complaint on those factors with him.

(4) The Fair Trade Commission may not withdraw the complaint after prosecution has commenced.

### ADDENDA

#### ■ Article 1 (Enforcement Date)

This Act shall enter into force on April 1, 1990.

#### ■ Article 2 (General Transitional Measures)

(1) Any authorization, approval, recognition, designation, corrective measures, etc. granted or taken by the Minister of the Finance and Economy pursuant to the previous provisions at the time of the enforcement of this Act, shall be considered as those by the Fair Trade Commission under this Act.

(2) Matters reported, requested or notified to the Minister of the Finance and Economy pursuant to the previous provisions at the time of the enforcement of this Act, shall be considered as those reported, requested or notified to the Fair Trade Commission under this Act.

(3) Any public notice made by the Minister of the Finance and Economy pursuant to the previous provisions at the time of the enforcement of this Act, shall be considered as that made by the Fair Trade Commission under this Act.

#### ■ Article 3 (Transitional Measures concerning Prohibition of Mutual Contribution)

If a company which belongs to an enterprise group designated as a large enterprise group, and operates a financing or insurance business at the time of the enforcement of this Act, violates the provisions of Article 9 (1), the provisions of the said Article shall not apply to it for one year from the enforcement date of this Act.

#### ■ Article 4 (Transitional Measures concerning Total Amount of Contribution)

(1) If a company which belongs to an enterprise group designated as a large enterprise group at the time of the enforcement of this Act or within two years from the enforcement date of this Act, and which received a notification as prescribed in Article 14 (1) at the time of designation, has made a contribution in excess of the maximum contribution amount at the time of notification, the total contribution existing on the date of notification (hereinafter referred to as the "special maximum amount") shall be considered as the maximum contribution amount for two years from the enforcement date of this Act in applying the provisions of Article 10 (1): Provided, That if the maximum contribution amount exceeds the special maximum amount due to increase of the net assets value, this provision shall not be applicable, and if it is shorter than that as prescribed in Article 14 (3) 2, it shall be one year.

(2) The Fair Trade Commission may, if necessary, have a company for which the special maximum amount is recognized, prepare and submit a yearly plan to settle the excess of the maximum contribution amount.

(3) Notwithstanding the provisions of Article 10 (1), if a company belonging to a large enterprise group owns on April 1, 1987 stocks of a company more than thirty percent of the total issued stocks of which is owned by the government, local governments or government-invested institutions under the Framework Act on the Management of Government-Invested Institutions, and if the Fair Trade Commission approves it, the company may own the stocks after the period as referred to in paragraph (1) has passed. In this case, the Fair Trade Commission may separately determine the period in which the company may own such stocks.

(4) Notwithstanding the provisions of Article 10 (1), if a company belonging to a large enterprise group owns on April 1, 1987 stocks issued by a foreign-invested enterprise under the Foreign Capital Inducement Act, and the Fair Trade Commission approves it, the company may own such stocks for up to three years after the period as referred to in paragraph (1) has passed.

#### ■ Article 5 Omitted.

#### ADDENDA



#### ■ Article 1 (Enforcement Date)

This Act shall enter into force at the expiration of six months after its promulgation.

#### ■ Articles 2 through 8 Omitted.

#### ADDENDA

#### ■ Article 1 (Enforcement Date)

This Act shall enter into force on April 1, 1993.

#### ■ Article 2 (Transitional Measures concerning Total Contribution)

In application of the proviso of Article 10 (1), the revised provisions of subparagraph 5 of the said paragraph shall be applicable only to stocks to be acquired or owned after the enforcement date of this Act.

#### ■ Article 3 (Transitional Measures concerning Debt Guarantee)

(1) If a company which belongs to an enterprises group designated as a large enterprise group subject to limitations on debt guarantee at the time this Act enters into force, or within three years after this Act enters into force, and which has received the notification as prescribed in Article 14 (1), has guaranteed any debt in excess of the maximum debt guarantee amount at the time of the notification thereof, the total debt guarantee on the day the notification is made (hereinafter referred to as the "special maximum debt guarantee amount") shall, in application of the provisions of Article 10-2 (1), be considered as the maximum debt guarantee amount for three years after this Act enters into force: Provided, That this shall not apply, in a case where the maximum debt guarantee amount exceeds the special maximum debt guarantee amount due to the increase of the owner's capital.

(2) The Fair Trade Commission may, if necessary, have a company having the special maximum debt guarantee amount recognized under paragraph (1), prepare and submit a plan to solve yearly the excess maximum debt guarantee amount through a consultation with domestic financial institutions.

#### ADDENDA

(1) (Enforcement Date) This Act shall enter into force on April 1, 1995.

(2) (Transitional Measures concerning Total Contribution) If a company which belongs to an enterprise group designated as a large enterprise group at the time this Act enters into force, or within three years after this Act enters into force, and which has received the notification as prescribed in Article 14 (1) at the time of such designation, holds a contribution in excess of the maximum contribution at the time it receives the notification, the total contribution existing on the day it receives the notification (hereinafter referred to as the "special ceiling") shall be

considered as the ceiling of contribution for three years after this Act enters into force: Provided, That if the ceiling of contribution exceeds the special ceiling due to an increase in the net assets, this shall not apply, and if the period is shorter than that as prescribed in the text of Article 14 (3) 2, it shall be one year.

(3) (Examples of Application) The revised provisions of Article 10 (2) shall apply only to stocks acquired or owned after this Act enters into force.

## **ADDENDA**

### **■ Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation. (Proviso Omitted.)

### **■ Articles 2 through 4 Omitted.**

## **ADDENDA**

(1) (Enforcement Date) This Act shall enter into force on April 1, 1997.

(2) (Transitional Measures as to Aggregate Contributions) In relation to the application of amended provisions of Article 10, where the book value of shares acquired before this Act takes effect is below the purchase price of such shares, the book value of the shares concerned shall be treated as the purchase price of the shares concerned.

(3) (Transitional Measures as to Guarantee of Liabilities) After this Act enter into force, where a member company of a large enterprise group subject to limitations on debt guarantee has provided guarantees over the maximum debt guarantee prescribed by the amended provisions of Article 102 (1) with domestic affiliated companies at the time when this Act enter into force, the aggregate debt guarantee shall be construed as the maximum debt guarantee for the company concerned by March 31, 1998: Provided, That in a case where the aggregate debt guarantee has exceeded the maximum debt guarantee for the company concerned because of an increase in the owner's equity, this paragraph shall not apply.

(4) (Transitional Measures as to Surcharge Provisions) The former provisions of this Act shall apply to the practices conducted before this Act takes effect.

## **ADDENDA**

### **■ Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation.

### **■ Articles 2 through 8 Omitted.**

## **ADDENDUM**

This Act shall enter into force on January 1, 1998. (Proviso Omitted.)

#### **ADDENDA**

##### **■ Article 1 (Enforcement Date)**

This Act shall enter into force on April 1, 1998.

##### **■ Articles 2 through 8 Omitted.**

#### **ADDENDA**

##### **■ Article 1 (Enforcement Date)**

This Act shall enter into force on April 1, 1998. (Proviso Omitted.)

##### **■ Articles 2 through 15 Omitted.**

#### **ADDENDA**

##### **■ Article 1 (Enforcement Date)**

This Act shall enter into force on April 1, 1998. (Proviso Omitted.)

##### **■ Articles 2 through 12 Omitted.**

#### **ADDENDA**

(1) (Enforcement Date) This Act shall enter into force on April 1, 1998: Provided, That the amended provisions of Article 10 shall enter into force on the date of its promulgation.

(2) (Transitional Measures on Debt Guarantee) If the total debt guarantees for domestic affiliated companies which a company belonging to an enterprise group designated in the year 1998 as a large enterprise group subject to the limitations on debt guarantee, which was designated in the year 1997, guarantees for domestic affiliated companies at the time of its designation, exceed the limitations on debt guarantee pursuant to the previous provisions of Article 10-2 (1), the previous provisions shall apply: Provided, That the period exceptionally recognized pursuant to the decrease of shareholder's equity referred to in the previous provisions of Article 10-2 (4) shall not expire on or before March 31, 2000.

#### **ADDENDA**

##### **■ Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation. (Proviso Omitted.)

■ **Articles 2 through 7** Omitted.

#### **ADDENDA**

■ **Article 1 (Enforcement Date)**

This Act shall enter into force two months after the date of its promulgation.

■ **Articles 2 through 9** Omitted.

#### **ADDENDA**

(1) (Enforcement Date) This Act shall enter into force on April 1, 1999: Provided, That the amendments to Article 50 (5), (6), (7) and (8), subparagraph 6 of Article 68, Articles 69 (1) and 69-2 (1) 7 shall enter into force on the date of its promulgation.

(2) (Validity Term) The amendments to Article 50 (5), (6), (7) and (8), subparagraph 6 of Article 68, Articles 69 (1) and 69-2 (1) 7 shall remain in force for five years from the date of promulgation of this Act.

(3) (Transitional Measures Pursuant to Expiration of Validity Term) The application of the penal provisions or a fine for negligence to any act committed prior to the expiration of validity term under paragraph (2) of this Addenda shall be governed by the previous provisions.

(4) (Transitional Measures on Penal Provisions) The application of the penal provisions to any act committed prior to the entry into force of this Act shall be governed by the previous provisions.

#### **ADDENDA**

■ **Article 1 (Enforcement Date)**

This Act shall enter into force on July 1, 1999.

■ **Articles 2 through 5** Omitted.

#### **ADDENDA**

■ **Article 1 (Enforcement Date)**

This Act shall enter into force three months after the date of its promulgation.

■ **Articles 2 through 10** Omitted.

#### **ADDENDA**

■ **Article 1 (Enforcement Date)**

This Act shall enter into force on April 1, 2000: Provided, That the amended provisions of Articles 10 and 14 (3) 2 shall enter into force on April 1, 2001.

**■ Article 2 (Special Case for Application concerning Investment for Corporate Restructuring)**

Of the amended provisions of Article 10 (1) 4, where acquiring or owning stocks for the purpose of corporate restructuring, with regard to the stocks that may be acquired or owned in excess of the amount of investment limit, the provisions of the same Article, same paragraph, and same subparagraph shall also be applicable to the stocks that were acquired or owned during a period from January 1, 1998 to March 31, 2002. In this case, in calculating the period according to the provisions of the same subparagraph, what have been acquired or owned during the period from January 1, 1998 to March 31, 2001 shall be deemed to have been acquired or owned on April 1, 2001.

**■ Article 3 (Transitional Measures concerning Total Amount of Investment)**

In applying the amended provisions of Article 10 (1) to a case where a company belonging to an enterprise group designated as a large enterprise group makes investment in excess of the investment limit amount at the time of enforcing this Act, the total amount of investment made by such company as of the date of enforcing this Act shall be deemed the investment limit amount for one year from the date of enforcing this Act: Provided, That the same shall not apply to the case where the investment limit amount exceeds an amount deemed the total amount of investment limit following an increase in the net asset value.

**■ Article 4 (Transitional Measures concerning Investment in Infrastructure)**

Any person who has acquired or owned, or received recognition of period extension with respect to, stocks of a company incorporated to carry on the first-class facility business as prescribed in the provisions of subparagraph 2 of Article 2 of the previous Promotion of Private Capital into Social Overhead Capital Investment Act (referring to the Act before it was amended by Act No. 5377) in accordance with the provisions of Article 10 (2) of the previous Monopoly Regulation and Fair Trade Act (referring to the Act before it was amended by Act No. 5528) prior to the enforcement of this Act shall be deemed to have acquired or owned such stocks or have received recognition of period extension under the amended provisions of Article 10 (1) 3 for a period recognized by the Fair Trade Commission at the time of recognition.

**■ Article 5 (Transitional Measures concerning Investment Made to Attract Foreign Investment)**

Where any stocks acquired or owned to attract foreign investment prior to the enforcement of this Act fall under the amended provisions of Article 10 (1) 4, such stocks shall be deemed to be acquired or owned on April 1, 2001.

**ADDENDA**

(1) (Enforcement Date) This Act shall enter into force on April 1, 2001; *provided* that the amendments to paragraph (2) of the Addenda of the Monopoly Regulation and Fair Trade Act amended by Act No. 5813 shall enter into force on the date of its promulgation.

(2) (Applicable Cases concerning Additional Payment for Refund of Surcharge) The amendments to Article 55–6 shall be applicable to the portion of occurrence of the causes for refund on or after the enforcement date of this Act.

(3) (Transitional Measures on Application of Penal Provisions) In applying the penal provisions against the activities prior to the enforcement of this Act, the previous provisions shall govern.

## **ADDENDA**

### **■ Article 1 (Enforcement Date)**

This Act shall enter into force on April 1, 2002: Provided, That the amended provisions of Article 11, and of Article 2 of the Addenda of Act No. 6043; Amended Act of the Monopoly Regulation and Fair Trade Act, shall enter into force on the date of its promulgation.

### **■ Article 2 (Period of Validity)**

Matters related to corporate restructuring in Article 10 (1) 4 shall be valid not later than March 31, 2003.

### **■ Article 3 (Retroactive Application in Relation to System of Limitation on Total Amount of Investments)**

(1) The amended provisions of Article 10 shall also be applicable to the stocks that are acquired or owned at the time of enforcement of this Act. In this case, the stocks acquired or owned under the amended provisions of Article 10 (6) 2 shall be limited to those acquired or owned after January 1, 1998.

(2) In applying the provisions of paragraph (1), where the stocks acquired or owned at the time of enforcement of this Act in order to induce foreign investments (excluding the stocks falling under Article 5 of the Addenda of Act No. 6043; Amended Act of the Monopoly Regulation and Fair Trade Act) come to fall under the amended provisions of Article 10 (1) 3, and were acquired or owned before March 31, 2001, they shall be deemed to have been acquired or owned on April 1, 2001.

### **■ Article 4 (Retroactive Application to Enterprise Having Amount Exceeding Investment Limit)**

The amended provisions of Article 17–2 and subparagraph 6 of Article 67 shall also be applicable to the case where an affiliate of an enterprise group designated as a large enterprise group at the time of enforcement of this Act, which has acquired and owns the stocks of another domestic company in excess of the amount of investment limit as of April 1, 2001 (referring to the designation date in the case of an affiliate of an enterprise group designated as a large enterprise

group in 2001; hereafter in this Article, the same shall apply), has violated the provisions of Article 10 (1) by continually owning them until the date on which one year elapsed from April 1, 2001.

**■ Article 5 (Transitional Measures for Designation, etc. of Enterprise Group Subject to Limitations on Mutual Investment)**

The enterprise group designated as a large enterprise group or that subject to limitations on debt guarantee under the previous provisions of Article 14 (1) at the time of enforcement of this Act, shall be deemed to be designated as an enterprise group subject to limitations on mutual investment under the amended provisions of Article 14 (1).

**■ Article 6 (Transitional Measures for Application of Penal Provisions)**

An application of penal provisions to the acts committed before the enforcement of this Act shall be governed by the previous provisions.

**ADDENDA**

**■ Article 1 (Enforcement Date)**

This Act shall enter into force three months after the date of its promulgation.

**■ Articles 2 through 4 Omitted.**

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