

## **Regarding the Introduction of Prior Confirmation Procedures on the Application of Laws and Regulations by Administrative Agencies**

Cabinet Decision, March 27, 2001

Revised on March 19, 2004

Revised on June 22, 2007

It was decided in the action plan for the reformation and creation of the economic structure (Third Follow-up Report (Cabinet Decision of December 1, 2000)) that, with the aim of rapid and fair conduct of business activities by private enterprises with the advent of the information technology revolution, administrative agencies who take administrative measures would endeavor to introduce procedures compatible with the legal system of Japan to speed up and clarify the interpretation of laws and regulations concerning such administrative measures, commence studies of such procedures, and implement them in certain fields starting in FY2001. In view of this, starting in FY2001, with respect to fields experiencing the brisk creation of new industries and new products and services, including information technology and finance, in order to increase a private enterprise's ability to predict whether a certain action would conflict with laws and regulations, administrative agencies will arrange so that a private-sector enterprise can inquire in advance as to the relationship between the action concerned and the provisions of certain laws and regulations. In addition, in order to ensure the fairness of administration and promote the increase of transparency, the contents of the inquiry concerned and the administrative agencies' responses will be made public. Further, this fact is also in accordance with the goal of clarifying the interpretation of existing rules (introduction of the "no action letter") in the "e-Japan Strategy" (the January 22, 2001 Advanced Information and Telecommunications Network Society Promotion Strategic Headquarters decision).

To this end, with regard to the above fields, guidelines are prescribed as follows for procedures in which a private enterprise, etc. confirms in advance with the administrative agency having jurisdiction to enforce certain laws and regulations whether specific actions in connection with business activities that the enterprise, etc. seeks to realize are subject to the provisions of the regulations concerned, such agency responds and the response is made public.

Further, each governmental department (including extra-ministerial departments thereof; hereinafter the same shall apply) shall prescribe and make public detailed regulations within the scope of these guidelines with regard to specific methods of implementation.

## **1. Subject**

### **(1) Fields whose laws are subject**

These guidelines have as their subject laws and regulations relating to the activities of the private companies and organisations; however, this shall not preclude the making, at the discretion of each governmental department, of laws and regulations relating to other fields subject to these guidelines.

### **(2) Scope of subject laws and regulations (provisions)**

Among the provisions of laws and regulations set forth in (1) above, the subjects of these guidelines shall be those to which either of the following items apply and that relate to the business activities of private enterprises; however, laws and regulations relating to matters disposed of by local municipal entities (matters statutorily delegated and matters of self-governance) shall not be subject hereto.

- 1) Cases where the provision concerned determines the basis for disposition of an application (this shall mean an application as defined in Article 2, Item 3 of the Administrative Procedures Law (Law No. 88, promulgated November 12, 1993) and the act of violating the provision concerned is subject to penal provisions; or
- 2) Cases where the provision concerned determines the basis for unfavorable disposition (this shall mean an unfavorable disposition as defined in Article 2, Item 4 of the Administrative Procedures Law).
- 3) Cases where the provision concerned imposes duties directly upon the private companies and organisations or limit their rights, and which each governmental department recognize as appropriate in light of the goals of these procedures.

### **(3) Determination and publication of subject laws and regulations (provisions)**

Each governmental department shall determine and make public the provisions made subject hereto in the governmental department concerned based on these guidelines.

## **2. Inquiries**

Each governmental department shall receive an inquiry from a private enterprise, etc. that fulfills the following requirements (hereinafter referred to as "inquirer") at a contact point to be prescribed in detailed regulations.

- 1) The inquirer indicates in writing (including electronic means) the individual, specific facts relating to actions the enterprise seeks to take in the future;
- 2) The inquirer specifies the provisions of laws and regulations among those the pertinent governmental department determined and made public based on paragraph 1(3) above with respect to which the inquirer wishes to determine applicability to its prospective action; and
- 3) The inquirer agrees to the contents of its inquiry and the response thereto being made public.

Further, each governmental department may, within a reasonable and necessary scope, add to its detailed regulations supplemental requirements, including a requirement that the inquirer clearly state its opinion concerning the applicability of the provisions of laws and regulations specified in 2) above and the basis therefor, and the inquirer agrees to its name being made public in a case where each governmental department need to be respond to an inquirer in light of the laws and regulations (provisions) subject to the inquiry.

## **3. Responses**

### **(1) Time of response**

As a general rule, each governmental department shall respond to an inquirer within 30 days (each governmental department shall prescribe specific times for response in its detailed regulations) of the arrival of a written inquiry from the inquirer at the contact point; however, each governmental department may prescribe in its detailed regulations a time of response in excess of 30 days in a case where careful judgment is required, or in a case where there is a reasonable ground, such as where a

substantial impediment to services arises due to a large number of inquiries that exceeds the capacity of the department or agency in charge.

In the event that a response cannot be made within the established time of response, each governmental department shall notify the inquirer of the reason for the delay and the expected time of response.

(2) Method of response

Response to an inquiry shall be made in writing (including electronic means); however, the foregoing shall not apply in a case where the inquirer agrees to receive an oral response.

A written response shall contain a clear statement to the effect that the response in question [a] is made from the position of having jurisdiction to enforce the laws and regulations (provisions) subject to the inquiry, [b] is premised only on the facts as presented by the inquirer, [c] is made only with respect to the relationship of the prospective business activities to the laws and regulations (provisions) subject to the inquiry, [d] indicates the governmental department's opinion as of that present time, and [e] as a matter of course, cannot bind the determination of any investigative agency or the finding of any court, including the application of penal provisions.

(3) Case of no response

Each governmental department may elect not to respond in a case where it is not able to respond to the inquiry submitted or in a case where it would not be appropriate to respond.

Each governmental department shall prescribe in advance in its detailed regulations the conditions of cases to which it will not respond.

In the event that no response will be made to an inquiry, each governmental department shall notify the inquirer of the reason for the decision not to respond.

**4. Making the contents of its inquiry and the response thereto public**

(1) Contents of publication

As a general rule, the contents of its inquiry and the response thereto should be made public as-is, and the inquirer's name may be made public in a case where the inquirer agrees to its name being made public; however, in a case where an inquiry or the response thereto contains information that falls under the category of an event of non-disclosure as prescribed in the Law Concerning the Disclosure of Information Retained by Administrative Agencies (Law No. 42, promulgated May 14, 1999) a governmental department may, as necessary, withhold such information from disclosure.

(2) Time of publication

As a general rule, the contents of its inquiry and the response thereto shall be made public within 30 days of the issuing of a response; however, in a case where the inquirer request to extend the time of publication, exceed 30 days of the issuing of a response, each governmental department shall be made public (each governmental department shall prescribe specific times for public).

**5. Time of introduction**

Each governmental department shall promptly study the introduction of prior confirmation procedures to fields experiencing the brisk creation of new industries and new products and services, including information technology and finance and shall implement such procedures as early as possible during FY2001.

**6. Follow-up and review**

The Ministry of Public Management, Home Affairs, Posts and Telecommunications shall conduct follow-up and make public the status of implementation of each governmental department in order to bring about the proper implementation of these procedures.

Further, review shall be conducted as necessary in view of the results of the aforementioned follow-up.

**7. Submission of related information**

In light of the goals and purposes of these procedures, each governmental department shall affirmatively endeavor to [a] provide various information relating to the application of laws and regulations including means such as enhancing the commentary on the laws

and regulations within its jurisdiction, and [b] make public standards for examinations and dispositions.

Attention: This text is for reference. The text in Japanese languages is authentic.