

Unfair Competition Prevention Act

(Act No. 47 of May 19, 1993)

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Chapter I General Provisions

(Purpose)

Article 1 The purpose of this Act is to provide measures, etc. for the prevention of unfair competition and for the compensation for loss or damage caused by unfair competition, in order to ensure fair competition among undertakings, and proper implementation of international agreements related thereto, thereby contributing to the sound development of the national economy.

(Definitions)

Article 2 (1) The term "unfair competition" as used in this Act means any of the following:

- (i) the act of creating confusion with another person's goods or business, by using an indication of goods or business (meaning a name, trade name, trademark, marks, containers or packaging for goods belonging to a person's business, or any other indication of a person's goods or business; the same applies hereinafter) that is identical or similar to another person's indication of goods or business that is well-known among consumers as belonging to that person, or by transferring, delivering, displaying for the purpose of

- transfer or delivery, exporting, importing or providing through telecommunications lines goods that use such indication;
- (ii) the act of using an indication of goods or business that is identical or similar to another person's famous indication of goods or business as one's own, or of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through telecommunications lines goods that use such indication;
 - (iii) the act of transferring, leasing, displaying for the purpose of transfer or lease, exporting or importing goods that imitate the form of another person's goods (excluding that which is indispensable to its functioning);
 - (iv) the act of acquiring trade secrets by theft, by fraud, by duress, or by other wrongful means (hereinafter referred to as an "act of wrongful acquisition of trade secrets"), or the act of using or disclosing trade secrets acquired through an act of wrongful acquisition of trade secrets (including their disclosure in confidence to a specific person; the same applies in the following item through item (ix), in Article 19, paragraph (1), item (vi), in Article 21, and in Article 4, item (i) of the Supplementary Provisions);
 - (v) the act of acquiring trade secrets while knowing that there has been an intervening act of wrongful acquisition of trade secrets, or while not knowing that fact through gross negligence; or the act of using or disclosing trade secrets acquired in such a way;
 - (vi) the act of using or disclosing trade secrets, after having acquired those trade secrets and learning that there had been an intervening act of wrongful acquisition of trade secrets, or while not knowing that fact through gross negligence;
 - (vii) the act of using or disclosing trade secrets disclosed by an undertaking holding that trade secret (hereinafter referred to as the "trade secret holder") for the purpose of wrongful gain, or causing damage to the trade secret holder;
 - (viii) the act of acquiring trade secrets while knowing that the trade secrets' disclosure is an act of improper disclosure of trade secrets (meaning, in the case prescribed in the preceding item, the act of disclosing trade secrets for the purpose prescribed in the same item, or the act of disclosing trade secrets in breach of a legal duty to maintain secrecy; the same applies hereinafter) or that there has been an intervening act of improper disclosure of trade secrets with regard to the relevant trade secrets, or while not knowing that fact through gross negligence; or the act of using or disclosing trade secrets acquired in such a way;
 - (ix) the act of using or disclosing trade secrets, after having acquired those trade secrets and learning that the relevant acquisition falls under an act of improper disclosure of trade secrets or that there had been an intervening

- act of improper disclosure of trade secrets with regard to the relevant trade secrets, or while not knowing that fact through gross negligence;
- (x) the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through telecommunications lines things created by any of the acts set forth in item (iv) through the preceding item (those acts are limited to acts of using a technical secret (meaning trade secrets which constitute technical information; the same applies hereinafter); hereinafter referred to as an "act of unauthorized use" in this item) (the relevant case excludes those in which a person that has received things by transfer (limited to a person that, at the time of receiving those things by transfer, had no knowledge that they were created through an act of unauthorized use, and such lack of knowledge was not due to gross negligence) conducts an act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through telecommunications lines those things);
 - (xi) the act of acquiring shared data with limited access by theft, by fraud, by duress, or by other wrongful means (hereinafter referred to as an "act of wrongful acquisition of shared data with limited access"); or the act of using or disclosing shared data with limited access acquired through an act of wrongful acquisition of shared data with limited access;
 - (xii) the act of acquiring shared data with limited access with the knowledge that there has been an intervening act of wrongful acquisition of shared data with limited access, or the act of using or disclosing shared data with limited access acquired in such a way;
 - (xiii) the act of disclosing shared data with limited access after having acquired it and learning that there had been an intervening act of wrongful acquisition of shared data with limited access;
 - (xiv) the act of using or disclosing shared data with limited access disclosed by an undertaking holding that data (hereinafter referred to as the "holder of shared data with limited access"), for the purpose of wrongful gain or causing damage to that holder of shared data with limited access (using the relevant data for that purpose is limited to an act conducted in breach of the duties regarding the management of that data);
 - (xv) the act of acquiring shared data with limited access with the knowledge that the disclosure of that data is an act of improper disclosure of shared data with limited access (meaning, in the case described in the preceding item, the act of disclosing shared data with limited access for the purpose as provided for in the same item; the same applies hereinafter) or that there has been an intervening act of improper disclosure of shared data with limited access with regard to the relevant shared data with limited access, or the act of using or disclosing shared data with limited access acquired in

such a way;

- (xvi) the act of disclosing shared data with limited access after having acquired that data and learning that the relevant acquisition falls under an act of improper disclosure of shared data with limited access or that there had been an intervening act of improper disclosure of shared data with limited access;
- (xvii) the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, or importing, a device (including a machine that incorporates a device, and a set of parts from which a device can be easily assembled) with a function that interferes with the effectiveness of technological restriction measures that are used for business purposes (excluding those which the relevant person uses to restrict all but specific persons from viewing images, listening to sounds, running programs, or processing information (limited to information recorded in an electronic or magnetic record (meaning a record used in computerized information processing which is created in electronic form, magnetic form, or any other form that is impossible to perceive through the human senses alone); the same applies hereinafter in this item, the following item, and paragraph (8)), or from recording images, sounds, programs, or any other information), and makes it possible to view images, listen to sounds, run programs, process information, or record images, sounds, programs, or any other information (that viewing, listening, running, processing, or recording is hereinafter referred to as "viewing images, etc." in this item) when those activities are restricted by the relevant technological restriction measures, a recording medium on which a program with that function (including a combination of the program with other programs) or code with that function (meaning a single instruction given to a computer which only can produce a specific result; the same applies in the following item) has been recorded, or a machine on which the program or code with that function has been stored; the act of providing that program or code through telecommunications lines (if the device or program in question has also any function other than the relevant function with it, those acts mentioned above are limited to an act conducted in order to provide the device or program for the purpose of making it possible to view images, etc. by interfering with the effectiveness of the technological restriction measures); or the act of providing a service for making it possible to view images, etc. by interfering with the effectiveness of the technological restriction measures;
- (xviii) the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting or importing, a device (including a machine that incorporates a device, and a set of parts from which a device can be easily assembled) with a function that interferes with the effectiveness of technological restriction measures used by another person in their business

- in order to only allow specific persons to view images, listen to sounds, run programs, process information, or record images, sounds, programs, or any other information, and makes it possible for any person other than those specific persons to view images, listen to sounds, run programs, process information, or record images, sounds, programs, or any other information (that viewing, listening, running, processing, or recording is hereinafter referred to as "to view images, etc." in this item), when those activities are restricted by the relevant technological restriction measures, a recording medium on which a program with that function (including a combination of the program with other programs) or code with that function has been recorded, or a machine on which that program or code has been stored; or the act of providing that program or code through telecommunication lines to any person other than the relevant specific persons (if the device or program has also any functions other than the relevant function, those acts mentioned above are limited to an act conducted in order to provide the device or program for the purpose of making it possible to view images, etc. by interfering with the effectiveness of the technological restriction measures); or the act of providing any person other than the relevant specific persons with a service for making it possible to view images, etc. by interfering with the effectiveness of the technological restriction measures;
- (xix) the act of acquiring or holding a right to use a domain name that is identical or similar to another person's specific indication of goods or services (meaning a name, trade name, trademark, marks, or any other indication of goods or services belonging to a person's business), or using any of such domain name, for the purpose of wrongful gain or causing damage to that other person;
- (xx) the act of using an indication on goods or services, in an advertisement thereof, or in trade documents or communication thereof, in a way that is likely to mislead as to the place of origin, quality, content, manufacturing process, purpose, or quantity of the goods, or the quality, content, purpose, or quantity of the services; the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through telecommunication lines goods so indicated; or the act of providing services so indicated;
- (xxi) the act of making or circulating false allegations that harm the business reputation of a business competitor;
- (xxii) an act by an agent or representative of a holder of a right to a trademark (the right is limited to a right that is equivalent to a trademark right; hereinafter simply referred to as a "right" in this item), or by a person that was that agent or representative within one year of the date of the act in question, without justifiable grounds and without the consent of the holder of

the right, in a country belonging to the Union established by the Paris Convention (meaning the Paris Convention as defined in Article 4, paragraph (1), item (ii) of the Trademark Act (Act No. 127 of 1959)), in a country which is a member of the World Trade Organization, or in a country which is a contracting party to the Trademark Law Treaty, which constitutes the use of a trademark identical or similar to that under the holder's right, on goods or services identical or similar to those in relation to the holder's right; which constitutes the transfer, delivery, display for the purpose of transfer or delivery, export, import or provision through telecommunication lines of goods that are similar or identical to those in relation to the holder's right and on which the trademark identical or similar to that under the holder's right has been used; or which constitutes the provision of services identical or similar to those in relation to the holder's right, using the trademark identical or similar to that under the holder's right.

- (2) The term "trademark" as used in this Act means a trademark as defined in Article 2, paragraph (1) of the Trademark Act.
- (3) The term "marks" as used in this Act means marks as defined in Article 2, paragraph (1) of the Trademark Act.
- (4) The term "form of goods" as used in this Act means the external and internal shape of goods, and the pattern, color, gloss, and texture combined with the shape, which can be perceived by consumers when they use the goods in an ordinary way.
- (5) The term "imitate" as used in this Act means the act of using a form of another person's goods and creating goods that have a form substantially similar to that of another person's goods.
- (6) The term "trade secret" as used in this Act means technical or business information useful for business activities, such as manufacturing or marketing methods, that is kept secret, and is not publicly known.
- (7) The term shared data with limited access as used in this Act means technical or business information that is accumulated to a significant extent and is managed by electronic or magnetic means (meaning an electronic form, magnetic form, or any other form that is impossible to perceive through the human senses alone; the same applies in the following paragraph) as information to be provided to specific persons on a regular basis (excluding information that is kept secret).
- (8) The term "technological restriction measures" as used in this Act means measures which restrict images from being viewed, sounds from being listened to, programs from being run, or information from being processed, or images, sounds, programs, or any other information from being recorded by electronic or magnetic means; and which use a method in which signals to which a viewing device, etc. (meaning a device used for viewing images, listening to

sounds, running programs, processing information, or recording images, sounds, programs, or any other information; the same applies hereinafter in this paragraph) makes a specific response are recorded onto a recording medium or are transmitted, or in which images, sounds, programs, or any other information is recorded onto a recording medium or transmitted after they are converted in a way that a viewing device, etc. needs specific conversion of them.

- (9) The term "program" as used in this Act means a set of instructions to a computer so that a specific result can be obtained.
- (10) The term "domain name" as used in this Act means letters, numbers, signs, or other symbols, or a combination thereof that corresponds to a combination of numbers, signs, or letters assigned to identify individual computers on the Internet.
- (11) The term "things" as used in this Act includes programs.

Chapter II Claims for Injunctions and Compensation for Loss or Damage

(Right to Claim for an Injunction)

- Article 3 (1) A person whose business interests have been infringed on or are likely to be infringed on through unfair competition may make a claim to suspend or prevent that infringement against the person that infringed or is likely to infringe on those business interests.
- (2) When making the claim under the preceding paragraph, the person whose business interests have been infringed on or are likely to be infringed on through unfair competition may make a claim to have things that constitute the act of infringement (including things created through the act of infringement; the same applies in Article 5, paragraph (1)) destroyed, to have equipment used for the act of infringement removed, or for others actions necessary for suspending or preventing the infringement.

(Compensation for Loss or Damage)

- Article 4 A person that intentionally or negligently infringes on the business interests of another person through unfair competition is liable to compensate loss or damage resulting therefrom; provided, however, that this Article does not apply to loss or damage resulting from the act of using trade secrets or shared data with limited access after the rights prescribed in Article 15 have extinguished pursuant to the same Article.

(Presumption of Amounts for Loss or Damage)

- Article 5 (1) If a person whose business interests have been infringed on through the unfair competition set forth in Article 2, paragraph (1), items (i) through (xvi), or item (xxii) (with regard to the unfair competition set forth in items (iv)

through (ix) of the same paragraph, limited to unfair competition that involves a technical secret) (hereinafter referred to as the "infringed party" in this paragraph) makes a claim for compensation for loss or damage suffered due to the infringement, from a person that has intentionally or negligently infringed on the business interests, and the infringer has transferred things constituting the act of infringement, the quantity of the things transferred (hereinafter referred to as the "transferred quantity" in this paragraph) multiplied by the amount of profit per unit of things that the infringed party could have sold in the absence of the act of infringement may be fixed as the amount of loss or damage suffered by the infringed party, within the limits of an amount proportionate to the infringed party's ability to sell or conduct other acts concerning the relevant things; provided, however, that if there are circumstances that would have prevented the infringed party from selling a number of the relevant things equivalent to all or a part of the transferred quantity, an amount proportionate to the number of the relevant things corresponding to the circumstances is deducted.

- (2) If a person whose business interests have been infringed on through unfair competition makes a claim for compensation for loss or damage from another person that intentionally or negligently infringed on those business interests, and that other person has made a profit through the act of infringement, the amount of that profit is presumed to be the amount of loss or damage that the person whose business interests were infringed on has suffered.
- (3) A person whose business interests have been infringed on through the unfair competition set forth in Article 2, paragraph (1), items (i) through (ix), items (xi) through (xvi), item (xix), or item (xxii) may make a claim for compensation for loss or damage against a person that has intentionally or negligently infringed on the business interests, in an amount equivalent to the amount of money that the infringed party should have been entitled to receive for the act prescribed in the relevant of the following items for the classification of unfair competition set forth therein, as the amount of loss or damage suffered by the infringed party:
 - (i) unfair competition set forth in Article 2, paragraph (1), items (i) or (ii): use of an indication of goods or business in relation to the infringement;
 - (ii) unfair competition set forth in Article 2, paragraph (1), item (iii): use of a form of goods in relation to the infringement;
 - (iii) unfair competition set forth in Article 2, paragraph (1), items (iv) through (ix): use of trade secrets in relation to the infringement;
 - (iv) unfair competition set forth in Article 2, paragraph (1), items (xi) through (xvi): use of shared data with limited access in relation to the infringement;
 - (v) unfair competition set forth in Article 2, paragraph (1), item (xix): use of a domain name in relation to the infringement; and

(vi) unfair competition set forth in Article 2, paragraph (1), item (xxii): use of a trademark in relation to the infringement.

(4) The provisions of the preceding paragraph do not preclude a claim for damages exceeding the amount prescribed in that paragraph. In such a case, if the person that infringed on the business interests did not do so intentionally or through gross negligence, the court may take this into consideration in determining the amount of the damages.

(Presumptions Regarding a Person Using a Technical Secret they Acquired)

Article 5-2 If any of the acts prescribed in Article 2, paragraph (1), item (iv), (v), or (viii) (limited to acts of acquiring trade secrets) have been conducted with regard to a technical secret (limited to a technical secret regarding manufacturing methods or other information specified by Cabinet Order; the same applies hereinafter in this Article) and a person that has conducted such act produces things through using the technical secret, or conducts other acts specified by Cabinet Order as that from which it can be clearly understood that the technical secret has been used (hereinafter referred to as the "production, etc." in this Article), the person is presumed to have conducted production, etc. as an act prescribed in each item (limited to acts of using trade secrets).

(Obligation to Clarify Specific Circumstances)

Article 6 In litigation involving the infringement of business interests through unfair competition, if a person claims that their interests have been infringed on, or are likely to be infringed on through unfair competition; and if the opponent denies the specific circumstances surrounding the things or process that the person in question claims constitute that infringement, the opponent must clarify the specific circumstances surrounding their own actions; provided, however, that this does not apply if the opponent has adequate grounds for not being able to clarify this.

(Production of Documents)

Article 7 (1) In litigation involving the infringement of business interests through unfair competition, the court may, on the motion of a party, order the other party to produce any documents necessary for proving the act of infringement or calculating the amount of loss or damage caused by the act of infringement; provided, however, that this does not apply if the holder of the documents has reasonable grounds for refusing to produce them.

(2) If the court finds it necessary for determining whether or not the documents subject to the motion under the main clause of the preceding paragraph fall within the scope of documents referred to in the main clause of the same paragraph or whether or not there are reasonable grounds as provided in the

proviso to the same paragraph, the court may have the holder of the documents present those documents to the court. In such a case, no person may request the disclosure of the presented documents.

- (3) In the case referred to in the preceding paragraph, if the court finds it necessary to disclose the documents referred to in the second sentence of the preceding paragraph and to hear opinions with regard to whether or not the documents subject to the motion under the main clause of paragraph (1) fall within the scope of documents referred to in the main clause of the same paragraph or whether or not there are reasonable grounds as provided in the proviso to the same paragraph, the court may disclose the documents to the parties, etc. (meaning the parties (or if a party is a corporation, its representative) or the parties' agents (excluding counsel or assistants in court), employees, or other workers; the same applies hereinafter), their counsel, or their assistants in court.
- (4) In the case referred to in paragraph (2), if the court finds it necessary to disclose the documents as provided in the latter sentence of paragraph (2) and hear an explanation based on expert knowledge, the court may disclose the documents to a technical advisor as provided in Part I, Chapter V, Section 2, Subsection 1 of the Code of Civil Procedure (Act No. 109 of 1996), with the consent of the parties.
- (5) The provisions of the preceding paragraphs apply mutatis mutandis to the presentation for any inspection that is necessary for proving the act of infringement in litigation involving the infringement of business interests through unfair competition.

(Expert Opinions on the Calculation of the Amount of Loss or Damage)

Article 8 In litigation involving the infringement of business interests through unfair competition, if the court, at the request of a party, orders an expert opinion on the matters necessary for calculating the amount of loss or damage caused by the act of infringement, the parties must explain the matters necessary for forming an expert opinion to the expert.

(Determination of Reasonable Amount of Loss or Damage)

Article 9 In litigation involving the infringement of business interests through unfair competition, if the court finds that loss or damage has actually been incurred but it is extremely difficult to prove the facts necessary for proving the amount of loss or damage due to the nature of the facts, the court may determine a reasonable amount of loss or damage based on all of oral arguments and the result of the examination of evidence.

(Orders to Protect Confidentiality)

Article 10 (1) In litigation involving the infringement of business interests through unfair competition, if there has been made a prima facie showing that trade secrets held by a party to the litigation fall under both of the following grounds, the court, at the request of the party and by means of a ruling, may order a party, etc., counsel, or assistant in court not to use the trade secrets for any purpose other than conducting the litigation, or not to disclose them to any person other than one subject to the order under this paragraph which relates to the trade secrets; provided, however, that this does not apply if the party, etc., counsel, or assistant in court had already acquired or held the trade secrets by means other than the reading of the brief prescribed in item (i) or the examination or disclosure of evidence prescribed in the same item by the time at which the request was made:

(i) the trade secrets held by the party is written in an already-produced or a to-be-produced brief, or is included in the contents of already-examined or to-be-examined evidence (including documents disclosed pursuant to Article 7, paragraph (3) or a document disclosed pursuant to Article 13, paragraph (4)); and

(ii) the party's business activities that are based on the trade secrets under the preceding item are likely to become hindered, if the trade secrets are used for any purpose other than those for conducting the litigation or those secrets are disclosed; and it is necessary to restrict the use or disclosure of the trade secrets in order to prevent this.

(2) A petition for the order under the preceding paragraph (hereinafter referred to as the "protective order") must be made in writing and include the following particulars:

(i) the person to whom the protective order is to be issued;

(ii) facts that are sufficient for identifying the trade secrets that are to be made the subject of the protective order; and

(iii) facts that fall within the grounds set forth in the respective items of the preceding paragraph.

(3) When issuing a protective order, the court must serve a written ruling on the person to whom the protective order has been issued.

(4) A protective order takes effect when a written ruling is served on the person to whom the protective order has been issued.

(5) If the court dismisses a petition for a protective order, the party may file an immediate appeal against the judicial decision.

(Rescission of Protective Orders)

Article 11 (1) A person that filed a petition for a protective order or a person to whom a protective order has been issued may file a motion to rescind the protective order with the court where the case record is kept (or, if no such

court exists, with the court that issued the protective order) on the grounds that a requirement prescribed in the preceding Article, paragraph (1) has not been met or is no longer being met.

- (2) If the court makes a judicial decision on a motion to rescind a protective order, it must serve a written ruling on the person that filed the motion and the opponent.
- (3) An immediate appeal may be filed against a judicial decision on the motion to rescind a protective order.
- (4) A judicial decision to rescind a protective order does not take effect until it becomes final and binding.
- (5) If a court has made a judicial decision rescinding a protective order, and, during the same litigation in which the protective order was issued, a protective order for the protection of the trade secrets was issued against any person other than the person that filed the motion for the rescission of the protective order or the opponent, the court must immediately notify that person of the judicial decision rescinding the protective order.

(Notices of Requests to Inspect Case Records)

Article 12 (1) If a court has made a ruling under Article 92, paragraph (1) of the Code of Civil Procedure with regard to the case record in a litigation in which a protective order has been issued (excluding a litigation in which all the protective orders have been rescinded), a party has requested to inspect, etc. the part of the record that contains the secret prescribed under the same paragraph, and the person that followed the procedures for filing the request has not had a protective order issued against them in the litigation, the court clerk must, immediately after the request has been filed, notify the party that filed the motion under the same paragraph (excluding the person filing the request; the same applies in paragraph (3)) of the fact that the request has been filed.

- (2) In a case as referred to in the preceding paragraph, the court clerk must not allow the person that followed the procedures for filing the request under the same paragraph to inspect, etc. the part of the record that contains the secret under the same paragraph until two weeks have elapsed since the date of the request (or, if a motion is filed for a protective order against the person in question on or before that date of the request, until the date on which the judicial decision on that motion becomes final and binding).
- (3) The provisions of the preceding two paragraphs do not apply if there is consent among all parties that have filed a motion under Article 92, paragraph (1) of the Code of Civil Procedure to allow the person that filed the request under paragraph (1) to inspect, etc. the part of the record that contains the secret.

(Suspension of the Open Examination of Parties)

Article 13 (1) In litigation involving the infringement of business interests through unfair competition, if a party, etc. is to be examined as a party to the case, legal representative, or witness with regard to a matter that serves as the basis for determining whether or not that infringement occurred, and falls under trade secrets held by that party; and if the court, by the unanimous agreement of the judges, finds that the party, etc. is unable to give a sufficient statement regarding the matter because it is clear that giving such a statement in open court would significantly hinder the party's business activities based on the trade secrets, and that, without the statement by the party, etc. and solely from other evidence, the court would be unable to make an appropriate judicial decision on whether or not the infringement of business interests occurred through unfair competition, which should be decided based on that matter, the court may rule to conduct an examination on the matter without opening it to the public.

(2) The court must hear the opinions of the parties, etc. in advance before making the ruling under the preceding paragraph.

(3) In the case referred to in the preceding paragraph, if the court finds it necessary, the court may order a party, etc. to present the court with a document that outlines the matters to be stated. In such a case, no person may request the disclosure of the presented document.

(4) If the court finds it necessary to disclose the documents under the second sentence of the preceding paragraph and to hear opinions, the court may disclose them to the relevant parties, etc., the counsel, or the assistant in court.

(5) If the court is to conduct an examination on a matter without opening it to the public pursuant to the provisions of paragraph (1), it must make a statement to that effect along with the reason therefor to the members of the public before having them leave the courtroom. When the examination on the matter ends, the court must allow the members of the public to re-enter the courtroom.

(Measures to Restore Business Reputation)

Article 14 Upon the request of a person whose business reputation has been harmed, the court may order the person that has intentionally or negligently engaged in unfair competition and thereby injured the business reputation of that other person to take the necessary measures for restoring the business reputation of that other person, in lieu of or in addition to compensation for loss or damage.

(Extinctive Prescription)

Article 15 (1) The right to claim the suspension or prevention of infringement under the provisions of Article 3, paragraph (1), against the act of using trade secrets in the unfair competition set forth in Article 2, paragraph (1), items (iv) through (ix), is extinguished by prescription, if the person conducting that act does so continuously and the trade secret holder whose business interests have been infringed or are likely to be infringed on by that act does not exercise the right within three years from the time when the holder comes to know of the fact and the identity of the person conducting the act in question. The same applies if twenty years have elapsed from the time the act in question began.

(2) The provisions of the preceding paragraph apply *mutatis mutandis* to the right to claim the suspension or prevention of infringement under the provisions of Article 3, paragraph (1), against the act of using shared data with limited access in the unfair competition set forth in Article 2, paragraph (1), items (xi) through (xvi). In such a case, the term "the trade secret holder" in the preceding paragraph is to be replaced with "the holder of shared data with limited access".

Chapter III Acts Prohibited based on International Agreements

(Prohibition on the Commercial Use of the National Flag of Foreign States)

Article 16 (1) No person may use anything that is identical or similar to a foreign state's national flag, coat of arms, or any other emblem specified by Order of the Ministry of Economy, Trade and Industry (hereinafter referred to as the "foreign state's national flag, etc.") (such identical or similar items are hereinafter referred to as the "emblems similar to a foreign state's national flag, etc.") as their trademark; may transfer, deliver, display for the purpose of transfer or delivery, export, import, or provide through telecommunication lines goods that use an emblem similar to a foreign state's national flag, etc. as their trademark; nor may provide services while using an emblem similar to a foreign state's national flag, etc. as a trademark; provided, however, that this does not apply if permission has been obtained from the government agency of the foreign state that is authorized to grant permission (including an administrative action similar to permission; the same applies hereinafter) for use of the foreign state's national flag, etc.

(2) Beyond what is prescribed in the preceding paragraph, no person may use a foreign state's coat of arms specified by Order of the Ministry of Economy, Trade and Industry which is referred to in the preceding paragraph (hereinafter referred to as the "coat of arms of a foreign state") in a manner that is likely to mislead as to the place of origin of goods; may transfer, deliver, display for the purpose of transfer or delivery, export, import or provide through telecommunication lines goods that use the coat of arms of a foreign

state in that manner; nor may provide services while using the coat of arms of a foreign state in the same manner; provided, however, this does not apply if permission has been obtained from the government agency of the foreign state that is authorized to grant permission to use the coat of arms of a foreign state.

(3) No person may use anything that is identical or similar to the seal or sign that the national or local government of a foreign state uses for supervision or certification purposes, specified by Order of the Ministry of Economy, Trade and Industry (hereinafter referred to as the "official markings of a foreign national government, etc.") (such identical or similar items are hereinafter referred to as the "official markings similar to that of a foreign national government, etc.") as a trademark on goods or for services that are identical or similar to those for which the official marking of a foreign national government, etc. is used; may transfer, deliver, display for the purpose of transfer or delivery, export, import or provide through telecommunication lines, goods that use an official marking similar to that of a foreign national government, etc. as their trademark; nor may provide services while using an official marking similar to that of a foreign national government, etc. as a trademark; provided, however, that this does not apply if permission has been obtained from the government agency of the foreign state that is authorized to grant permission for use of the official marking of a foreign national government, etc.

(Prohibition of the Commercial Use of Marks of International Organizations)

Article 17 No person may use anything that is identical or similar to a mark representing an international organization (meaning an international intergovernmental organization or an equivalent organization specified by Order of the Ministry of Economy, Trade and Industry; the same applies hereinafter in this Article) which is specified by Order of the Ministry of Economy, Trade and Industry (such identical or similar items are hereinafter referred to as the "mark similar to that of an international organization") as a trademark, in a manner that is likely to mislead as to the existence of a relationship with that international organization; may transfer, deliver, display for the purpose of transfer or delivery, export, import or provide through telecommunication lines, goods that use a mark similar to that of an international organization as their trademark in that manner; nor may provide services while using a mark similar to that of an international organization as their trademark, in the same manner; provided, however, that this does not apply if the permission of the relevant international organization has been obtained.

(Prohibition against the Provision of Wrongful Gains to Foreign Public Officials)

Article 18 (1) No person may give, offer or promise any money or other benefit to a foreign public official, etc. in order to have them act or refrain from acting in relation to the performance of official duties, or in order to have the foreign public officials, etc., use their position to influence another foreign public official, etc. to act or refrain from acting in relation to the performance of official duties, so that the person in question can make any wrongful gain in business with regard to international commercial transactions.

(2) The term "foreign public official, etc." as used in the preceding paragraph means any of the following persons:

- (i) any person that engages in public service for a national or local foreign government;
- (ii) any person that engages in the business affairs of an entity established under foreign special laws to carry out specific business affairs in the public interest;
- (iii) any person that engages in the business affairs of an undertaking in which one or more of the national or local governments of foreign states directly owns a number of voting shares or an amount of capital subscription that exceeds 50 percent of that undertaking's total issued voting shares or total amount of capital subscription, or in which the majority of the officers (meaning directors, auditors, council members, inspectors, liquidators, and other persons engaged in management of the business) are appointed or designated by one or more of the national or local foreign governments, and to which special rights and interests are granted by the national or local government of the foreign states for performance of its business; or a person specified by Cabinet Order as their equivalent person;
- (iv) any person that engages in public services for an international organization (meaning an international organization which is formed by governments or international intergovernmental organizations); or
- (v) any person that engages in the business affairs that are under the authority of the national or local government of a foreign state or an international organization and that are delegated by any of them.

Chapter IV Miscellaneous Provisions

(Exclusion from Application)

Article 19 (1) The provisions of Articles 3 through 15, Article 21 (excluding the part under Article 21, paragraph (2), item (vii)), and Article 22 do not apply to the act prescribed in the relevant of the following items for the classification of unfair competition set forth in that item:

- (i) unfair competition set forth in Article 2, paragraph (1), items (i), (ii), (xx), and (xxii): the act of using or indicating a common name for goods or

- business (excluding the name of a place of origin of things made from grapes or by using grapes as an ingredient, which has become a common name) or an indication of goods or business that is in common usage for identical or similar goods or business (hereinafter collectively referred to as a "common name, etc.") in the way that this is normally done, or the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through telecommunication lines goods that use or indicate a common name in the way that this is normally done (including the act of providing services while indicating or using a common name, etc. in the way that this is normally done, in cases of unfair competition set forth in items (xx) and (xxii) of the same paragraph);
- (ii) unfair competition set forth in Article 2, paragraph (1), items (i), (ii), and (xxii): the act of using one's own name with no wrongful purpose (meaning the purpose of making any wrongful gain, the purpose of causing damage to others, or any other wrongful purpose; the same applies hereinafter), or the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through telecommunication lines goods that use one's own name with no wrongful purpose (including an act of providing services while using one's own name with no wrongful purpose, in cases of unfair competition set forth in the same items);
 - (iii) unfair competition set forth in Article 2, paragraph (1), item (i): the act by a person that has used an indication of goods or business that is identical or similar to another person's indication of goods or business, since before the other person's indication became well-known among consumers, or by a person that has succeeded to a business in relation to that indication of goods or business, of using that indication with no wrongful purpose, or of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through telecommunication lines goods that use that indication with no wrongful purpose;
 - (iv) unfair competition set forth in Article 2, paragraph (1), item (ii): the act by a person that has used an indication of goods or business that is identical or similar to another person's indication of goods or business, since before the other person's indication became famous, or by a person that has succeeded to a business in relation to that indication, of using that indication with no wrongful purpose, or of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through telecommunication lines goods that use that indication with no wrongful purpose;
 - (v) unfair competition set forth in Article 2, paragraph (1), item (iii): any of the following acts:
 - (a) the act of transferring, leasing, displaying for the purpose of transfer or

- lease, exporting or importing goods that imitate the form of goods if three years have elapsed since the date they were first sold in Japan; or
- (b) the act by a person that has received goods that imitate the form of another person's goods through transfer (limited to a person that, at the time of receiving the goods through transfer, did not know, without gross negligence, that the goods imitated the form of another person's goods), of transferring, leasing, displaying for the purpose of transfer or lease, exporting, or importing the goods;
 - (vi) unfair competition set forth in Article 2, paragraph (1), items (iv) through (ix): the act by a person that has acquired trade secrets through a transaction (limited to a person that, at the time of acquiring the trade secrets, did not know, without gross negligence, that the disclosure of those trade secrets was an act of improper disclosure of trade secrets or that there had been an intervening act of wrongful acquisition of trade secrets or an act of improper disclosure of trade secrets with regard to the trade secrets in question), of using or disclosing the trade secrets within the scope of title acquired through the transaction;
 - (vii) unfair competition set forth in Article 2, paragraph (1), item (x): the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing or providing through telecommunication lines things created by the act of using trade secrets after the rights prescribed in Article 15, paragraph (1) have extinguished pursuant to the same paragraph;
 - (viii) unfair competition set forth in Article 2, paragraph (1), items (xi) through (xvi): any of the following acts:
 - (a) the act by a person that has acquired shared data with limited access through a transaction (limited to a person that, at the time of acquiring the shared data with limited access, was without knowledge that the disclosure of that data was an act of improper disclosure of shared data with limited access or that there had been an intervening act of wrongful acquisition of shared data with limited access or an act of improper disclosure of shared data with limited access with regard to that data), of disclosing the shared data with limited access within the scope of title acquired through the transaction; or
 - (b) the act of acquiring shared data with limited access in which the information accumulated to a significant extent is the same as any information that has been made available to the public without compensation, or the act of using or disclosing such acquired shared data with limited access;
 - (ix) unfair competition set forth in Article 2, paragraph (1), items (xvii) and (xviii): the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, a device prescribed in items (xvii)

and (xviii) of the same paragraph, a recording medium on which a program or code prescribed in those items has been recorded, or a machine on which a program or code prescribed in the same items has been stored, which is used for testing or research for technological restriction measures; the act of providing the program or the code through telecommunication lines; or the act of providing a service prescribed in those items, which is conducted for testing or research on technological restriction measures.

- (2) A person whose business interests have been infringed or are likely to be infringed on through any of the acts set forth in item (ii) or (iii) of the preceding paragraph may request another person specified in each of the following items for the classification of acts set forth in the relevant item, to affix an indication appropriate to prevent confusion of that other person's goods or business with those of their own:
- (i) acts set forth in item (ii) of the preceding paragraph: the person using their own name (including the person that personally assigns, delivers, displays for the purpose of transfer or delivery, exports, imports, or provides through telecommunication lines goods that use their own name); or
 - (ii) acts set forth in item (iii) of the preceding paragraph: the person using the indication of goods or business that is identical or similar to other person's indication of goods or business, and the person that has succeeded to a business in relation to that indication (including the person that personally assigns, delivers, displays for the purpose of transfer or delivery, exports, imports or provides through telecommunication lines, goods that use that indication).

(Delegation to Cabinet Order)

Article 19-2 (1) Beyond what is provided for in this Act, matters for measures to collect arrears which are necessary for the procedural adjustment between those measures and preservation for confiscation are specified by Cabinet Order.

- (2) Beyond what is provided for in this Act, matters necessary for procedures concerning a third party's participation and a judicial decision under Article 32, procedures concerning preservation for confiscation and preservation for collection of equivalent value under Chapter VIII, and procedures for international mutual legal assistance under Chapter IX (excluding matters prescribed in the preceding paragraph) are specified by the Rules of the Supreme Court.

(Transitional Measures)

Article 20 If Cabinet Orders or Orders of the Ministry of Economy, Trade and Industry are enacted, amended, or repealed pursuant to the provisions of this

Act, the required transitional measures (including transitional measures concerning penal provisions) may be specified by that Cabinet Order or Ministerial Order, to the extent considered reasonably necessary for the enactment, amendment or repeal.

Chapter V Penal Provisions

(Penal Provisions)

Article 21 (1) A person that falls under any of the following items is subject to imprisonment for not more than ten years, a fine of not more than twenty million yen, or both:

- (i) a person that acquires trade secrets through an act of fraud, etc. (meaning the act of deceiving, assaulting, or intimidating a person; the same applies in the following item) or through an act of infringing on management (meaning the act of stealing assets, breaking into a facility, making unauthorized access (meaning the act of unauthorized access prescribed in Article 2, paragraph (4) of the Unauthorized Computer Access Act (Act No. 128 of 1999)), or in any other way prejudicing the management that the trade secret holder maintains; the same applies in the following item), for the purpose of wrongful gain or causing damage to the trade secret holder;
- (ii) a person that uses or discloses trade secrets acquired through an act of fraud, etc. or through infringing on management, for the purpose of wrongful gain or causing damage to the trade secret holder;
- (iii) a person to whom the trade secret holder has disclosed their trade secrets, and who, for the purpose of wrongful gain or causing damage to the trade secret holder, obtains trade secrets by any of the following means, in breach of the duties regarding the management of the trade secrets;
 - (a) misappropriating a recording medium containing trade secrets, etc. (meaning a document, a drawing, or a recording medium on which trade secrets are described or recorded; the same applies hereinafter in this item) or an object that represents trade secrets;
 - (b) reproducing a description or a record from a recording medium containing trade secrets, etc., or an object that represents trade secrets; or
 - (c) not deleting a description or a record that should be deleted from a recording medium containing trade secrets, etc., and disguising this act as if the description or record in the recording medium containing the trade secrets, etc. had been deleted;
- (iv) a person to whom the trade secret holder has disclosed trade secrets, and who, for the purpose of wrongful gain or causing damage to the trade secret holder, uses or discloses trade secrets obtained through the means set forth in (a) through (c) of the preceding item, in breach of the duty regarding the

- management of the trade secrets;
- (v) a person that is the officer (meaning a council member, director, executive officer, executive member, inspector or auditor, or other equivalent person; the same applies in the following item) or employee of the trade secret holder; to whom the trade secret owner has disclosed trade secrets; and who, for the purpose of wrongful gain or causing damage to the trade secret holder, uses or discloses the trade secrets, in breach of the duty regarding the management of the trade secrets (excluding the person set forth in the preceding item);
 - (vi) a person that was the officer or employee of the trade secret holder, to whom the trade secret holder had disclosed trade secrets, and who, for the purpose of wrongful gain or causing damage to the trade secret holder, has offered to disclose the trade secrets, or received a request to use or disclose the trade secrets, while holding that position, in breach of the legal duty regarding the management of the trade secrets, and uses or discloses it after leaving that position (excluding the person set forth in item (iv));
 - (vii) a person that, for the purpose of wrongful gain or causing damage to the trade secret holder, uses or discloses trade secrets acquired by a disclosure that constitutes an offence prescribed in item (ii), the preceding three items, or paragraph (3), item (ii) (limited to the part regarding a disclosure that constitutes an offence prescribed in item (ii) or the preceding three items);
 - (viii) a person that, for the purpose of wrongful gain or causing damage to the trade secret holder, uses or discloses trade secrets acquired, knowing that there has been an disclosure that constitutes an offence prescribed in item (ii), items (iv) through the preceding item, or paragraph (3), item (ii) (limited to the part regarding a disclosure that constitutes an offence prescribed in item (ii) or items (iv) through the preceding item); or
 - (ix) a person that, for the purpose of wrongful gain or causing damage to the trade secret holder, assigns, delivers, displays for the purpose of transfer or delivery, exports, imports, or provides through telecommunication lines things created by an act conducted by the same person or another person that constitutes an offence prescribed in item (ii), items (iv) through the preceding item, or paragraph (3), item (iii) (limited to an act of using a technical secret; hereinafter referred to as an "act of illegal use" in this item and paragraph (1), item (ii) of the following Article) (excluding a person that has received the things by transfer without knowing that the things were created by an act of illegal use, and has transferred, delivered, displayed for the purpose of transfer or delivery, exported, imported, or provided through telecommunication lines those things).
- (2) A person that falls under any of the following items is subject to imprisonment for not more than five years, a fine of not more than five million

yen, or both:

- (i) a person that, for a wrongful purpose, commits any act of unfair competition set forth in Article 2, paragraph (1), item (i) or (xx);
 - (ii) a person that, for the purpose of wrongful gain through the use of the reputation or good name of another person's famous indication of goods or business, or for the purpose of injuring that reputation or good name, commits any act of unfair competition set forth in Article 2, paragraph (1), item (ii);
 - (iii) a person that, for the purpose of wrongful gain, commits any act of unfair competition set forth in Article 2, paragraph (1), item (iii);
 - (iv) a person that, for the purpose of wrongful gain, or for the purpose of causing damage to another person that is using technological restriction measures for their business purposes, commits any act of unfair competition set forth in Article 2, paragraph (1), item (xvii) or (xviii);
 - (v) a person that makes a false indication on goods, in services, in an advertisement thereof, or in trade documents or communication, that is likely to mislead as to the place of origin, quality, contents, manufacturing process, purpose, or quantity of the goods, or as to the quality, contents, purpose, or quantity of the services (excluding a person set forth in item (i));
 - (vi) a person that violates a protective order; or
 - (vii) a person that violates any of the provisions of Article 16, 17, or 18, paragraph (1).
- (3) A person that falls under any of the following items is subject to imprisonment for not more than ten years, a fine of not more than thirty million yen, or both:
- (i) a person that commits offences prescribed in paragraph (1), item (i) or (iii) for the purpose of use outside Japan;
 - (ii) a person that makes a disclosure that constitutes offences prescribed in paragraph (1), item (ii), or items (iv) through (viii), knowing that the receiving party has the purpose of their use outside Japan that constitutes the offences; or
 - (iii) a person that outside Japan uses trade secrets of the trade secret holder conducting business within Japan in a way that constitutes offences prescribed in paragraph (1), item (ii), or items (iv) through (viii).
- (4) An attempt of offences prescribed in paragraph (1) (excluding item (iii)) and items (i) (excluding the part regarding paragraph (1), item (iii)), (ii), and (iii) of the preceding paragraph is subject to punishment.
- (5) The offences prescribed in paragraph (2), item (vi) may not be prosecuted without a criminal complaint.
- (6) The offences prescribed in each item of paragraph (1) (excluding item (ix)), paragraph (3), item (i) or (ii), or paragraph (4) (excluding the part regarding

paragraph (1), item (ix)) also apply to a person that commits the offences outside Japan in connection with trade secrets of the trade secret holder conducting business within Japan.

- (7) The offence prescribed in paragraph (2), item (vi) also applies to a person that commits the offence outside Japan.
- (8) The offence prescribed in paragraph (2), item (vii) (limited to the part under Article 18, paragraph (1)) is governed by Article 3 of the Penal Code (Act No. 45 of 1907).
- (9) The provisions of paragraphs (1) through (4) do not preclude the application of penal provisions under the Penal Code or any other legislation.
- (10) The assets set forth in the following items may be confiscated:
 - (i) assets resulting from, gained by means of, or gained as reward for the criminal acts which constitute the offences prescribed in paragraphs (1), (3), and (4); and
 - (ii) assets gained as profits from the assets set forth in the preceding item, assets gained in exchange for the assets set forth in the same item, assets gained in exchange for either of these types of assets, or other assets gained through holding or disposing the assets set forth in that item.
- (11) The provisions of Articles 14 and 15 of the Act on Punishment of Organized Crime and Control of Crime Proceeds (Act No. 136 of 1999; hereinafter referred to as the "Organized Crime Punishment Act") apply mutatis mutandis to the confiscation under the preceding paragraph. In such a case, the phrase "each item of paragraph (1) or each item of paragraph (4) of the preceding Article" in Article 14 of the Organized Crime Punishment Act is deemed to be replaced with "each item of Article 21, paragraph (10) of the Unfair Competition Prevention Act".
- (12) When the assets set forth in each item of paragraph (10) cannot be confiscated or it is considered inappropriate to confiscate the assets due to their nature, the condition of its use, the existence or non-existence of rights of any person other than the offender regarding the assets, or other circumstances, the equivalent value thereof may be collected from the offender.

Article 22 (1) If the representative of a corporation, or the agent, employee, or other worker of a corporation or of any person has committed a violation set forth in any of the provisions of the following items with regard to the business of the corporation or the person, in addition to the offender being subject to punishment, the corporation is to be subject to the fine prescribed in the relevant items, and the person is to be subject to the fine prescribed in the relevant Article:

- (i) paragraph (3), item (i) of the preceding Article (limited to the part regarding paragraph (1), item (i) of the same Article); paragraph (3), item (ii) of the

- preceding Article (limited to the part regarding paragraph (1), items (ii), (vii), and (viii) of the same Article); paragraph (3), item (iii) of the preceding Article (limited to the part regarding paragraph (1), items (ii), (vii), and (viii) of the same Article); or paragraph (4) of the preceding Article (limited to the part regarding paragraph (3), item (i) of the same Article (limited to the part regarding paragraph (1), item (i) of the same Article), paragraph (3), item (ii) of the same Article (limited to the part regarding paragraph (1), items (ii), (vii), and (viii) of the same Article), and paragraph (3), item (iii) of the same Article (limited to the part regarding paragraph (1), items (ii), (vii), and (viii) of the same Article)): a fine not more than one billion yen;
- (ii) paragraph (1), items (i), (ii), (vii), (viii), or (ix) of the preceding Article (excluding cases in which a person that has committed an act of illegal use concerning the offences prescribed in items (iv) through (vi) of the same paragraph or in paragraph (3), item (iii) of the preceding Article (limited to the part regarding paragraph (1), items (iv) through (vi) of the same Article) (hereinafter referred to as a "specified act of illegal use" in this item and paragraph (3)) falls under those items); or paragraph (4) of the preceding Article (limited to the part regarding paragraph (1), items (i), (ii), (vii), (viii), or (ix) of the same Article (excluding cases in which a person that has committed a specified act of illegal use falls under those items)) of the same Article: a fine not more than five hundred million yen; or
- (iii) paragraph (2) of the preceding Article: a fine not more than three hundred million yen.
- (2) In a case referred to in the preceding paragraph, a criminal complaint prescribed in paragraph (5) of the preceding Article which is filed against the offender in question for an offence prescribed in paragraph (2), item (vi) of the same Article also has effect with respect to the corporation or person in relation to the preceding paragraph, and a criminal complaint filed against that corporation or person also has effect with respect to that offender.
- (3) The period of prescription for the punishment by fine to which the corporation or person in question is subject pursuant to the provisions of paragraph (1) in regard to violation under paragraph (1), item (i), (ii), (vii), (viii), or (ix) of the preceding Article (excluding cases in which a person that has committed a specified act of illegal use falls under those items); under paragraph (2) of the same Article; under paragraph (3), item (i) of the same Article (limited to the part regarding paragraph (1), item (i) of the same Article); under paragraph (3), item (ii) of the same Article (limited to the part regarding paragraph (1), item (ii), (vii), or (viii) of the same Article); under paragraph (3), item (iii) of the same Article (limited to the part regarding paragraph (1), item (ii), (vii), or (viii) of the same Article); or under paragraph (4) of the same Article (limited to the part regarding paragraph (1), items (i), (ii), (vii), (viii), or (ix) of the

same Article (excluding cases in which a person that has committed a specified act of illegal use falls under those items), paragraph (3), item (i) of the same Article (limited to the part regarding paragraph (1), item (i) of the same Article), paragraph (3), item (ii) of the same Article (limited to the part regarding paragraph (1), items (ii), (vii), or (viii) of the same Article), or paragraph (3), item (iii) of the same Article (limited to the part regarding paragraph (1), item (ii), (vii), or (viii) of the same Article)), is the same as that for the offence referred to in the relevant of those provisions.

Chapter VI Special Provisions on Criminal Proceedings

(Protective Rulings for Trade Secrets)

- Article 23 (1) When the court is handling a case involving a crime prescribed in Article 21, paragraph (1), (3) or (4) or a crime prescribed in paragraph (1) of the preceding Article (excluding item (iii)), the victim, the victim's legal representative, or the attorney entrusted by either of these persons files a petition not to reveal a matter in open court that will identify all or part of the information that constitutes the trade secrets regarding the case, and the court finds it to be appropriate, upon hearing the opinions of the accused or defense counsel, the court may rule that the matters will not be revealed in open court, and set the scope for this.
- (2) The petition referred to in the preceding paragraph must be made to the public prosecutor in advance. In such a case, the public prosecutor is to notify the court of this together with the prosecutor's opinion.
- (3) If the court is handling a case prescribed in paragraph (1) and the public prosecutor, the accused, or defense counsel files a petition not to reveal a matter in open court that would allow all or part of the information that constitutes trade secrets held by the accused or other persons to be identified, and, upon hearing the opinions of the opponent, the court finds that the matter is indispensable as proof of the offence or for the defense of the accused but there is a risk that revealing the matter in open court would significantly hinder the accused's or other persons' business activities that are based on trade secrets, and also finds that it to be appropriate, the court may rule that the matters will not be revealed in open court, and set the scope for this.
- (4) When the court has made a ruling prescribed in paragraph (1) or the preceding paragraph (hereinafter referred to as a "protective ruling"), and the court finds it to be necessary, upon hearing the opinions of the public prosecutor and the accused or defense counsel, the court may decide, in a ruling, on a naming or other expression to be used in lieu of the name or other expression for the matter that allows trade secrets to be identified ("matter that allows trade secrets to be identified" means a matter that allows all or

part of the information that constitutes trade secrets to be identified, which were decided not to be revealed in open court pursuant to a protective ruling; the same applies hereinafter).

- (5) If the court has issued a protective ruling but has come to find that it is inappropriate for the matter that allows trade secrets to be identified not to be revealed in open court, or the case has no longer come under the case prescribed in paragraph (1) because applicable penal statutes have been withdrawn or altered pursuant to Article 312 of the Code of Criminal Procedure (Act No. 131 of 1948), the court must in a ruling rescind all or part of the protective ruling and the all or part of the ruling prescribed in the preceding paragraph regarding that protective ruling (hereinafter referred to as a "ruling on a naming, etc.") .

(Special Provisions on the Manner of Reading Out Charging Instruments)

Article 24 If a protective ruling has been issued, the indictment must be read out, under Article 291, paragraph (1) of the Code of Criminal Procedure, in a manner that does not reveal the matter that allows trade secrets to be identified. In such a case, the public prosecutor must show the indictment to the accused.

(Limiting Examinations)

Article 25 (1) If a protective ruling has been issued and examinations or statements by persons concerned in the case include the matter that allows trade secrets to be identified, unless limiting the examinations or statements could materially interfere with proving the offence or could be substantially detrimental to the defense of the accused, the presiding judge may limit the questions or statements. The same applies to questions for the accused by persons concerned in the case.

- (2) The provisions of Article 295, paragraphs (5) and (6) of the Code of Criminal Procedure apply mutatis mutandis if the public prosecutor or attorney acting as defense counsel has disobeyed an order under the provisions of the preceding paragraph.

(Examination of Witnesses on Days Other Than Trial Dates)

Article 26 (1) When the court has issued a protective ruling, if the court examines a witness, expert, interpreter, or translator, or the accused makes a statement voluntarily; and if, upon hearing the opinions of the public prosecutor and the accused or defense counsel, the court finds that there is a risk that matters that allow trade secrets to be identified will be included in examinations or statements of the witness, the expert, the interpreter, or the translator, in questions for the accused, or in statements of the accused, and

revealing those matters in open court would significantly hinder the victim's, accused's, or other persons' business activities based on trade secrets, and also finds that it is unavoidable to do so to prevent this, the court may conduct the examination or the proceedings for asking the accused questions provided in Article 311, paragraphs (2) and (3) of the Code of Criminal Procedure on a day other than a trial date.

(2) The provisions of Article 157, paragraphs (1) and (2), Article 158, paragraphs (2) and (3), Article 159, paragraph (1), Article 273, paragraph (2), Article 274, and Article 303 of the Code of Criminal Procedure apply mutatis mutandis to the proceedings for asking for a statement of the accused under the provisions of the preceding paragraph. In this case, the phrase "the accused or defense counsel" in Article 157, paragraph (1), Article 158, paragraph (3), and Article 159, paragraph (1) of the Code of Criminal Procedure is deemed to be replaced with "defense counsel, the co-defendants, or their defense counsel"; the phrase "the accused and defense counsel" in Article 158, paragraph (2) of the same Code is deemed to be replaced with "defense counsel, the co-defendants, and their defense counsel"; the phrase "the trial date" in Article 273, paragraph (2) of the same Code is deemed to be replaced with "the date of the proceedings for asking statements of the accused under the provisions of Article 26, paragraph (1) of the Unfair Competition Prevention Act"; the phrase "the trial date" in Article 274 of the same Code is deemed to be replaced with "the date, time, and location of the proceedings for asking statements of the accused under the provisions of Article 26, paragraph (1) of the Unfair Competition Prevention Act"; the phrase "documents which contain the results of the examination of witnesses or other persons, inspections, seizure or search, and objects seized" in Article 303 of the same Code is deemed to be replaced with "documents which contain the results of the proceedings for asking statements of the accused under the provisions of Article 26, paragraph (1) of the Unfair Competition Prevention Act"; and the phrase "documentary or material evidence" in the same Article is deemed to be replaced with "documentary evidence".

(Order to Present Documents that Outline Matters for Examination)

Article 27 If the court finds it to be necessary in issuing a ruling on a naming, etc. or in deciding that the examination or the proceedings for asking statements of the accused will be conducted on a day other than a trial date pursuant to the provisions of the paragraph (1) of the preceding Article, the court may order the public prosecutor and the accused or defense counsel to present the court with a document that outlines the matters involved in the examination or statements to be made by the persons concerned in the case or the questions for the accused.

(Special Provisions on the Manner of Reading Out Documentary Evidence)

Article 28 If a protective ruling has been issued, the documentary evidence must be read out, under the provisions of Article 305, paragraphs (1) or (2) of the Code of Criminal Procedure, in a manner that does not reveal the matter that allows trade secrets to be identified.

(Rulings in Pretrial Conference Procedures)

Article 29 The following acts may be taken in pretrial conference procedures and interim conference procedures:

- (i) a protective ruling, a ruling on a naming, etc., or a ruling rescinding these rulings; or
- (ii) a decision that the examination or the proceedings for asking statements of the accused will be conducted on a day other than a trial date pursuant to the provisions of Article 26, paragraph (1).

(Requests for Protective Handling of Trade Secrets in the Disclosure of Evidence)

Article 30 (1) If the public prosecutor or defense counsel finds that, in providing an opportunity to inspect documentary or material evidence pursuant to the provisions of Article 299, paragraph (1) of the Code of Criminal Procedure in a case prescribed in Article 23, paragraph (1), there is a risk that revealing a matter that allows all or part of the information that constitutes trade secrets to be identified as prescribed in Article 23, paragraph (1) or (3) would significantly hinder the victim's, accused's, or other persons' business activities based on the trade secrets, the public prosecutor or defense counsel may notify the opponent of this risk and request that the opportunity be provided in such a way that the parties concerned (including the accused) do not learn of the matters, unless the same matters are necessary for proof or investigation of the offence, or for the defense of the accused; provided, however, that for a request that the opportunity be provided in such a way that the accused does not learn of the matters, this is limited solely to matters that are not written in the indictment.

(2) The provisions of the preceding paragraph apply *mutatis mutandis* if the public prosecutor or defense counsel discloses evidence under the provisions of Part II, Chapter III, Section 2, Subsection 1, Division 2 of the Code of Criminal Procedure (including as applied *mutatis mutandis* pursuant to the provisions of Article 316-28, paragraph (2) of the same Code).

(Delegation to Rules of the Supreme Court)

Article 31 Beyond what is provided for in this Act, matters necessary for the enforcement of the provisions referred to in Article 23 through the preceding

Article are specified by Rules of the Supreme Court.

Chapter VII Special Provisions on Procedures for Confiscation

(Procedures for Confiscation of Assets of Third Parties)

Article 32 (1) If a claim, etc. (meaning assets other than real property and movables; the same applies in Article 34) which falls under the assets set forth in each item of Article 21, paragraph (10) belongs to a person other than the accused (hereinafter referred to as a "third party" in this Article), and the third party is not allowed to participate in the proceedings of the case under public prosecution, a judicial decision for confiscation may not be made.

(2) The provisions of the preceding paragraph also apply if the assets on which there exists superficies, a mortgage, or any other rights of a third party are to be confiscated pursuant to the provisions of Article 21, paragraph (10) and the third party is not allowed to participate in the proceedings of the case under public prosecution.

(3) The provisions of Article 18, paragraphs (3) through (5) of the Organized Crime Punishment Act apply mutatis mutandis to cases where the assets on which there exists superficies, a mortgage, or any other rights of a third party are to be confiscated and the relevant rights should continue to exist pursuant to the provisions of Article 15, paragraph (2) of the Organized Crime Punishment Act as applied mutatis mutandis pursuant to Article 21, paragraph (11).

(4) Except as otherwise provided by this Act, the provisions of the Act on Emergency Measures in Criminal Procedure to Confiscate Items Owned by Third Parties (Act No. 138 of 1963) apply mutatis mutandis to the procedures for confiscation of assets prescribed in paragraphs (1) and (2).

(Disposition of Confiscated Claims)

Article 33 The provisions of Article 19 of the Organized Crime Punishment Act apply mutatis mutandis to the confiscation under Article 21, paragraph (10), and the provisions of Article 20 of the Organized Crime Punishment Act apply mutatis mutandis to cases in which the registration of a transfer of rights is to be made commissioned to the relevant organization based on a judicial decision to confiscate the assets for which registration is required in the case of transfer of its rights. In such a case, the phrase "Section 1 of the following Chapter" in the same Article is deemed to be replaced with "Chapter VIII of the Unfair Competition Prevention Act".

(Special Provisions on Criminal Compensation)

Article 34 The provisions of Article 4, paragraph (6) of the Criminal

Compensation Act (Act No. 1 of 1950) apply mutatis mutandis to the contents of compensation under the same Act with regard to the execution of confiscation of claims, etc.

Chapter VIII Procedures for Preservation

(Order for Preservation for Confiscation)

- Article 35 (1) With regard to cases under public prosecution concerning the offences prescribed in Article 21, paragraphs (1), (3), and (4), if a court finds that there is probable cause to consider that the relevant assets fall under those which may be confiscated pursuant to paragraph (10) of the same Article (hereinafter referred to as the "assets to be confiscated") and it is necessary for the confiscation of the assets, the court may issue an order for preservation for confiscation to prohibit the disposition of the assets, at the request of a public prosecutor or by its own authority.
- (2) If a court has issued or intends to issue an order for preservation for confiscation with regard to assets on which there exists superficies, a mortgage, or any other rights; and if the court finds that there is probable cause to consider that the rights will be extinguished through the confiscation and also finds that it is necessary for the confiscation of the assets, or if the court finds that there is probable cause to consider that the rights have been falsified, the court may issue an incidental order for preservation separately to prohibit the disposition of the rights, at the request of a public prosecutor or by its own authority.
- (3) If a judge finds that there are the grounds and necessity prescribed in the preceding two paragraphs, even before the institution of prosecution, the judge may conduct the disposition prescribed in the preceding two paragraphs at the request of a public prosecutor or a judicial police officer (with regard to judicial police officers that are police officers, limited to a person designated by the National Public Safety Commission or the Prefectural Public Safety Commission as those in the rank of police inspector or in a higher rank).
- (4) Beyond what is provided for in the preceding three paragraphs, the disposition under these provisions is governed by the provisions for the prohibition of the disposition under the order for preservation for confiscation or the incidental order for preservation as provided for in Chapter IV, Sections 1 and 3 of the Organized Crime Punishment Act.

(Order for Preservation for Collection of Equivalent Value)

- Article 36 (1) With regard to cases under public prosecution concerning the offences prescribed in Article 21, paragraphs (1), (3), and (4), if a court finds that there is probable cause to consider that collection of equivalent value

should be conducted pursuant to paragraph (12) of the same Article and there is a likelihood that it will be impossible or extremely difficult to execute a judicial decision on collection of equivalent value, the court may issue an order for preservation for collection of equivalent value to prohibit the accused from disposing of the assets, at the request of a public prosecutor or by its own authority.

- (2) If a judge finds that there are the grounds and necessity prescribed in the preceding paragraph, even before the institution of prosecution, the judge may conduct the disposition prescribed in the same paragraph, at the request of a public prosecutor.
- (3) Beyond what is provided for in the preceding two paragraphs, the disposition under these provisions is governed by the provisions for the prohibition of the disposition under the order for preservation for collection of equivalent value as provided for in Chapter IV, Sections 2 and 3 of the Organized Crime Punishment Act.

Chapter IX Procedures for International Mutual Legal Assistance in the Execution of Judicial Decisions and in Preservation for Confiscation and Collection of Equivalent Value

(Provision of Mutual Assistance)

Article 37 (1) If a foreign state makes a request for assistance for execution of a final and binding decision on confiscation or collection of equivalent value, or for preservation of assets for confiscation or collection of equivalent value with regard to a criminal case of the relevant foreign state (limited to cases in which the act constituting the offence which is alleged to have been committed in that criminal case would constitute the offences prescribed in Article 21, paragraph (1), (3), or (4), if the act had been carried out in Japan), assistance may be provided for the request unless the relevant case falls under any of the following items:

- (i) it would be considered impossible to impose a punishment under Japanese laws and regulations if the act constituting the offence for which assistance is requested (meaning an offence which is alleged to have been committed in a request for assistance; the same applies hereinafter in this paragraph) had been carried out in Japan;
- (ii) a case in relation to the offence for which assistance is requested is pending before a Japanese court, or a final and binding judgment has been issued thereon by a Japanese court;
- (iii) in cases of assistance for execution of a final and binding decision on confiscation or assistance in preservation for confiscation, the assets in relation to the request would not be subject to a judicial decision on

- confiscation in connection with the offence for which assistance is requested or would not be eligible for preservation for confiscation in connection with that offence, under Japanese laws and regulations, if the act constituting the offence for which assistance is requested had been carried out in Japan;
- (iv) in cases of assistance for execution of a final and binding decision on collection of equivalent value or assistance in preservation for collection of equivalent value, the assets in relation to the request would not be subject to a judicial decision on collection of equivalent value in connection with the offence for which assistance is requested or would not be eligible for preservation for collection of equivalent value in connection with that offence, under Japanese laws and regulations, if the act constituting the offence for which assistance is requested had been carried out in Japan;
- (v) it is considered that, in cases of assistance for execution of a final and binding decision on confiscation, a person that there is probable cause to believe has the assets in relation to the request, or has superficies, a mortgage, or any other rights thereon, or in cases of assistance for execution of a final and binding decision on collection of equivalent value, a person that is subject to the judicial decision, was unable to claim their rights in the proceedings for the judicial decision due to grounds not attributable to them; or
- (vi) in cases of assistance in preservation for confiscation or collection of equivalent value, except for a request based on a judicial decision on preservation for confiscation or collection of equivalent value which was rendered by a court or a judge of a requesting country, or except for a request after the final and binding decision on confiscation or collection of equivalent value, there is no probable cause to suspect that the act constituting the offence for which assistance is requested has been carried out, or it is considered that there would be no grounds prescribed in Article 35, paragraph (1) or paragraph (1) of the preceding Article if the act had been carried out in Japan.
- (2) In providing assistance for execution of a final and binding decision on confiscation regarding assets on which there exists superficies, a mortgage, or any other rights, those rights should be affirmed to continue to exist, if Japanese laws and regulations require this in the event that those assets are confiscated.

(Confiscation Considered as Collection of Equivalent Value)

Article 38 (1) In cases of a request for assistance for execution of a final and binding decision to confiscate assets held by a person subject to the judicial decision that is of the equivalent value to the assets set forth in each item of Article 21, paragraph (10), in lieu of the assets set forth in that item, that final

and binding decision is deemed as a final and binding decision to collect the value of the assets from the person, in providing assistance pursuant to this Act.

- (2) The provisions of the preceding paragraph apply mutatis mutandis to a request for assistance in preservation for confiscation of assets whose value is equivalent to that of the assets set forth in each item of Article 21, paragraph (10), in lieu of the assets set forth in that item.

(Transfer of Assets in Providing Assistance to a Requesting State)

Article 39 If a foreign state which has made a request for assistance for execution of a final and binding decision on confiscation or collection of equivalent value prescribed in Article 37, paragraph (1), makes a request for transfer of assets or their equivalent sum of money in relation to the provision of the assistance, all or part of the assets or money in question may be transferred.

(Treatment of Assistance Pursuant to the Organized Crime Punishment Act)

Article 40 Beyond what is provided for in the preceding three Articles, assistance under Article 37 and transfer under the preceding Article is governed by the provisions for assistance and transfer under Chapter VI of the Organized Crime Punishment Act.

Supplementary Provisions [Extract]

(Effective Date)

Article 1 This Act comes into effect on the day specified by Cabinet Order, within a period not exceeding one year from the date of its promulgation.

(Transitional Measures)

Article 2 Except as otherwise provided, the provisions of the Unfair Competition Prevention Act after its amendment (hereinafter referred to as the "new Act") also apply to matters that arose before this Act came into effect; provided, however, that this does not preclude any effect that had arisen based on the Unfair Competition Prevention Act prior to its amendment (hereinafter referred to as the "former Act").

Article 3 The provisions of Article 3, the main clause of Article 4, and Article 5 do not apply to the continuation of any of the following acts that commenced before this Act came into effect:

- (i) an act that falls under the act set forth in Article 2, paragraph (1), item (ii) (excluding an act that falls under item (i) of the same paragraph); or

(ii) among the acts set forth in Article 2, paragraph (1), item (xx), the act of using an indication on services, in an advertisement thereof, or in trade documents or communication thereof, in a way that is likely to mislead as to the quality, contents, purpose, or quantity of the services, or the act of providing services with using such indication.

Article 4 The provisions of Articles 3 through 5, Article 14, and Article 15, paragraph (1) do not apply to acts of unfair competition set forth in Article 2, paragraph (1), items (iv) through (vi), item (viii), and item (ix) in connection with an act of wrongful acquisition of trade secrets prescribed in item (iv) of the same paragraph or an act of improper disclosure of trade secrets prescribed in item (viii) of the same paragraph that took place before June 15, 1991, if those acts of unfair competition are committed on or after the date (excluding an act that falls under the following items); or to the continuation of the act of using trade secrets as prescribed in item (vii) of the same paragraph that commenced before the date:

- (i) the act of disclosing trade secrets as prescribed in Article 2, paragraph (1), items (iv) through (vi), item (viii), and item (ix); or
- (ii) the act of acquiring trade secrets as prescribed in Article 2, paragraph (1), item (v) and (viii), and the act of using trade secrets acquired through such act.

Article 5 The provisions of Article 7 of the new Act apply to litigation filed after this Act comes into effect, and prior laws continue to govern litigation filed before this Act comes into effect.

Article 6 The provisions of Article 14 do not apply to the continuation of an act that commenced before this Act comes into effect and falls under an act set forth in Article 2, paragraph (1), item (ii) or (xx) (excluding an act that falls under item (i) of the same paragraph).

Article 7 A person that has obtained permission as prescribed in Article 4, paragraphs (1) through (3) or Article 4-2 of the former Act before this Act comes into effect is deemed to have obtained a permission respectively prescribed in the provisos to Article 16, paragraphs (1) through (3) or the proviso to Article 17 of the new Act.

Article 8 The provisions of Article 16 of the new Act do not apply to a person that has obtained the permission prescribed in Article 4, paragraph (4) of the former Act as of the time this Act comes into effect.

Article 9 The provisions of Article 17 of the new Act do not apply to the continuation of any act that falls under the act of using a mark similar to that of an international organization as provided for in Article 17 of the new Act (excluding a mark identical or similar to the emblem, flag, or other insignia, abbreviation, or name of an intergovernmental organization that is designated by the competent minister as prescribed in Article 4-2 of the former Act; hereinafter referred to as the "mark similar to that of a private international organization") as a trademark; falls under the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, providing through telecommunication lines goods that use a mark similar to that of a private international organization as a trademark; or falls under the act of providing services using a mark similar to that of a private international organization as a trademark, if the act in question commenced before this Act comes into effect.

Article 10 The provisions of Article 21 (excluding the part under Article 21, paragraph (2), item (vii)) and Article 22 do not apply to the continuation of an act that falls under the act set forth in Article 3, item (ii) of the Supplementary Provisions, if the act commenced before this Act comes into effect.

Article 11 Prior laws continue to govern a request prescribed in Article 3 of the former Act made by a foreign national prescribed in the same Article against an act that was committed before this Act comes into effect.

(Transitional Measures for the Application of Penal Provisions)

Article 13 Prior laws continue to govern application of penal provisions to an act that was committed before this Act comes into effect.

(Delegation to Cabinet Order)

Article 14 Beyond what is provided for in Articles 2 through 11 of the Supplementary Provisions and the preceding Article, the transitional measures necessary for enforcement of this Act are specified by Cabinet Order.