

**ACT CONCERNING ELIMINATION AND PREVENTION OF
INVOLVEMENT IN BID RIGGING etc.
(Law No. 101 of 2002)**

(Tentative Translation)

Sec. 1 [Purpose]

This Act, for the purpose of eliminating and preventing involvement in bid rigging etc., shall provide for demands by the Fair Trade Commission to the Heads of Ministries and Agencies etc. regarding improvement measures necessary to eliminate involvement in bid rigging etc., claims directed at employees involved in said bid rigging for damage compensation, investigation of the reasons for disciplinary actions against said employees, and coordination and cooperation among the administrative institutions concerned, and other matters.

Sec. 2 [Definition]

The term “Heads of Ministries and Agencies” in this Act shall mean the heads of Ministries and Agencies as stipulated in Section 20, subsection 2, of the Public Finance Law (Law No. 34 of 1947).

(2) The term “specified corporation” in this Act shall mean a corporation in which the government or local governments have an equity of 50% or over.

(3) The term “Heads of Ministries and Agencies etc.” in this Act shall mean the heads of Ministries and Agencies, heads of local governments as well as the representatives of specified corporations.

(4) The term “bid rigging etc.” in this Act shall mean, in respect of conclusion of agreements by the government, local governments or specified corporations (hereafter called “government, etc.”) of sale and purchase, lease, contract, etc., with a counter party to be chosen by auction or other competitive means, the acts in violation of the provision of Section 3 or Section 8, subsection 1, item 1 of the Act concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (Law No. 54 of 1947), through such practices that an entrepreneur wishing to participate in the bidding decides in conjunction with other entrepreneurs the successful bidder or the successful bid price, or the trade association makes an entrepreneur wishing to participate in the said bidding do the said acts.

(5) The term “involvement in bid rigging etc.” in this Act shall mean the involvement in bid rigging etc. by the employees of government or local public bodies, or directors or employees

of specified corporations (hereafter called "the employees"), and falling under any one of the following items.

- (i) Having a entrepreneur or trade association engage in bid rigging etc..
- (ii) Nomination of the counter party of a contract in advance, or indication or suggestion in advance of wishes to the effect that a specified person be the counter party of the contract.
- (iii) Out of various data concerning bidding or contract, indication or suggestion of information held in confidential files to a specified entrepreneur or trade association, access to which shall facilitate bid rigging etc. by the specified entrepreneur or trade association.

Sec. 3 [Demand of improvement measures to the heads of Ministries and Agencies]

The Fair Trade Commission may, when it recognizes involvement in bid rigging etc. as a result of its investigation of bid rigging cases, demand that the Heads of Ministries and Agencies etc. implement improvement measures on the administration of bidding and contracts that are necessary for eliminating the said involvement in bid rigging etc. (hereafter simply called "improvement measures").

(2) In cases that it specifically deems that action is necessary, the Fair Trade Commission may, when it recognizes involvement in bid rigging etc. as a result of its investigation of bid rigging etc. cases (even when said involvement in bid rigging etc. has already been eliminated), demand that the Heads of Ministries and Agencies etc. implement improvement measures to ensure that said involvement in bid rigging etc. is eliminated.

(3) The Fair Trade Commission shall, in making demands under the provisions of the preceding two subsections, deliver written statements describing the content of the said demand and the reasons thereof to the Heads of Ministries and Agencies etc..

(4) The Heads of Ministries and Agencies etc. shall, when they receive a demand under the provisions of subsection 1 or subsection 2, perform a necessary investigation, and shall, when it becomes evident that there is or was the said involvement in bid rigging etc., implement the improvement measures, based on the results of the said investigation, necessary to eliminate the said involvement in bid rigging etc. or to secure that the said involvement in bid rigging etc. has been eliminated.

(5) The Heads of Ministries and Agencies etc. may, when deemed necessary in the investigation of the preceding subsection, ask the Fair Trade Commission to provide data and other necessary cooperation.

(6) The Heads of Ministries and Agencies etc. shall publicize the results of the investigation of subsection 4 and the content of the improvement measures implemented under the provisions of the same subsection, and notify the Fair Trade Commission thereof.

(7) The Fair Trade Commission may, when it is deemed specifically necessary in cases where it has received notification of the preceding subsection, express its opinions thereon to the Heads of Ministries and Agencies etc..

Sec. 4 [Claim to the employees of compensation for damage]

The Heads of Ministries and Agencies etc. shall, when there was a demand under the provisions of subsection 1 and subsection 2 of the preceding Section, perform a necessary investigation if there is any damage to the government, etc., due to the said involvement in bid rigging etc..

(2) The Heads of Ministries and Agencies etc. shall, when it has been recognized, as a result of the investigation, that there was damage to the government, make a necessary investigation if the employees involved in said bid rigging etc. are liable for damage as well as the amount of damage to the government.

(3) The Heads of Ministries and Agencies etc. may, when deemed necessary in conducting the investigation of the preceding two subsections, ask the Fair Trade Commission to provide data and other necessary cooperation.

(4) The Heads of Ministries and Agencies etc. shall, when it has been recognized, as a result of the investigation, that the employees involved in said bid rigging etc. caused damage due to willful or grave negligence, demand compensation for the damage immediately.

(5) In respect of cases where the employees involved in said bid rigging etc. are liable for damage under the provisions of Section 3, subsection 2, of the Law concerning the responsibility of government employees who execute the budget (Law No. 172 of 1950) (including the case of application under the provisions of Section 9, subsection 2, of the same Law *mutatis mutandis*), the Heads of Ministries and Agencies or the heads of government corporations (meaning the heads of government corporations stipulated in subsection 1 of the same Section) shall, irrespective of the provisions of subsection 2, subsection 3 (limited to the part concerning the investigation of subsection 2), and the preceding subsection, implement, as provided for by the same Law, necessary measures immediately. In this case, "without delay" in Section 4, subsection 4, of the same Law (including cases of application under Section 9, subsection 2, of the same Law *mutatis mutandis*) shall read "immediately accompanied by the result of the investigation of Section 4, subsection 1, of the Act concerning involvement in bid rigging etc. by the said government employees who execute the budget (meaning the involvement in bid rigging etc. stipulated in Section 2, subsection 5, of the Act concerning elimination and prevention of involvement in bid rigging etc. (Law No. 101 of 2002))".

(6) In cases where employees involved in said bid rigging etc. are liable for damage under Section 243-2, subsection 1, of the Local Autonomy Law (Law No. 67 of 1947) (including the application *mutatis mutandis* of Section 34 of the Local Public Enterprise Law [Law No. 292 of 1952], the provisions of subsection 2, subsection 3 (limited to the part concerning the investigation of subsection 2) and section 4 shall not apply, and the term "request decision" in Section 243-2, subsection 3, of the Local Autonomy Law shall read "request immediate decision", and the provisions of the said Section shall apply (including the application *mutatis mutandis* of Section 34 of the Local Public Enterprise Law).

Sec. 5 [Investigation of the reasons for disciplinary actions against the employees]

The Heads of Ministries and Agencies etc. shall, when there is a demand under the provisions of Section 3, subsection 1 and subsection 2, perform a necessary investigation if it is possible to impose disciplinary actions based on the National Public Servants Law and the Local Public Servants Law, upon the employees involved in said bid rigging etc.. Such action shall mean dismissal, suspension of duties, cut in salary, or warning and other sanctions in the case of specified corporations (excluding specified public corporations - meaning specified public corporations stipulated under Section 2, subsection 2 of the Public Corporation General Rule Law [Law No. 103 of 1999]; hereafter the same in this subsection). It is provided, however, that the Heads of Ministries and Agencies, heads of local governments, or heads of specified public corporations, in cases where they do not have the appointive power of the said employees (including cases where the appointive power of the said employees was assigned), shall suffice if the notification was made to the person with an appointive power (including the person who was assigned the appointive power of the said employees; hereafter called "person with appointive power") to the effect that the demand under the provisions of Section 3, subsection 1 or subsection 2, was received.

(2) The persons with appointive power, who received notification under the proviso of the preceding subsection, shall perform a necessary investigation if it is possible to impose disciplinary actions upon the employees involved in the said involvement in bid rigging etc..

(3) The Heads of Ministries and Agencies or the persons with appointive power may, when it was deemed necessary to perform an investigation based on the text of subsection 1 or the preceding subsection, ask the Fair Trade Commission to provide data and other necessary cooperation.

Sec. 6 [Investigation by designated employees]

The Heads of Ministries and Agencies etc. or persons with appointive power shall have the employees designated by them (hereafter in this Section called "designated employees") perform the investigation as provided for in Section 3, subsection 4; Section 4, subsection 1 or subsection 2; or the text of subsection 1 or subsection 2 of the preceding Section, (hereafter in this Section called "investigation"). In this case, Heads of Ministries and Agencies etc. or persons with appointive power shall implement the necessary measures to secure an effective investigation by designating employees equipped with abilities and experience to properly perform the said investigation.

(2) The designated employees shall, in performing the investigation, conduct it from a fair and neutral standpoint.

(3) In cases where the designated employees conduct the investigation, the employees of the said Ministries and Agencies (meaning the Ministries and Agencies stipulated in Section 21 of the Public Finance Law; hereafter the same), local public bodies or specified corporations shall cooperate with the said investigation.

Sec. 7 [Coordination and cooperation among the administrative institutions concerned]

Administrative institutions concerned of the government shall, with regard to the prevention of involvement in bid rigging etc., cooperate by maintaining mutual coordination.

Sec. 8 [Consideration in application]

In the application of this Act, due consideration shall be paid to the independent efforts of local governments in properly administrating bidding and contracts.

Sec. 9 [Assignment of administrative work]

The Heads of Ministries and Agencies may assign administrative work stipulated in this Act to affiliated agencies of the said Ministries and Agencies (limited to those whose heads are equivalent to ministers of state under the law).

Supplementary Provisions

This Act shall come into force as from such a day as is fixed by a Cabinet Ordinance within a limit not exceeding six months counting from the date of its promulgation.