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SHERMAN ACT OF 1890

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Section 1. Trusts, etc., in restraint of trade illegl; penalty.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade of commerce among the several States, or with foreign nations, is declared to be illegal shall be deemed guilty of felony, and on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of he court.

Section 2 Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire withany other person of persons, to monopolize any part of the trade or commerce amongthe several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000.000 if a corporation, or, if any other person $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

ภาคผนวก ข.

THE CLAYTON ACT OF 1914

THE CLAYTON ACT OF 1914

Section 7 (Section 18 of Chapter 15U.S. Code): Acquisition by one corporation of stock of another

"No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly. No person shall acquire directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or tend to create a monopoly..."

Section 7A Clayton Act, 15 U.S.C. § 18a. Premerger notification and waiting period

(a) Filing

Except as exempted pursuant to subsection (c), no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) and the waiting period described in subsection (b)(1) has expired, if--

1. the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce; and

2. as a result of such acquisition, the acquiring person would hold an aggregate total amount of the voting securities and assets of the acquired person--

A. in excess of $200,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2004, in the same manner as provided in

section 8(a)(5) to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2003); or

B.

i. in excess of $50,000,000 (as so adjusted and published) but not in excess of $200,000,000 (as so adjusted and published); and

ii.

I. any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of $10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of $100,000,000 (as so adjusted and published) or more;

II. any voting securities or assets of a person not engaged in manufacturing which has total assets of $10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of $100,000,000 (as so adjusted and published) or more; or

III. any voting securities or assets of a person with annual net sales or total assets of $100,000,000 (as so adjusted and published) or more are being acquired by any person with total assets or annual net sales of $10,000,000 (as so adjusted and published) or more.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d).

(b) Waiting period; publication; voting securities

1. The waiting period required under subsection (a) of this section shall--

A. begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the

Department of Justice (hereinafter referred to in this section as the "Assistant Attorney General") of--

i. the completed notification required under subsection (a) of this section, or

ii. if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance, from both persons, or, in the case of a tender offer, the acquiring person; and

B. end on the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e) (2) or (g) (2) of this section.

2. The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the Federal Register a notice that neither intends to take any action within such period with respect to such acquisition.

3. As used in this section--

A. The term "voting securities" means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

B. The amount or percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or percentage of such voting securities or assets held or acquired by such other person and each affiliate thereof.

(c) Exempt transactions

The following classes of transactions are exempt from the requirements of this section--

1. acquisitions of goods or realty transferred in the ordinary course of business;

2. acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;

3. acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisition;

4. transfers to or from a Federal agency or a State or political subdivision thereof;

5. transactions specifically exempted from the antitrust laws by Federal statute;

6. transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

7. transactions which require agency approval under section 1467a(e) of Title 12, section 1828(c) of Title 12, or section 1842 of Title 12;

8. transactions which require agency approval under section 1843 of Title 12 or section 1464 of Title 12, if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction;

9. acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;

10. acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer;

11. acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of (A) voting securities pursuant to a plan of reorganization or dissolution; or (B) assets in the ordinary course of its business; and

12. such other acquisitions, transfers, or transactions, as may be exempted under subsection (d) (2) (B) of this section.

(d) Commission rules

The Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of Title 5, consistent with the purposes of this

section--

1. shall require that the notification required under subsection (a) of this section be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisition may, if consummated, violate the antitrust laws; and

2. may--

A. define the terms used in this section;

B. exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and

C. prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.

(e) Additional information; waiting period extensions

1.

A. The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b) (1) of this section, require the submission of additional information or documentary material relevant to the proposed acquisition, from a person required to file notification with respect to such acquisition under subsection (a) of this section prior to the expiration of the waiting period specified in subsection (b) (1) of this section, or from any officer, director, partner, agent, or employee of such person.

B.

i. The Assistant Attorney General and the Federal Trade Commission shall each designate a senior official who does not have direct responsibility for the review of any enforcement recommendation under this section concerning the transaction at issue, to hear any petition filed by such person to determine--

I. whether the request for additional information or documentary material is unreasonably cumulative, unduly burdensome, or duplicative; or

II. whether the request for additional information or documentary material has been substantially complied with the petitioning person.

ii. Internal review procedures for petitions filed pursuant to clause (i) shall include reasonable deadlines for expedited review of such petitions, after reasonable negotiations with investigative staff, in order to avoid undue delay of the merger review process.

iii. Not later than 90 days after the date of the enactment of this Act, the Assistant Attorney General and the Federal Trade Commission shall conduct an internal review and implement reforms of the merger review process in order to eliminate unnecessary burden, remove costly duplication, and eliminate undue delay, in order to achieve a more effective and more efficient merger review process.

iv. Not later than 120 days after the date of enactment of this Act, the Assistant Attorney General and the Federal Trade Commission shall issue or amend their respective industry guidance, regulations, operating manuals and relevant policy documents, to the extent appropriate, to implement each reform in this subparagraph.

v. Not later than 180 days after the date the of enactment of this Act, the Assistant Attorney General and the Federal Trade Commission shall each report to Congress--

I. which reforms each agency has adopted under this subparagraph;

II. which steps each has taken to implement such internal reforms; and

III. the effects of such reforms.

2. The Federal Trade Commission or the Assistant Attorney General, in its or his discretion, may extend the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b) (1) of this section for an additional period of not more than 30 days (or in the case of a cash tender offer, 10 days) after the date on which the Federal Trade Commission or the Assistant Attorney General, as the case may be, receives from any person to whom a request is made under paragraph (1), or in the case of tender offers, the acquiring person, (A) all the information and documentary material required to be submitted pursuant to such a request, or (B) if such request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance. Such additional period may be further extended only by the United States district court, upon an application by the Federal Trade Commission or the Assistant Attorney General pursuant to subsection (g) (2) of this section.

(f) Preliminary injunctions; hearings

If a proceeding is instituted or an action is filed by the Federal Trade Commission, alleging that a proposed acquisition violates section 18 of this title, or section 45 of this title, or an action is filed by the United States, alleging that a proposed acquisition violates such section 18 of this title, or section 1 or 2 of this title, and the Federal Trade Commission or the Assistant Attorney General (1) files a motion for a preliminary injunction against consummation of such acquisition pendente lite, and (2) certifies the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection, then upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes.

(g) Civil penalty; compliance; power of court

1. Any person, or any officer, director, or partner thereof, who fails to comply with

any provision of this section shall be liable to the United States for a civil penalty of not more than $10,000 for each day during which such person is in violation of this section. Such penalty may be recovered in a civil action brought by the United States.

2. If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the notification requirement under subsection (a) of this section or any request for the submission of additional information or documentary material under subsection (e) (1) of this section within the waiting period specified in subsection (b) (1) of this section and as may be extended under subsection (e) (2) of this section, the United States district court--

A. may order compliance;

B. shall extend the waiting period specified in subsection (b) (1) of this section and as may have been extended under subsection (e) (2) of this section until there has been substantial compliance, except that, in the case of a tender offer, the court may not extend such waiting period on the basis of a failure, by the person whose stock is sought to be acquired, to comply substantially with such notification requirement or any such request; and

C. may grant such other equitable relief as the court in its discretion determines necessary or appropriate, upon application of the Federal Trade Commission or the Assistant Attorney General.

(h) Disclosure exemption

Any information or documentary material filed with the Assistant Attorney General or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of Title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

(i) Construction with other laws

1. Any action taken by the Federal Trade Commission or the Assistant Attorney

General or any failure of the Federal Trade Commission or the Assistant Attorney General to take any action under this section shall not bar any proceeding or any action with respect to such acquisition at any time under any other section of this Act or any other provision of law.

2. Nothing contained in this section shall limit the authority of the Assistant Attorney General or the Federal Trade Commission to secure at any time from any person documentary material, oral testimony, or other information under the Antitrust Civil Process Act [15 U.S.C.A. § 1311 et seq.], the Federal Trade Commission Act [15 U.S.C.A. § 41 et seq.], or any other provision of law.

(j) Report to Congress; legislative recommendations

Beginning not later than January 1, 1978, the Federal Trade Commission, with the concurrence of the Assistant Attorney General, shall annually report to the Congress on the operation of this section. Such report shall include an assessment of the effects of this section, of the effects, purpose, and need for any rules promulgated pursuant thereto, and any recommendations for revisions of this section.

(k) If the end of any period of time provided in this section falls on a Saturday, Sunday, or legal public holiday (as defined in section 6103(a) of title 5 of the United States Code), then such period shall be extended to the end of the next day that is not a Saturday, Sunday, or legal public holiday.

Section 8 (Section 19 of Chapter 15 U.S. Code): Interlocking directorates and officers

"(a) (1) No person shall, at the same time, serve as a director or officer in any two corporations (other than banks, banking associations, and trust companies) that are

(A) engaged in whole or in part in commerce; and

(B) by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws; if each of the corporations has capital, surplus, and undivided profits aggregating more than $10,000,000 as adjusted pursuant to paragraph (5) of this subsection. (2)

(2) Notwithstanding the provisions of paragraph (1), simultaneous service as a director or officer in any two corporations shall not be prohibited by this section if—

(A) the competitive sales of either corporation are less than 51,000,000, as adjusted pursuant to paragraph (5) of this subsection; V

(B) the competitive sales of either corporation are less than 2 percentum of that corporation's.total sales; or

(C) the competitive sales of each corporation are less than 4 percentum of that corporation's total sales.

For purposes of this paragraph, "competitive sales" means the gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation's last completed fiscal year. For the purposes of this paragraph, "total sales" means the gross revenues for all products and services sold by one corporation over that corporation's last completed fiscal year..."

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ANTIMONOPOLY ACT CONCERNING PROHIBITION OF PRIVATE MONOPOLY AND MAINTENANCE OF FAIR TRADE

ANTIMONOPOLY ACT CONCERNING PROHIBITION OF PRIVATE MONOPOLY AND MAINTENANCE OF FAIR TRADE

Japan

(Act No.54 of April 14, 1947)

CHAPTER III

TRADE ASSOCIATIONS

Sec.8 [Prohibited acts of a trade association, filing requirement]

(1) No trade association shall engage in any acts which comes under any one of the following paragraphs:

(i) Substantially restraining competition in any particular field of trade;

(ii) Entering into an international agreement or an international contract as provided for in Section 6(1);

(iii) Limiting the present or future number of entrepreneurs in any particular field of business;

(iv) Unjustly restricting the functions or activities of the constituent entrepreneurs (meaning an entrepreneur who is a member of the trade association; hereinafter the same);

(v) Causing entrepreneurs to employ such acts as constitute unfair trade practices.

(2) Every trade association shall, when formed, in accordance with the rules of the Fair Trade Commission, file a report thereof with the Commission within thirty days as from the date of its formation.

(3) When any change has occurred to the matters reported under the preceding subsection, the trade association concerned shall, in accordance with the Rules of the Fair Trade Commission,

file a report thereof with the Commission, within two months after the end of the business year during which such change occurred.

(4) Every trade association shall, when dissolved, in accordance with the Rules of the Fair Trade Commission, file a report thereof with the commission, within thirty days as from the date of its dissolution.

Sec.8-2 [Elimination measures against prohibited acts of trade associations]

(1) When there exists any act in violation of the provisions of the preceding section, the Fair Trade Commission may, in accordance with the procedures as provided for in Division II [procedures], Chapter VIII, order the trade association concerned to file a report, or to cease and desist from such act, to dissolve the said association, or to take any other measures necessary to eliminate the said act.

2) The provisions of Section 7(2) [measures against already ceased violation] shall apply mutatis mutandis to any act in violation of provisions of subsection (1)(i), (iv) or (v) of the preceding section.

(3) The Fair Trade Commission may, in accordance with the procedures as provided for in Division II [procedures], Chapter VIII, in ordering a trade association to take any of the measures set forth in subsection (1) above or Section 7(2) applicable mutatis mutandis under the provisions of the preceding subsection, when it finds it particularly necessary, at the same time order an officer, manager or constituent entrepreneur (including other entrepreneur when a constituent entrepreneur is acting for the benefit of the entrepreneur; the same shall apply in Section 48 [recommendation to the violator to take elimination measures] (1) and (2)) of the said association to take measures necessary to ensure the measures provided for in subsection (1) above or Section 7(2) applicable mutatis mutandis under the provisions of the preceding subsection.

Sec.8-3 [Surcharges against constituent entrepreneurs]

The provisions of Section 7-2 [Surcharge] shall apply mutatis mutandis to cases where an act is committed in violation of the provisions of Section 8(1) [prohibited acts of a trade association] (i) or (ii) (applying only to such an entrepreneur who is a party to an international agreement or an international contract which contains such matters as constitute an unreasonable restraint of trade). In this case, the term "any entrepreneur" appearing in subsection (1) of Section 7-2 shall read "any trade association", the term "entrepreneur concerned" appearing therein shall read "the constituent entrepreneur" (other entrepreneur when a constituent entrepreneur is acting for the benefit of the entrepreneur; the same shall apply hereinafter in this section) of the trade association concerned and the term "such entrepreneur" appearing in subsection (2) of the said section shall read "the constituent entrepreneur of such trade association concerned."

CHAPTER III-II

MONOPOLISTIC SITUATIONS

Sec. 8-4 [Measures against a monopolistic situation]

(1) When there exists a monopolistic situation, the Fair Trade Commission may order the entrepreneur concerned, in accordance with the procedures as provided for in Division II [procedures], Chapter VIII, to transfer a part of his business or to take any other measures necessary to restore competition with respect to such goods or services: Provided, That the foregoing shall not apply to cases where the Commission finds that such measures may reduce the scale of business of the said entrepreneur to such an extent that the costs required for the supply of goods or services which such entrepreneur supplies will rise sharply, undermine its financial position and make it difficult for the entrepreneur to maintain its international competitiveness, or where other alternative measures may be taken which the Commission finds sufficient to restore competition with respect to such goods or services.

(2) In issuing an order prescribed in the preceding subsection, the Fair Trade Commission shall give consideration, based on the items prescribed in each of the following paragraphs, to the smooth conduct of business activities by the entrepreneurs concerned, and those associated with them and the stabilization of livelihood for those employed by such entrepreneurs:

(i) Assets, income and expenditures and other aspects of accounting;

(ii) Officers and employees;

(iii) Location of factories, workyards and offices and other locational conditions;

(iv) Aspects of business facilities and equipments;

(v) The substance of patent rights, trademark rights and other intellectual property rights and other technological features;

(vi) Capacity for and situations of production and sales, etc.;

(vii) Capacity for and situations of obtaining funds and materials, etc.;

(viii) Situations of supply and distribution of goods or services.

CHAPTER IV

STOCKHOLDINGS, INTERLOCKING DIRECTORATES, MERGERS AND ACQUISITIONS OF BUSINESS

Sec.9 [Prohibition of holding company]

(1) No holding company shall be established.

(2) Any company (including a foreign company; hereinafter the same) shall not operate as a holding company in Japan.

(3) The term "holding company" as used in the preceding two subsections shall mean a company whose principal business is to control the business activities of a company or companies in Japan by means of holding of stock (including shares of partnership; hereinafter the same).

Sec.9-2 [Restriction on total amount of stockholding by a giantnon-financial company]

(1) Any stock company whose business is other than financial (this term refers to those engaged in banking, trust banking, insurance, mutual financing and securities businesses; the same meaning shall apply hereinafter) and whose capital is larger than ten billion yen or whose net assets (this term refers to the sum of an amount arrived at by deducting the total liabilities from the total assets listed in the latest balance sheet and the amount by which the net assets have increased as a result of an issuance of new stock in accordance with the provisions of Section 280-2 of the Commercial Code (Act No.48 of 1899) or as a result of an issuance of new stock by the exercise of pre-emptive right endowed by cum right corporate bonds, or as a result of a merger or the conversion of corporate bonds, if any; hereinafter the same meaning shall apply in this section) are larger than thirty billion yen shall not acquire or hold stock of companies in Japan in excess of its capital or its net assets, whichever is larger (hereinafter referred to as "the base amount"), if by so doing total amount of acquiring price of such stocks (another price if it is listed so in the latest balance sheet; the same meaning shall apply hereinafter) which it has acquired or holds exceeds the base amount: Provided, That the foregoing shall not apply to the acquisition or holding of such stock in the cases provided for in any one of the following paragraphs;

(i) The acquisition or holding of stock of a company in Japan which has been prescribed by a Cabinet Ordinance and which has been invested in by a juridical person established by the government, or a local public authority, or a juridical person established under a special law

whose total amount of capital is owned by the government or whose liabilities may be contractually guaranteed by the government;

(ii) The acquisition or holding of stock of a company in Japan, as prescribed by a Cabinet Ordinance, engaged in a business contributive to the development of industries and the progress of economy and societies, which requires large sum of funds of such a magnitude as to make it difficult to procure by ordinary means;

(iii) The acquisition or holding of stock of a company in Japan whose purpose is to engage in any one or two or more of the following businesses, and which performs business activities pursuant to the objective thereof;

(a) Business undertaken outside Japan (including the business undertaken in Japan which is closely connected with, and incidental to, such business);

(b) Business of investment or long-term loans to foreign governments or foreign juridical persons (including those businesses which are closely connected with, and incidental to, such businesses, hereinafter referred to as "investment and financing business");

(c) Investment and financing business to the companies provided for in the preceding paragraph; or

(d) Investment and financing business to the companies which fall under the purview of this paragraph;

(iv) The acquisition or holding of stock of a company in Japan, as prescribed by a Cabinet Ordinance, engaged in the business provided for in paragraph (ii) above, and in the investment and financing business as provided for in the preceding paragraph;

(v) The acquisition or holding of stock of a company in Japan, established by partially separating the business actually performed by itself, whose issued stock is wholly acquired or owned

immediately after the establishment by itself: Provided, That this shall apply only to cases where such stock is held for two years or less from the said company's establishment;

(vi) The acquisition or holding of stock of a company in Japan, established by joint investment with a foreign government, foreign juridical person or foreign national (referred to as "co-investment company" in subsection (5) below) when it is particularly necessary for the operation of its business to take the form of such a co-investment company therein: Provided, That this shall apply only to such cases where authorization of the Fair Trade Commission is obtained in advance in accordance with the provisions of the Rules of the Commission;

(vii) The acquisition or holding of new stock acquired or held due to a stockholder allocation on currently held stock (excluding the stock held under the provisions of the paragraphs (i) to (iv) inclusive, of the preceding paragraph): Provided, That this shall apply only to cases where such stock is held for two years or less from the date of its acquisition;

(viii) The acquisition or holding of stock as a result of the enforcement of a lien, pledge, mortgage, or as a result of payment in kind: Provided, That this shall apply only to cases where such stock is held for one year or less from the date of its acquisition (or for one year or less from the date on which it is decided to conclude rehabilitation procedures, in case the stock is deemed to have been acquired through payment in kind under the provision of Section 265 [special provisions to Section 9-2 or Section 11 of the Act] of the Company Rehabilitation Act (Act No.172 of 1952)]; or

(ix) The acquisition or holding of stock of a company in Japan for an imperative reason; Provided, That this shall apply only to cases where approval of the Fair Trade Commission is obtained in advance (or without delay after the acquisition of such stock, in case it is acquired under urgent and imperative circumstances) in accordance with provisions of the Rules of the Fair Trade Commission , and where such stock is held for the period or less stipulated by such approval.

(2) If, as a result of a decrease in the base amount of the stock company as provided for in the preceding subsection, the total amount of the acquisition price of stock held in companies in Japan (excluding the holdings which fall under any one of the paragraphs of the said subsection; the same shall apply in the following subsection) turns out to be in excess of the base amount, the total amount of such acquisition price shall be deemed as the base amount for the purpose of applying the provisions of the preceding subsection during the five years beginning from the date on which the acquisition price exceeded the base amount.

(3) In case the base amount decreases still more during the five-year period under the preceding subsection, the base amount determined prior to such decrease or the total amount of the acquisition price of stock held in companies in Japan as of the date on which the period as provided for in the preceding subsection expired, whichever is the smaller, shall be deemed as the base amount for the purpose of applying the provisions of subsection (1) above during the five-year period. The same shall apply to cases where the base amount decreased still more during the five-year period immediately following such decrease.

(4) The provisions of the preceding two subsections shall not apply to cases where the base amount has increased beyond the amount which is deemed as the base amount then effective under these provisions.

(5) When the Fair Trade Commission grants authorization under subsection (1) (vi), it shall, in advance, consult with the Minister of Finance and the competent minister having jurisdiction over the business in which the co-investment company is engaged.

(6) When the Fair Trade Commission grants authorization under subsection (1) (vi) or approval under paragraph (ix) of the said subsection, the Commission shall, in advance, consult with the minister or ministers who are empowered by virtue of a special law to make recommendations or give instructions with respect to the financial management of the companies which seek to acquire stock and are subject to such authorization or approval.

(7) In case a company which falls under subsection (1) (iii) above ceases to become subject thereto, the provision of the said subsection shall not apply to the holding of stock of such company for one year immediately following the date on which such company ceased to fall thereunder.

(8) In case any company acquires stock of another company in Japan under urgent and imperative circumstances that are subject to an ex post facto approval under subsection (1) (ix) above but fails to obtain such approval, the provision of the said subsection shall not apply to the holding of such stock for one month immediately following the date on which such company failed to obtain such approval.

(9) In the event, as a result of a change in economic conditions, any drastic increase or decrease occurs in the amounts of capital and net assets of the stock companies which rank among the largest two hundred in terms of the size of their capital and net assets (excluding those engaged in financial business; the same shall apply in this subsection), the amount stipulated in subsection (1) may be revised by virtue of a Cabinet Ordinance to reflect such change.

Sec.10 [Prohibition of particular stockholding by a company, filing requirement]

(1) No company shall acquire or hold stock of a company or companies in Japan where the effect of such acquisition or holding of stock may be substantially to restrain competition in any particular field of trade, or shall acquire or hold stock of a company or companies in Japan through unfair trade practices.

(2) Every company in Japan whose business is other than financial and whose total assets (meaning total amount of the assets according to the latest balance sheet; hereinafter the same) exceed two billion yen or every foreign company whose business is other than financial, shall, in case it holds stock of another company or companies in Japan (including the stock held in the

form of trust property of pecuniary or security trust of which it is a trustor or beneficiary and can exercise its voting rights or where such trustor or beneficiary can issue instructions regarding the exercise of such voting rights), submit, in accordance with the Rules of the Fair Trade Commission, a report on such stock held in its name or in the name of trustee as of the end of every business year to the Commission within three months therefrom.

Sec.11 [Restriction on stockholding rate by a financial company]

(1) No company engaged in financial business shall acquire or hold stock of another company in Japan if by doing so it holds in excess of five percent (ten percent in the case of an insurance company) of the total outstanding stock: Provided, That the foregoing shall not apply to such cases where authorization of the Fair Trade Commission is obtained in advance in accordance with the Rules of the Fair Trade Commission, or to such cases failing under any one of the following paragraphs:

(i) Acquisition or holding of stock as a result of the enforcement of lien, pledge, mortgage, or of payment in kind;

(ii) Acquisition or holding of stock by a company engaging in securities in the course of its business;

(iii) Acquisition or holding of stock in the form of trust property of pecuniary or security trust; Provided, That this shall apply only to cases where the trustor or the beneficiary of such trust property can exercise his voting rights or where such trustor or beneficiary can issue instructions regarding the exercise of such voting rights.

(2) Any company whose business is financial, being desirous, in the case of paragraphs (i) and (ii) of the preceding subsection, of holding stock of another company or companies in Japan over the period of one year from the date of such acquisition in excess of five percent of the total outstanding stock, shall, in accordance with the Rules of the Fair Trade Commission, obtain

authorization in advance from the Commission. The authorization of the Fair Trade Commission in such case shall be granted with a condition that the company engaged in financial business should promptly dispose of the said stock.

(3) When the Fair Trade Commission grants authorization under the provisions of the two preceding subsections, it shall, in advance, consult with the Minister of Finance.

Sec.12 [Restriction on acquisition of corporate bonds]

Deleted. (Act No.214 of 1948)

Sec.13 [Prohibition of particular interlocking directorates, filing requirement]

(1) Neither an officer nor an employee (meaning in this section a person other than officers in the regular employment of a company) of a company shall hold at the same time a position as an officer in another company or companies in Japan wherever the effect of such an interlocking directorate may be substantially to restrain competition in any particular field of trade.

(2) No company shall coerce another company or companies in Japan in competition with it in Japan, through unfair trade practices, to admit one of its officers concurrently to the position of an officer or an employee of the latter company or companies, or to admit its employee, concurrently to the position of an officer of such company or companies.

(3) Every officer or employee of a company who holds concurrently the position of an officer in another company or companies in Japan in competition with it in Japan, shall, in case the total assets of either one company exceed two billion yen, file, in accordance with the Rules of the Fair Trade Commission, a report thereof with the Commission within thirty days as from the date of assuming the position of such an officer.

Sec.14 [Prohibition of particular stockholding by a person other than a company, filing requirement]

(1) No person other than a company shall acquire or hold stock of another company or companies in Japan whenever the effect of such acquisition or holding of stock may be substantially to restrain competition in any particular field of trade, or shall acquire or hold stock of another company or companies in Japan through unfair trade practices.

(2) Every person other than a company shall, in case he has come to hold stock of two or more companies mutually competing in Japan in excess of ten per cent of the total outstanding stock of the respective company, file, in accordance with the Rules of the Fair Trade Commission, a report on such stock with the Commission within thirty days as from the date of such holding.

Sec.15 [Prohibition of particular mergers, filing requirement]

(1) No company in Japan shall effect a merger coming under any one of the following paragraphs:

(i) Where the effect of a merger may be substantially to restrain competition in any particular field of trade;

(ii) Where unfair trade practices have been employed in the course of the merger.

(2) Every company in Japan, which is desirous of becoming a party to a merger shall, in accordance with the provisions of the Rules of the Fair Trade Commission, file a report with the Commission.

(3) No company in Japan shall, in the cases coming under the preceding subsection, effect a merger until the expiration of a thirty-day waiting period from the date of the issuance of the receipt of the said report: Provided, That the Fair Trade Commission may, when it finds it necessary, shorten the said period, or extend it by an additional period of time not exceeding sixty days with the consent of the companies concerned.

(4) The Fair Trade Commission shall, where it determines to initiate hearing proceedings or makes a recommendation with a view to ordering the necessary measures relating to the merger in

question pursuant to the provisions of Section 17-2 [elimination measures against unlawful acts relating to a company, etc.], do so before the expiration of a thirty-day waiting period as provided for in the preceding subsection, or of any shortened or extended period under the proviso thereof: Provided, That the foregoing provisions shall not apply in cases where there has been a false statement with respect to important matters in the report specified in subsection (2) above.

Sec.16 [Prohibition of particular acquisitions of business, etc., filing requirement]

The provisions of the preceding section shall apply mutatis mutandis to an act of a company coming under any one of the following paragraphs:

(i) Acquiring the whole or a substantial part of the business in Japan of another company;

(ii) Acquiring the whole or a substantial part of the fixed assets used for the business in Japan of another company;

(iii) Taking on lease of the whole or a substantial part of the business in Japan of another company;

(iv) Undertaking the management of the whole or a substantial part of the business in Japan of another company;

(v) Entering into a contract which provides for a joint profit and loss account for business in Japan with another company.

Sec17 [Prohibition of evasion]

No acts in whatever form or manner shall be committed to evade such prohibitions or restrictions as provided for by Section 9 to the preceding section inclusive [prohibition of holding company, restriction on total amount of stockholding by a giant non-financial company, prohibition of particular stockholding by a company, restriction on stockholding rate by a financial company, prohibition of particular interlocking directorates, prohibition of particular stockholding by a

person other than a company, prohibition of particular mergers, prohibition of particular acquisition of business, etc.].

Sec.17-2 [Elimination measures against unlawful acts relating to a company, etc.]

(1) Where there exists any act in violation of the provisions of Section 9-2(1) [restriction on total amount of stockholding by a giant non-financial company], Section 10 [prohibition of particular stockholding by a company], Section 11(1) [restriction on stockholding rate by a financial company], Section 15(1) [prohibition of particular mergers] (including such cases where the said provisions are applied mutatis mutandis by Section 16 [prohibition of particular acquisition of business, etc.]) or the preceding section , the Fair Trade Commission may, in accordance with the procedures as provided for in Division II (procedures), Chapter VIII, order the entrepreneur concerned to submit a report, or to dispose of the whole or a part of his stocks to transfer a part of his business, or to take any other measures necessary to eliminate such acts in violation of the said provisions.

(2) Where there exists any establishment of an act in violation of the provisions of Section 9(1) [prohibition of establishment of a holding company] or (2) [prohibition of operation as a holding company], Section 13 [prohibition of particular interlocking directorates], Section 14 [prohibition of particular stockholding by a person other than a company] or the preceding section, the Fair Trade Commission may, in accordance with the procedures as provided for in Division II [procedures], Chapter VIII, order the person violating such provisions to submit a report or to dispose of the whole or a part of his stocks, to resign from his position as an officer in a company, or to take any other measures necessary to eliminate such acts in violation of the said provisions.

Sec.18 [Measures against the establishment of a holding company or an illegal merger]

The Fair Trade Commission may, in case where any company has been established in violation of the provisions of Section 9(1) [prohibition of establishment of a holding company] or companies

that have merged in violation of the provisions of Section 15(2) [filing of merger] and (3) [waiting period of merger], bring a suit to have the said establishment or merger declared null and void.

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THE MONOPOLY REGULATION AND FAIR TRADE ACT 1980 (MRFTA)

The Monopoly Regulation and Fair trade Act 1980 (MRFTA)

CHAPTER III RESTRICTION ON THE COMBINATION OF ENTERPRISES AND REPRESSION OF THE ECONOMIC POWER CONCENTRATION

■ Article 7 (Restriction on Combination of Enterprises)

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

1. The acquisition or ownership of stocks of other companies;

2. The concurrent holding of an officer's position in another company (hereinafter referred to as the "concurrent holding of an officer's position") by an officer or employee (referring to a person who continues to be engaged in the affairs of the company, but is not an officer; hereinafter the same shall apply);

3. A merger with other companies;

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

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

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

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

(1) of the Commercial Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Where it is converted into a holding company or establishes a holding company by the division,

merger through division, or real division under Article 530-2 or 530-12 of the Commercial Act; and

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

2. An act of owning less than 50/100 of the total number of its subsidiary's issued stocks [30/100 where the relevant subsidiary is a stock-listed corporation or an Association-registered corporation under the Securities and Exchange Act, and 20/100 where it is a subsidiary of the

holding company which satisfies the standards as prescribed by the Presidential Decree, in terms of the holding company having the venture enterprise under Article 2 (1) of the Act on Special Measures for the Promotion of Venture Businesses (hereinafter referred to as the "venture enterprise") as a subsidiary]: Provided, That where it falls under any of the following items, with regard to the subsidiary's stocks which are retained at the time when it is converted into a holding company or it establishes a holding company, the same shall not apply for two years (in the case of item (d), one year from the end of relevant business year) from the date on which it has been converted into a holding company or has established a holding company:

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

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

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

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

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

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

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

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

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

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

(2) A general holding company's subsidiary shall not own the stocks of another domestic company

(excluding companies as determined by the Presidential Decree such as companies closely connected with such subsidiary's business activities and other subsidiaries of the general holding company which controls such subsidiary) for control purposes as determined by the Presidential Decree: Provided, That where such subsidiary owns stocks of a domestic company at the time when it becomes a subsidiary of the general holding company, it may own stocks (including stocks

acquired through the exercise of preemptive rights or stock dividends) of the domestic company for two years from the date of its becoming the subsidiary.

(3) A holding company shall submit to the Fair Trade Commission a report on its or its subsidiary's

business contents, such as status of stock-holding and financial standing, under the conditions as prescribed by the Presidential Decree.

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

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

Where the same person who controls a company belonging to an enterprise group subject to the

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

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

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

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

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

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

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

■ Article 10 (Restrictions on Gross Amount of Investment)

(1) Any company belonging to an enterprise group, whose total amount of assets or financial structure, etc. falls under the standard prescribed by the Presidential Decree, and thereby

designated under Article 14 (1) (hereinafter referred to as an "enterprise group subject to the limitations on total investment amount") shall be prohibited from acquiring or owning stocks of another domestic company in excess of an amount obtained by multiplying its net asset amount by
25/100 (hereinafter referred to as the "investment limit amount"): Provided, That the same shall not apply to the case falling under any of the following subparagraphs:

1. Where such company acquires or owns new stocks of another domestic company within the ratio of acquired or owned stocks against the gross number of stocks issued by the said company. In this case, the same shall be limited to within two years from the date of acquisition or owning;
2. Where such company acquires or owns stocks of another domestic company through the execution of collateral right or receipt of accord and satisfaction: Provided, That the same shall be limited to within 6 months from the date of acquisition or owning;
3. Where such company acquires or owns stocks of foreign-invested company under the Foreign Investment Promotion Act in order to induce foreign investments. In this case, the same shall be limited to 5 years from the date of acquisition or owning;
4. Where such company acquires or owns stocks of another domestic company with the aim of facilitating the corporate restructuring (hereinafter referred to as "corporate restructuring") to bolster the corporate competitiveness, promoting technological cooperation with small and medium businesses, or strengthening international competitiveness of the new industry under Article 7 of the Industrial Development Act and other industries prescribed by the Presidential Decree, and the Fair Trade Commission recognizes such acquisition and owning as consistent with requirements prescribed by the Presidential Decree: Provided, That the same shall apply to a period set by the Presidential Decree within the scope of 5 years from the date of acquisition and owning, but the Fair Trade Commission may, when it deems necessary, extend such period within the scope of 3 years;
5. Where such company acquires or owns the stocks in excess of the investment limit amount with
the aim of converting into a holding company or of not becoming a holding company in the case of
one which was a holding company by acquiring, owning or disposing of the stocks or by

decreasing or increasing the assets, and where such acts satisfy the requisites as prescribed by the Presidential Decree: Provided, That the period for which such company may acquire or own the stocks shall be from the date of acquisition or owning to the end of relevant business year, but,
if such conversion into the holding company or into the company other than a holding company takes considerable time and if there exist reasonable reasons therefor, the Fair Trade Commission may extend such period until the next business year; and
6. Where such company owns stocks of a company falling under any of the following items. In this
case, when the procedures of each of the following items have been completed, the same shall be limited to within 6 months from the date of completion:
(a) Company for which the procedure for company reorganization has been initiated and is in progress under the Company Reorganization Act;
(b) Company for which the procedure for composition has been initiated and is in progress under the Composition Act;
(c) Company for which the procedure is in progress after sentenced to a bankruptcy under the Bankruptcy Act; and
(d) Company for which the procedure for management has been initiated and is in progress under Article 12 (1) 1 through 3-1 of the Corporate Restructuring Promotion Act.
(2) The net asset amount under the provisions of the main sentence of paragraph (1) except each subparagraph shall be an amount calculated according to the following methods:
1. An amount obtained by subtracting the amount of investment made by affiliated companies in the company (meaning an amount that derives from the multiplication of the number of stocks in possession by the per stock face value: hereafter in this paragraph, the same shall apply) as of the closing date of the immediately preceding business year from the larger amount between the capital sum, entered on the balance sheet of immediately preceding business year, and the equity capital;
2. In case that a newly incorporated company has no balance sheet of the immediately preceding business year, an amount obtained by subtracting the amount of investment made by affiliated companies in the company from the paid-in capital at the time of incorporation; and

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

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

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

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

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

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

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

1. Where acquiring or owning the stocks of a company operating a private investment project in the modes under subparagraph 1 or 2 of Article 4 of the Act on Private Participation in

Infrastructure. In this case, the same shall be limited to within 20 years from the date of acquisition or owning: Provided, That it may be extended within the limit of 10 years, when the Fair Trade Commission deems it necessary, such as the period summing up the construction period of the said private investment project and the free-use period exceeds 20 years;

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

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

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

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

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

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

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

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

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

2. Holding company; and

3. Company for which the procedure for company reorganization under the Company Reorganization Act, or the procedure for composition under the Composition Act, has been initiated and is in progress, or the procedure for management under Article 12 (1) 1 through 3 of the Corporate Restructuring Promotion Act has been initiated and is in progress. In this case, when each procedure has been completed, it shall be limited to within one year from the date of completion.

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

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

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

1. A guarantee made in connection with any obligation of a company, which is taken over according to the plan or criteria for rationalization under the Restriction of Special Taxation Act.

2. Deleted; and

3. A guarantee with respect to debts that is deemed necessary to enhance the international competitiveness of enterprises, or which are set forth by Presidential Decree.

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

1. Financial institutions as prescribed by the Banking Act, the Korea Development Bank, the Export-Import Bank of Korea, the Long-Term Credit Bank, and the Industrial Bank of Korea;

2. Deleted;

3. Insurance companies as prescribed by the Insurance Business Act;

4. Securities companies as prescribed by the Securities and Exchange Act;

5. Merchant Banking Corporations as prescribed by the Merchant Bank Act; and

6. Other financial institutions as prescribed by Presidential Decree.

(3) and (4) Deleted.

■?Article 10-3 Deleted.

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

No financial or insurance company belonging to an enterprise group subject to the limitations on mutual investment shall exercise its voting rights in stocks of domestic affiliated companies,

under its acquisition or ownership: Provided, That the same shall not apply to the cases falling under any of the following subparagraphs:

1. Where acquiring or owning stocks in order to carry on the financial business or insurance business;

2. Where acquiring or owning stocks by obtaining an approval, etc. pursuant to the Insurance Business Act, etc. in order to efficiently operate and manage the insurance properties; and

3. Where the general meeting of stockholders of a relevant domestic affiliated company (limited to the stock-listed corporation or Association-registered corporation under the Securities and Exchange Act) passes a resolution for matters falling under any of the following items. In this case, the number of voting stocks from among those of the said affiliated company shall not exceed 30/100 of the gross number of stocks issued by the said affiliated company, including the number of stocks to be exercised by the persons other than those as stipulated by the Presidential Decree, from among the specially-related persons with the said affiliated company:

(a) Appointment or dismissal of officers;

(b) Alteration of the articles of incorporation; and

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

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

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

1. The act of channeling or trading funds, such as suspense payments and loans, etc.;

2. The act of offering or trading securities such as stocks and company bonds, etc.; and

3. The act of offering or trading assets such as real estate or intangible property rights, etc.

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

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

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

■ Article 12 (Report on Combination of Enterprises)

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

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

2. In the case where officers hold concurrent positions;

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

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

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

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

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

and

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

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

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

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

(6) No one who has made a report under the proviso of paragraph (5) shall register the fact of a merger, execute the contracts for the takeover of business, or acquire stocks until thirty days after making such a report; provided that the Fair Trade Commission may, if necessary, shorten the period, or extend it up to not more than sixty days from the date following the expiry date.
(7) Where a person intends to combine enterprises under Article 7 (1), he may request the Fair Trade Commission determine whether such combination may be categorized as one which practically suppresses competition even before the period requiring a report under paragraph (5).
(8) Upon the request of a determination under paragraph (7), the Fair Trade Commission shall give notice of its decision to the requesting company within thirty days; provided that the Fair Trade Commission may, if necessary, extend such period up to not more than sixty days from the date following the expiry date.
(9) When the duty to file a report pursuant to paragraph (1) falls on two or more companies, these companies shall file the report jointly; provided that the foregoing shall not apply where the Fair Trade Commission has designated one of the companies belonging to an enterprise group composed of the company obligated to file as the representative responsible for filing the report (hereafter referred to as the "representative" in this Article) under the conditions prescribed by Presidential Decree.

■ Article 13 (Report on Status of Stockholding)

(1) All companies belonging to an enterprise group subject to the limitations on mutual investments, an enterprise group subject to the limitations on the total investment amount, or an enterprise group subject to the limitations on debt guarantees shall submit to the Fair Trade Commission a report on the status of ownership of their stockholders, financial standing, and status of their ownership of other domestic companies' stocks under the conditions as prescribed by the Presidential Decree.
(2) All companies belonging to the enterprise group subject to the limitations on debt guarantees shall submit to the Fair Trade Commission a report on the status of debt guarantees issued in favor of domestic affiliated companies after obtaining confirmation from a domestic financial institution pursuant to the Presidential Decree.
(3) The proviso of Article 12 (9) shall apply mutatis mutandis to reports referred to in paragraphs (1) and (2).

(4) Deleted.

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

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

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

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

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

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

3. Where the company is in violation of the provisions of Article 10-2 (1) (including the case

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

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

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

shall use the balance sheet revised according to the opinions on audit of the certified public accountant.

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

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

(2) Where the Fair Trade Commission deems it necessary for the determination referred to in paragraph (1), it may request that the company concerned submit data on the composition of stockholders and directors, status of debt guarantees, financial standing, transactions, and other

related matters.

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

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

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

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

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

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

1. The Financial Supervisory Service, pursuant to the Act on the Establishment, etc. of Financial Supervisory Organization;

2. Deleted;

3. Domestic financial institutions pursuant to any subparagraph of Article 10-2 (2); or

4. Other institutions set forth by Presidential Decree as relating to financial transactions and the exchange of stocks.

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

■ Article 15 (Prohibition of Evasion of Law)

(1)No one shall perform any act of evading the application of the provisions of Articles 7 (1) and

(3), 8-2 (1) and (2), 8-3, 9, 10 (1), 10-2 (1), or 11.

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

■ Article 16 (Corrective Measures)

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

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

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

■ Article 17 (Surcharge)

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

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

(3) Deleted.

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

1. Obligations exceeding its total capital for a violation of the provisions of Article 8-2 (1) 1;

2. In the case of a violation of the text of the portion other than each subparagraph of Article 8-2 (1) 2, the amount computed by the following formula:Total book value ofstocks of itssubsidiary× (Ratio under each ofthe following items — Owning ratio ofstocks of itssubsidiary)

Owning ratio of stocks of its subsidiary

(a) Where the said subsidiary is a stock-listed corporation or an Association-registered corporation under the Securities and Exchange Act: 30/100;

(b) Where the said subsidiary is a subsidiary of the holding company falling under the criteria prescribed by the Presidential Decree pursuant to the text of the portion other than each item of Article 8-2 (1) 2: 20/100; and

(c) Where not falling under items (a) and (b): 50/100;

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

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

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

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

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

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

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

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

■ Article 17-3 (Compulsory Performance Money)

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

1. The total amount of the book value of stocks acquired or owned and obligations accepted, for the combination of enterprises listed in Article 7 (1) 1 or 5;

2. The sum of the book value of stocks granted in compensation for a merger and obligations accepted, for the combination of enterprises listed in Article 7 (1) 3; and

3. The amount of business taken over from another company, for a combination of enterprises listed in Article 7 (1) 4.

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

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

■ Article 18 (Enforcing Compliance with Corrective Measures)

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

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

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

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

ภาคผนวก จ.

Law No. 5 of 1999

Law No. 5 of 1999

Article 25

(1) Entrepreneurs are prohibited from taking advantage of their dominant position, either directly or indirectly, in order to:

a. impose trade terms with the intention to prevent and/or hamper the consumers to acquire competitive goods and/or services, both in prices or quality; or

b. restrict the market and technology development; or

c. hamper other entrepreneurs having the potential to become their competitors to enter the relevantmarket.

(2) Entrepreneurs are in the dominant position as referred to under Paragraph (1) of this article if:

a. one entrepreneur or a group of entrepreneurs controls 50% (fifty percent) or more of the market share on one type of goods or service; or

b. two or three entrepreneurs or groups of entrepreneurs control 75% (seventy five percent) or moreof the market share on one type of certain goods or services.

Article 26

A person who serves as the director or commissioner of a company is prohibited from concurrentlybeing the director or commissioner at other enterprises, if the said enterprises:

a. are in the same relevant market; or

b. are closely related to the field and/or type of business; or

c. can jointly control the market share of certain goods and/or services, which could cause monopolistic practices and/or unfair business competition.

Article 27

Entrepreneurs are prohibited from holding majority shares at several firms engaged in the same business sector in the same relevant market, or establish several firms engaged in the same business activities in the same relevant market, if the said ownership causes:

a. one entrepreneur or a group of entrepreneurs to control 50% (fifty percent) or more of the marketshare on one type of goods or service; or

b. two or three entrepreneurs or groups of entrepreneurs to control 75% (seventy five percent) or more of the market share on one type of certain goods or services

Article 28

(1) Entrepreneurs are prohibited from conducting merger or dissolving companies that might cause monopolistic practices and/or unfair business competition.

(2) Entrepreneurs are prohibited from acquiring shares of other entrepreneurs if the said action can cause monopolistic practices and/or unfair business competition.

(3) More detailed provisions concerning prohibited merger of companies as referred to under Paragraph (1) of this article, and provisions concerning acquisition of company shares as referred to under

Paragraph (2) of this article, are stipulated in the government regulation.

Article 29

(1) Merger of the companies or acquisition of shares as referred to under Article 28, causing its assets value and/or sales value to exceed a certain amount, must be reported to the Commission at the latestwithin a period of 30 (thirty) days after the merger or acquisition takes places.

(2) Provisions regarding determination of the assets value and/or sales value and procedure of reporting as referred to under Paragraph (a) of this article are stipulated in the government regulation.

ภาคผนวก ฉ.

COMPETTION LAW No.27/2004/QH11

COMPETTION LAW No.27/2004/QH11

Article 16 *Economic concentration*

Economic concentration means conduct of enterprises comprising:

1. Merger of enterprises;

2. Consolidation of enterprises;

3. Acquisition of an enterprise;

4. Joint venture between enterprises;

5. Other forms of economic concentration as stipulated by law.

Article 17 *Merger, consolidation, acquisition and joint venture between enterprises*

1. Merger of enterprises means the transfer by one or more enterprise(s) of all of its lawful assets, rights, obligations and interests to another enterprise and at the same time the termination of the existence of the merging enterprise(s).

2. Consolidation of enterprises means the transfer by two or more enterprises of all of their lawful assets, rights, obligations and interests to form one new enterprise and at the same time the termination of the existence of the consolidating enterprises.

3. Acquisition of an enterprise means the purchase by one enterprise of all or part of the assets of another enterprise sufficient to control or govern the activities of one or all of the trades of the acquired enterprise.

4. Joint venture between enterprises means two or more enterprises together contribute a portion of their lawful assets, rights, obligations and interests to form a new enterprise.

Article 18 *Prohibited cases of economic concentration*

Any economic concentration shall be prohibited if the enterprises participating in the economic concentration have a combined market share in the relevant market of more than fifty (50) per cent, except in the cases stipulated in article 19 of this Law or where the enterprise after

the economic concentration still falls within the category of medium and small sized enterprises as stipulated by law.

Article 19 *Cases of exemption for prohibited economic concentration*

A prohibited economic concentration as stipulated in article 18 of this Law may be considered for exemption in the following cases:

1. One or more of the parties participating in the economic concentration is or are at risk of being dissolved or of becoming bankrupt;

2. The economic concentration has the effect of extension of export or contribution to socio-economic development and/or to technical and technological progress.

Article 20 *Notification of economic concentration*

1. In the case where enterprises participating in an economic concentration have a combined market share in the relevant market of from thirty (30) per cent to fifty (50) per cent, the legal representative of such enterprises must notify the administrative body for competition prior to carrying out the economic concentration.

If the enterprises participating in the economic concentration have a combined share in the relevant market of less than thirty (30) per cent or

if, after the economic concentration, the enterprise still falls within the category of medium and small sized enterprise as stipulated by law, they shall not be required to provide notification.

2. Enterprises participating in an economic concentration and entitled to exemption pursuant to article 19 of this Law shall submit a file for request of exemption in accordance with the provisions in Section 4 of this Chapter, instead of providing notification of the economic concentration.

Article 21 *File for notification of economic concentration*

1. A file for notification of an economic concentration shall comprise:

(a) Written notification of the economic concentration in the form issued by the administrative body for competition;

(b) Valid copy of the certificate of business registration of all of the enterprises participating in the economic concentration;

(c) Financial statements for the last two consecutive years of all of the enterprises participating in the economic concentration, certified by an auditing organization as stipulated by law;

(d) List of the enterprises which are subsidiary entities of the enterprises participating in the economic concentration;

(dd) List of all types of goods and services in which the enterprises participating in the economic concentration and their subsidiaries are currently conducting business;

(e) Report on market share in the relevant market of the enterprises participating in the economic concentration for the last two consecutive years.

2. The enterprise submitting a file for notification of an economic concentration shall be responsible for the truthfulness of the file.

Article 22 *Acceptance of jurisdiction over file for notification of economic concentration*

The administrative body for competition shall be responsible, within a time-limit of seven working days from the date of receipt of a file, to provide written notice to the enterprise submitting the file on the completeness and validity of the file.

If a file is incomplete, the administrative body for competition shall be responsible to specify what items are required to be supplemente

ภาคผนวก ช.

ปัญหาการควบรวมธุรกิจภายใต้พระราชบัญญัติแข่งขันทางการค้า พ.ศ. 2542

ข้อ	ปัญหา	กฎหมายต่างประเทศ					กฎหมายไทย	การวิเคราะห์	ข้อเสนอแนะ
		สหรัฐอเมริกา	ญี่ปุ่น	เกาหลีใต้	อินโดนีเซีย	เวียดนาม			
1.	ปัญหาองค์กรบังคับใช้กฎหมายแข่งขันทางการค้า	Federal Trade Commission คณะกรรมาธิการการค้า หรือ FTC เป็นองค์กรอิสระซึ่งจัดตั้งโดยอาศัยอำนาจตาม FTC Act แต่งตั้งโดยประธานาธิบดีโดยความเห็นชอบของวุฒิสภา (The Senate)	The Trade commission หรือ JFTC เป็นองค์กรอิสระที่มีอำนาจกึ่งตุลาการ แต่งตั้งโดยนายกรัฐมนตรีโดยผ่านรัฐสภา	คณะกรรมการการค้าโดยธรรม (The Fair Trade Commission of Korea) หรือ KFTC ถูกแต่งตั้งโดยประธานาธิบดี โดยรัฐมนตรีว่าการกระทรวงคณะกรรมการวางแผนเศรษฐกิจ	ประเทศอินโดนีเซีย สำนักงานคณะกรรมการกำกับดูแลการแข่งขันทางธุรกิจ (The Commission for the supervision of Business Competition) หรือเรียกว่า “KPPU” ซึ่งเป็นสำนักงานบริหารรัฐ ที่	1.Vietnam Competition Authority (VCA) คือ องค์ภายใต้กระทรวงการค้าและอุตสาหกรรม 2.Vietnam Competition Council (VCC) จัดตั้งโดยรัฐบาลและมีหน้าที่วินิจฉัยคดีที่เกี่ยวข้องกับการกระทำที่เป็นการจำกัดการแข่งขัน โดย VCC ได้ตั้ง	คณะกรรมการแข่งขันทางการค้า เป็นองค์กรที่ทำหน้าที่บังคับใช้กฎหมายแข่งขันทางการค้า ที่จัดตั้งขึ้นในกรมการค้าภายใน อยู่ภายใต้สังกัดกระทรวงพาณิชย์	พระราชบัญญัติการแข่งขันทางการค้า พ.ศ.2542 กำหนดให้มีองค์กรบังคับใช้ไว้ คือ คณะกรรมการแข่งขันทางการค้า เป็นองค์กรที่ทำหน้าที่บังคับใช้กฎหมายแข่งขันทางการค้า ที่จัดตั้งขึ้นในกรมการค้าภายใน อยู่ภายใต้สังกัดกระทรวงพาณิชย์ ตั้งแต่ปีพ.ศ. 2542 การดำเนินการต่างๆจะต้องอยู่ใน	ควรจัดตั้งสำนักงานคณะกรรมการแข่งขันทางการค้า เป็นองค์กรอิสระขึ้นตรงกับรัฐสภา เหมือนกับคณะกรรมการกิจการโทรคมนาคม เป็นองค์กรของรัฐที่เป็นอิสระ รายงานการปฏิบัติงานขึ้นตรงกับรัฐสภา

ข้อ	ปัญหา	กฎหมายต่างประเทศ					กฎหมายไทย	การวิเคราะห์	ข้อเสนอแนะ
		สหรัฐอเมริกา	ญี่ปุ่น	เกาหลีใต้	อินโดนีเซีย	เวียดนาม			
				เป็นผู้เสนอไปยังประธานาธิบดี	เป็นอิสระจากผู้บริหารตุลาการและนิติบัญญัติ สมาชิกได้รับการแต่งตั้งโดยประธานาธิบดี	Competition Case-Handling Council ซึ่งประกอบด้วยสมาชิกจาก VCC อย่างน้อย 5 คน เพื่อดำเนินคดีกับประเด็นที่เกี่ยวกับการแข่งขันทางการค้า		สายบังคับบัญชาของระบบราชการที่ไม่มีความเป็นอิสระและมีความล่าช้าในการดำเนินงานอีกทั้งยังถูกแทรกแซงจากอำนาจทางการเมืองได้ง่าย	เพื่อให้คณะกรรมการปฏิบัติงานได้อย่างอิสระปราศจากการแทรกแทรง
2.	ปัญหาการกำหนดรูปแบบการควบรวมธุรกิจที่อยู่ภายใต้บังคับของ	การควบรวมภายใต้ข้อบังคับการควบหรือรวมธุรกิจ (Merger and Acquisition	การควบรวมภายใต้ข้อบังคับการควบหรือรวมธุรกิจ (Merger and Acquisition	การควบรวมภายใต้ข้อบังคับการควบหรือรวมธุรกิจ (Merger and Acquisition	การควบรวมภายใต้ข้อบังคับการควบหรือรวมธุรกิจ (Merger and Acquisition	การควบรวมภายใต้ข้อบังคับการควบหรือรวมธุรกิจ (Merger and Acquisition หรือ M&A),Joint Venture,และให้	มาตรา 26 ได้บัญญัติ ให้นิยามสำหรับรูปแบบการควบรวมธุรกิจไว้เพียง 3 รูปแบบเท่านั้น กล่าวคือการรวม	มาตรา 26 ได้บัญญัติให้นิยามสำหรับรูปแบบการควบรวมธุรกิจไว้เพียง 3 รูปแบบเท่านั้น กล่าวคือการรวมกิจการ (Merger),	กำหนดรูปแบบการควบรวมให้ครบถ้วนไว้ในประกาศคณะกรรมการแข่งขันทางการค้า ซึ่งจะต้อง

ข้อ	ปัญหา	กฎหมายต่างประเทศ					กฎหมายไทย	การวิเคราะห์	ข้อเสนอแนะ
		สหรัฐอเมริกา	ญี่ปุ่น	เกาหลีใต้	อินโดนีเซีย	เวียดนาม			
	กฎหมายแข่งขันทางการค้า	หรือ M&A),Interlocking Directorates, Joint Venture,	หรือ M&A), Interlocking Directorate, Joint Venture, Holding Company	หรือ M&A), Interlocking Directorate, Joint Venture, Holding Company	หรือ M&A), Interlocking Directorate, Holding Company	รวมถึง การกระจุกตัวทางเศรษฐกิจรูปแบบอื่นตามที่กฎหมายกำหนด	กิจการ (Merger),การซื้อกิจการ (Acquisition), การครอบงำกิจการ(Take Over)	การซื้อกิจการ (Acquisition), การครอบงำกิจการ(Take Over),เท่านั้น ยังไม่เพียงพอ ที่จะไปครอบคลุมถึงการควบรวมด้วยวิธีอื่นๆ	ประกาศการควบรวม Holding Company, กิจการร่วมค้า (Joint Venture) และ Interlocking Directorates หรือการถือหุ้นไขว้ให้อยู่ภายในประกาศ
3.	ปัญหาการขออนุญาตรวมธุรกิจตามพระราชบัญญัติการแข่งขันทาง								

ข้อ	ปัญหา	กฎหมายต่างประเทศ					กฎหมายไทย	การวิเคราะห์	ข้อเสนอแนะ
		สหรัฐอเมริกา	ญี่ปุ่น	เกาหลีใต้	อินโดนีเซีย	เวียดนาม			
	การค้า พ.ศ. 2542 มาตรา 26								
	3.1 ปัญหาการแจ้งการควบรวมธุรกิจ	ผู้ที่จะทำการควบรวมนั้นจะต้องรอการพิจาณาเป็นระยะเวลา 30 วัน ก่อนที่จะดำเนินการควบรวมกิจการต่อไปได้ เรียกว่า Waiting Period โดยระยะเวลา30 วันเป็นระยะเวลาที่	การแจ้งการควบรวมของประเทศญี่ปุ่นนั้นจะมีทั้งต้องแจ้งก่อนการควบรวมและแจ้งหลังการควบรวม โดยแบ่งไปตามวิธีและรูปแบบของการควบรวม (1) การขออนุญาตก่อน	บริษัทที่รวมกิจการมีสินทรัพย์รวมหรือรายได้ประจำปี (รวมสินทรัพย์รวมหรือรายได้บริษัทในเครือ) ทั่วโลกของแต่ละฝ่ายมากกว่าหรือเท่ากับ	เป็นแบบสมัครใจจะแจ้งการควบรวมธุรกิจได้2 รูปแบบ แจ้งก่อนควบรวมหรือแจ้งหลังการควบรวมแล้วภายใน 30วันก็ได้	แจ้งก่อนการควบรวม โดยจะใช้ระยะเวลาในการดำเนาการพิจารณา 45 วัน และขยายได้อีกครั้งละไม่เกิน 30 วัน	ต้องแจ้งก่อนจะมีการควบรวมธุรกิจต่อคณะกรรมการฯ จะต้องทำการสอบสวนและพิจารณาคำขออนุญาตรวมธุรกิจให้เสร็จสิ้นภายในระยะเวลา 90 วัน นับแต่วันที่ได้รับคำขอและขยายได้ครั้งละไม่เกิน15วัน	โดยการรับเรื่องคำขออนุญาตที่จะต้องใช้ระยะเวลาในการพิจารณาเป็นเวลาถึง 90 วันและหากยังไม่สามารถพิจารณาให้แล้วเสร็จในเวลาได้ก็สามารถที่จะขยายระยะเวลาออกไปอีก 15วันซึ่งหากการรวมธุรกิจนั้นมีความจำเป็นต่อความอยู่รอดทางเศรษฐกิจของผู้ประกอบการที่ขออนุญาตควบรวม	การศึกษาผู้เขียนเห็นว่าในพระราชบัญญัติการแข่งขันการค้า 2542 นั้นควรนำหลักเกณฑ์ ของประเทศอินโดนีเซียในเรื่องการแจ้งขออนุญาตขอรวมธุรกิจ มาประยุกต์ใช้ในกรณี การควบรวมธุรกิจที่ เข้า

ข้อ	ปัญหา	กฎหมายต่างประเทศ					กฎหมายไทย	การวิเคราะห์	ข้อเสนอแนะ
		สหรัฐอเมริกา	ญี่ปุ่น	เกาหลีใต้	อินโดนีเซีย	เวียดนาม			
		กำหนดไว้สำหรับการรวมธุรกิจทั่วไปซึ่งใช้สิ่งตอบแทนเป็นอย่างอื่นนอกจากตัวเงินทั้งหมดหรือบางส่วน แต่ในกรณีที่ใช้สิ่งตอบแทนเป็นเงินเพียงอย่างเดียวจะใช้เวลาเพียง15 วันเท่านั้น โดยองค์กรที่บังคับใช้	การดำเนินการ30 วัน ซึ่งกำหนดหลักเกณฑ์ว่าผู้รวมธุรกิจรายหนึ่ง(ผู้ซื้อ) มีทรัพย์สินมากกว่า 10,000 ล้านเยนและผู้รวมกิจการรายหนึ่ง (ผู้ขาย) มีทรัพย์สินมากกว่า 1,000 ล้าน	100,000 ล้านวอน และกรณีการรวมบริษัทในประเทศธุรกิจที่รวมและบริษัทในเครือมีสินทรัพย์หรือรายได้มากกว่าหรือเท่ากับ 2 ล้านล้านวอน กรณีการรวมกับบริษัทต่างประเทศต้องแจ้งถ้าสินทรัพย์				ธุรกิจหรือทำให้เสียประโยชน์ในการแข่งขันทางการค้าในตลาดสินค้านั้นๆ หากเหตุผลของการรวมธุรกิจมีความจำเป็นต่อการอยู่รอดของธุรกิจนั้น หากจะต้องใช้ระยะเวลาในการพิจารณาถึง 90 วันหรือหากคณะกรรมการขอขยายไปอีก15 วันก็เท่ากับว่าจะต้อใช้ระยะเวลาในการพิจารณาทั้งสิ้น 105 วัน โดยจำนวนระยะเวลาในการ	หลักเกณฑ์ ส่วนแบ่งตลาด ยอดเงินขาย จำนวนทุน จำนวนหุ้น หรือจำนวนสินทรัพย์ที่จะต้องแจ้งการควบรวมต่อคณะกรรมการแข่งขันทางการค้า แต่หากการควบรวมนั้นไม่ก่อให้เกิดการผูกขาดหรือความไม่เป็นธรรมในการแข่งขัน นั้น ควรจะมีเกณฑ์การ

ข้อ	ปัญหา	กฎหมายต่างประเทศ					กฎหมายไทย	การวิเคราะห์	ข้อเสนอแนะ
		สหรัฐอเมริกา	ญี่ปุ่น	เกาหลีใต้	อินโดนีเซีย	เวียดนาม			
		กฎหมายจะวิเคราะห์ว่าการขอรวมธุรกิจนั้นจะมีผลกระทบต่อการแข่งขันหรือไม่หากองค์กรดังกล่าวต้องการข้อมูลหรือพยานหลักฐานเพิ่มเพื่อประกอบการพิจารณาก็สามารถขอข้อมูลเพิ่มจากผู้ยื่นคำขอได้	เยนจะทำการรวมธุรกิจประเภท Merger,Acquisition of All Business หรือ Demerger เข้าข่ายต้องแจ้งก่อนการควบรวมและในกรณีที่เป็นการเข้าซื้อกิจการบางส่วนรวมธุรกิจรายหนึ่ง(ผู้ซื้อ) มีทรัพย์สิน	หรือยอดขายในเกาหลีของหนึ่งธุรกิจที่รวมมากกว่าหรือเท่ากับ 1,00,000 ล้านวอนและยอดขายของแต่ละฝ่ายในเกาหลีมากกว่าหรือเท่ากับ 3,000 ล้านวอน บังคับให้แจ้งภายหลังการรวมธุรกิจภายใน 30				พิจารณาดังกล่าวถือว่านานเกินไปและอาจทำให้เกิดผลกระทบในทางลบต่อการดำเนินธุรกิจของผู้ขออนุญาตรวมธุรกิจด้วย	แจ้งในภายหลังจากการควบรวมแล้ว 30 วัน แต่หากเป็นการควบรวมที่อาจก่อให้เกิดการผูกขาดหรือไม่เป็นธรรมต่อการแข่งขัน ก็ให้ใช้หลักเกณฑ์ในการแจ้งขออนุญาตก่อนการควบรวมตามระยะเวลาพิจารณาตามปกติ แต่ผู้เขียนมีความเห็นว่าการ

ข้อ	ปัญหา	กฎหมายต่างประเทศ					กฎหมายไทย	การวิเคราะห์	ข้อเสนอแนะ
		สหรัฐอเมริกา	ญี่ปุ่น	เกาหลีใต้	อินโดนีเซีย	เวียดนาม			
		ซึ่งในกรณีนี้สามารถขยายระยะเวลาออกไปได้อีก 30วัน นับตั้งแต่ฝ่ายที่ประสงค์ควบรวมส่งข้อมูลหรือเอกสารให้เป็นที่เรียบร้อยแล้ว แต่ในกรณีที่เป็นการควบรวมโดยใช้เงินเพียงอย่างเดียวจะสามารถขยาย	มากกว่า 10,000 ล้านเยนและผู้รวมกิจการรายหนึ่ง (ผู้ขาย) มีทรัพย์สินมากกว่า 1,000 ล้านเยนต้องแจ้งขออนุญาตก่อนการดำเนินการด้วยเช่นกัน (2) การแจ้งภายหลังเสร็จสิ้นการดำเนินการ	วัน โดยใช้ระยะเวลาในการพิจารณา 30 วันและขยายได้ไม่เกิน 60 วัน นับจากวันสิ้นระยะเวลาพิจารณา					ใช้เวลาในการพิจารณา 90 วัน ตามเกณฑ์การขออนุญาตตามปกตินั้นเป็นระยะเวลาที่นานจนเกินไปอาจก่อให้เกิดภาระต่อการดำเนินธุรกิจได้ โดยผู้เขียนเสนอให้เปลี่ยนเป็น 45 วันนับแต่วันที่คณะกรรมการได้รับแจ้งการควบรวมนั้นและสามารถขยายได้เฉพาะ

ข้อ	ปัญหา	กฎหมายต่างประเทศ					กฎหมายไทย	การวิเคราะห์	ข้อเสนอแนะ
		สหรัฐอเมริกา	ญี่ปุ่น	เกาหลีใต้	อินโดนีเซีย	เวียดนาม			
		ออกไปได้ไม่เกิน10วัน	ควบรวมแล้วภายใน30วัน กำหนดหลักเกณฑ์ว่าผู้รวมธุรกิจรายหนึ่ง(ผู้ซื้อ) มีทรัพย์สินมากกว่า 10,000 ล้านเยนและผู้รวมกิจการรายหนึ่ง (ผู้ขาย)มีทรัพย์สินมากว่า2,000 ล้านเยน ทำการซื้อหุ้น						ในกรณีที่คณะกรรมการได้เรียกเอกสารหรือข้อมูลเพิ่มเติมเท่านั้น

ข้อ	ปัญหา	กฎหมายต่างประเทศ					กฎหมายไทย	การวิเคราะห์	ข้อเสนอแนะ
		สหรัฐอเมริกา	ญี่ปุ่น	เกาหลีใต้	อินโดนีเซีย	เวียดนาม			
			สามัญ (Stockholding) ของผู้ขายเมื่อรวมกันแล้วมีสิทธิออกเสียงเกิน 10% 25% และ50% ต้องยื่นแจ้งต่อ JFTC ของการได้มาซึ่งสิทธิในการออกเสียงดังกล่าวในแต่ละช่วงที่ถึงเกณฑ์เพื่อเป็นช่องทางใน						

ข้อ	ปัญหา	กฎหมายต่างประเทศ					กฎหมายไทย	การวิเคราะห์	ข้อเสนอแนะ
		สหรัฐอเมริกา	ญี่ปุ่น	เกาหลีใต้	อินโดนีเซีย	เวียดนาม			
			การกำกับดูแลของ JFTC ซึ่งหากเห็นว่าการซื้อหุ้นนั้นเป็นการก่อให้เกิดการจำกัดการแข่งขัน ก็สามารถสั่งให้ผู้รวมธุรกิจขายหุ้นออกไปได้ซึ่งในกรณีของ Stockholding รวมไปถึง Holding Company						

ข้อ	ปัญหา	กฎหมายต่างประเทศ					กฎหมายไทย	การวิเคราะห์	ข้อเสนอแนะ
		สหรัฐอเมริกา	ญี่ปุ่น	เกาหลีใต้	อินโดนีเซีย	เวียดนาม			
			และ joint Venture ด้วย						
	3.2 ปัญหาการอุทธรณ์คำสั่ง	สามารถโต้แย้งคำตัดสินของคณะกรรมการโดยนำคดีขึ้นสู่ศาลได้	สามารถอุทธรณ์คำตัดสินนั้นไปยังศาลสูงเมือง Tokyo (The Tokyo High Court) ได้ อีกทั้งยังสามารถฎีกาไปยังศาลฎีกาเป็นขั้นตอนต่อไปได้	สามารถอุทธรณ์คำตัดสินของคณะกรรมการไปยังศาลสูงเมืองโซล (The Soul High Court)	ศาลแขวง (PengadilanNegeri) และศาลฎีกามีหน้าที่ในการทบทวนและรับอุทธรณ์คำตัดสิน		สามารถยื่นอุทธรณ์ต่อคณะกรรมการอุทธรณ์	ประเทศไทยต้องพัฒนาศักยภาพทางกฎหมายให้เทียบเท่ากับนานาประเทศหรือแม้แต่ในประเทศในกลุ่มสมาชิกอาเซียนด้วยกันแล้วจึงมีความจำเป็นอย่างมากที่จะต้องพัฒนากฎหมายและการบังคับใช้ให้เป็นที่ยอมรับ และสามารถตรวจสอบได้ จะให้ข้อพิพาทนั้นระงับโดยเจ้าหน้าที่ภายใน	

ข้อ	ปัญหา	กฎหมายต่างประเทศ					กฎหมายไทย	การวิเคราะห์	ข้อเสนอแนะ
		สหรัฐอเมริกา	ญี่ปุ่น	เกาหลีใต้	อินโดนีเซีย	เวียดนาม			
								องค์กรใดองค์กรหนึ่งไม่ได้ ควรจะให้การอุทธรณ์นั้นไปจบลงที่ศาลในการพิจารณาเนื่องจากระบบการพิจารณาของศาลนั้นมีการตรวจสอบได้และมีความน่าเชื่อถือ	