

**ADMINISTRATIVE PROCEDURE LAW (JAPAN)**  
**Law No. 88 of 1993 (effective Nov. 12, 1993)\***

Translation and Notes by Mark A. Levin\*\*

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**CHAPTER 1**  
**General Provisions**

Article 1  
Purpose, etc.

(1) This law concerning procedures for dispositions, administrative guidance, and notifications, and providing with universality for matters relating to such actions, seeks to advance a guarantee of fairness and progress towards transparency (here meaning, that there be clarity in the public understanding of the contents and processes of

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administrative determinations; the same meaning being intended in Article 38, *infra*) in administrative process, and thereby to promote the protection of the rights and interests of the public.

(2) Where special provisions exist in other laws which concern the matters otherwise governed hereby, then procedures for dispositions, administrative guidance, and notifications shall be determined in accordance with the terms of said special provisions.

## Article 2 Definitions

Hereinafter in this law, the terms specified in the following clauses shall be defined as provided for in each of those clauses.

- 1) *Statutes* refer to enacted laws, orders arising under enacted laws (including official notices), ordinances, and regulations (including internal rules) promulgated by the executive organ of local public entities.<sup>1</sup>
- 2) *Dispositions* refer to the rendering of dispositions and other acts involving the exercise of public authority by administrative agencies.
- 3) *Applications* refer to requests, made pursuant to Statutes, for permission, authorization, license, or some other Disposition by an administrative agency granting some benefit to the applicant (collectively hereinafter referred to as "permission, etc.") and to which requests the administrative agencies should respond in the affirmative or negative.
- 4) *Adverse Dispositions* refer to Dispositions in which administrative agencies, acting pursuant to Statutes, designate specified persons as subject parties to the Disposition and directly impose duties upon them or limit their rights; excluding however, where any of the following specified provisions apply:

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<sup>1</sup> The terms "ordinances" and "regulations" specifically relate to local public entities (that is, local government) in Japan. Ordinances are enactments of the legislative branch of a local government, and regulations are the primary executive orders issued by the executive branch of the local governments. Neither can conflict with the valid laws or executive orders of the national government.

- a. *De facto* acts and Dispositions in the nature of procedures that may be required by Statutes to clarify the scope, timing, etc. pertaining to *de facto* acts;
  - b. Dispositions which deny the permission, etc. requested by Applications and other Dispositions that are rendered based upon Applications and which specifically designate those who made the Applications as the subject of the Disposition;<sup>2</sup>
  - c. Dispositions rendered with the consent of the persons who are to be the subject parties to the disposition;
  - d. Dispositions which nullify the effect of any permission, etc., and which are rendered because there has been a Notification [as hereinafter defined] that the facts on which the applicable permission, etc. had been based have ceased to exist.
- 5) *Administrative Organs* refers to the organs specifically listed as follows:
- a. Organs established as administrative organs of the State as provided for in Article 3, paragraph 2 of the National Government Organization Law (Law No. 120 of 1948), organs established pursuant to law under the jurisdiction of the Cabinet, and organs established by one of the above mentioned organs or the personnel of these organs who are authorized by law to independently exercise such authority; and,
  - b. Organs (excluding legislative assemblies) of local public entities.
- 6) *Administrative Guidance* refers to guidance, recommendations, advice, or other acts by which an Administrative Organ may seek, within the scope of its duties or designated functions, certain feasibility or non-feasibility on the part of specified persons in order

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<sup>2</sup> In short, adverse administrative determinations relating to Applications are not "Adverse Dispositions" to which Chapter 3 applies. If a denial or some other undesired consequence such as approval with conditions is issued pertaining to an Application, notwithstanding that it may be "adverse," only the provisions of Chapter 2 apply.

to realize administrative aims, where such acts are not Dispositions.<sup>3</sup>

- 7) *Notifications* refer to actions taken to notify administrative agencies of given matters (excluding Applications) as may be expressly obligated by Statutes (including those notifications which become necessary by virtue of being prerequisite for bringing about some hoped-for legal effect).

### Article 3 Scope of Application

(1) The provisions of Chapters 2 - 4 shall not apply to the Dispositions and the Administrative Guidance specifically listed as follows:

- 1) Dispositions rendered in the nature of any resolution of both or either houses of the Diet or by the legislative assemblies [of local public entities];
- 2) Dispositions rendered by the judgment of any court or judge or made in accomplishing the enforcement of any such judgment;
- 3) Dispositions directed [i.e., in the nature of an express instruction] by a resolution of both or either houses of the Diet or legislative assemblies [of local public entities] or Dispositions rendered based upon the consent or approval of said houses or assemblies, where [such consent or approval is] necessary;<sup>4</sup>
- 4) Dispositions decided by the Audit Commission;

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<sup>3</sup> The "designated functions" of an Administrative Organ refers to the broadly-phrased delegated functions of the Organ found in the enabling provisions of the specific laws establishing the various entities. *See, e.g.*, Article 3 of the Ministry of Construction Establishment Law, Law No. 113 of 1948.

<sup>4</sup> Dispositions excepted by clause 1 refer to matters passed by the various legislative bodies in the administration of their own affairs. Dispositions excepted by clause 3 refer to Dispositions by executive agencies that are made either: 1) expressly and specifically at the direction of a legislative body (that is, not made pursuant to the executive's powers generally delegated by laws), or 2) pursuant to certain laws which require the consent or approval of a particular legislative body in order for specified administrative actions to be effective (for example, the dismissal of a member of the National Personnel Authority pursuant to Article 8, Section 3 of the National Public Employees Law, Law No. 120 of 1947) and where that consent or approval is obtained.

- 5) Dispositions and Administrative Guidance rendered by public prosecutors, prosecutorial clerks, or police personnel pursuant to Statutes relating to criminal cases;
- 6) Dispositions and Administrative Guidance rendered by the Director General of the National Tax Administration Agency, directors of the Regional Taxation Bureaus, the chiefs of tax offices, tax collectors, the Superintendent of Custom Houses, customs officers, or local tax officials (including those who perform the duties of these offices pursuant to the provisions of other Statutes) pursuant to Statutes relating to national or local tax law violations (including occasions when such Statutes correspondingly apply in other Statutes) and, Dispositions and Administrative Guidance rendered by the Securities and Exchange Surveillance Commission, personnel of that Commission (including those persons deemed as its personnel pursuant to applicable Statutes), directors of Regional Finance Bureaus, and directors of the Regional Finance Branch Bureaus pursuant to Statutes relating to violations of securities and exchange and trading-in-futures regulations;
- 7) Dispositions and Administrative Guidance rendered towards the achievement of educational or training-oriented goals to students, pupils, kindergartners, or pre-school children, or to their guardians, or to trainees in schools, short-course training schools, training schools, and professional training institutes;
- 8) Dispositions and Administrative Guidance rendered to effectuate in-custody accommodation in prisons, juvenile prisons, detention houses, detention rooms (here meaning, facilities for keeping persons in custody established by the [Tokyo] Metropolitan Police Agency, prefectural police headquarters (including district headquarters) and police offices), detention rooms of the Maritime Safety Agency (here meaning, facilities for keeping persons in custody established at the Regional Maritime Safety Headquarters, its other offices and organizations, and on the vessels of the Maritime Safety Agency), juvenile training schools, juvenile classification homes, and women's guidance homes;
- 9) Dispositions or Administrative Guidance rendered to public officials (here and hereinafter meaning, the national public employees described in Article 2, Section 1 of the National Public

- Service Law (Law No. 120 of 1947) and the local public service personnel described in Article 2 of the Local Public Service Personnel Law (Law No. 261 of 1950)) or rendered concerning the public duties or status of former public officials;
- 10) Dispositions and Administrative Guidance concerning emigration and immigration of foreigners, recognition of refugees, and naturalization;
  - 11) Dispositions exclusively based upon results of examinations or official certifications regarding a person's scholastic ability or technical skills;
  - 12) Arbitrations or other Dispositions (expressly limited to cases where both sides are made parties [to the proceedings]) and Administrative Guidance rendered pursuant to the provisions of those Statutes that have been enacted for the purpose of adjusting the interests of persons having a clash of interests;<sup>5</sup>
  - 13) Dispositions and Administrative Guidance rendered on the spot by police personnel, maritime safety personnel, or other personnel invested expressly by law with the authority to safeguard the public interest, where situations implicating a risk to public health, environmental protection, the prevention of epidemics, public safety, and other public interests arise or are likely to arise;
  - 14) Dispositions ordering submission of reports or articles and any other Dispositions, or Administrative Guidance, rendered with the express purpose of collecting information necessary for the performance of [administrative] duties;
  - 15) Adjudications, rulings, and other Dispositions rendered relating to requests for review, requests for reconsideration, and other administrative appeals; and,
  - 16) Dispositions or Administrative Guidance rendered pursuant to Statutes concerning procedures for the Dispositions referenced in

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<sup>5</sup> This clause refers to laws that specifically provide for administrative intervention to balance competing interests. *See, e.g.*, Article 40, Section 2 of the Waterworks Law, Law No. 177 of 1957. Accordingly, the requirement that "both" sides be present is appropriate in the context because the referenced laws involve only two-party proceedings.

the immediately preceding clause, procedures for formal hearings or for grants of opportunity for explanation and rebuttal provided for in Chapter 3 herein, and other procedures for statements of opinions.

(2) In addition to the matters specifically enumerated in the several clauses of the preceding paragraph [Article 3, paragraph 1, clauses 1 - 16], the provisions of Chapters 2 - 5 shall not apply to Dispositions (here being expressly limited to Dispositions made pursuant to enabling provisions contained in ordinances and regulations [of local public entities]) and Administrative Guidance rendered by the organs of local public entities, and furthermore shall not apply to Notifications (here being expressly limited to where notice as described in Article 2, clause 7 is given pursuant to enabling provisions contained in ordinances and regulations) to the organs of local public entities.

#### Article 4

##### Scope of Application--Dispositions Rendered to Governmental Entities

(1) The provisions of this law shall not apply to Dispositions (expressly limited to where the organs and entities [referenced *infra*] that are made the subject parties of the applicable Dispositions are made so with regard to their distinct nature [as governmental entities]) and Administrative Guidance rendered to organs of the State or to local public entities, nor shall it apply to Notifications made by said organs or entities (expressly limited to where the obligation [to make the Notification] of the involved organs and entities arises with regard to their distinct nature [as governmental entities]).<sup>6</sup>

(2) The provisions of Chapters 2 and 3 shall not apply to Dispositions concerning the juridical persons described in the following specified provisions and which are rendered pursuant to the specific provisions of laws relating to the supervision of those juridical persons (excluding however, Dispositions ordering the dissolution of those juridical persons or revoking the authorization for their establishment or ordering the removal of either the officers of those juridical persons or of the persons carrying out their affairs):

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<sup>6</sup> The "distinct nature" of an entity as a governmental body describes those activities that can *only* be undertaken by governmental bodies. Thus, for example, operation of public transit systems, which may also be undertaken by private entities, is not within the "distinct nature." In contrast, the issuance of public finance bonds falls within the "distinct nature" description.

- 1) Juridical persons established expressly by law or established by a special act of establishment pursuant to the provisions of special laws;<sup>7</sup> and,
- 2) Juridical persons established pursuant to special laws and which, the authorization of administrative agencies being required for their establishment, are designated by Cabinet Order for having affairs closely related to the administrative processes of the State or the local public entities.

(3) When administrative agencies designate, in accordance with the provision of laws, all or some part of the performance of examinations, inspections, certifications, registrations, and other affairs of administration, to specific persons charged with the performance of those affairs, and when those designated persons (or, in the case of juridical persons, their officers), their employees, or others, as concerns their involvement in those affairs, are regarded as being engaged in official duties, then the provisions of Chapters 2 and 3 shall not apply to Dispositions (excluding however, Dispositions revoking the applicable designation, Dispositions ordering the dismissal of officers of juridical persons, or otherwise with regards to the designated persons, Dispositions ordering the dismissal of the individuals engaged in the concerned affairs) rendered to those designated persons for the purpose of supervising the assigned matters in accordance with applicable law .

## **CHAPTER 2**

### **Dispositions Relating to Applications**

#### Article 5 Review Standards

(1) Administrative agencies shall enact standards (hereinafter referred to as "review standards"), [such standards] being necessary for judging, in accordance with the provisions of relevant Statutes, whether an Application requesting permission, etc. will be granted.

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<sup>7</sup> This clause describes *tokushu houjin* [special corporations]. A "special act of establishment" describes where the government selects "establishment commissioners" who are specifically charged under a particular law with the responsibility to establish a special corporation.



(2) Administrative agencies, in enacting review standards, shall make them as concrete as possible in light of the nature of the particular permission, etc. in question.

(3) Except in cases of extraordinary administrative inconvenience, administrative agencies shall make review standards available to the public by means of posting them at the administrative office which is, in accordance with applicable Statutes, in charge of receiving the subject Applications or by some other appropriate method.

#### Article 6

##### Typical Process Time-Frame

Administrative agencies shall endeavor to establish standards for the amount of time to be typically needed between an Application's arrival at their administrative offices and the rendering of a Disposition regarding that Application (provided that where Statutes designate for receipt of Applications an organ which is not the competent administrative agency [to decide upon such Applications], then also [the competent agency shall endeavor to establish] standards for the amount of time to be typically needed between the Application's arrival at the administrative office of the organ designated to receive the Application and its subsequent arrival at the administrative offices of the competent agency); and upon establishing such standard time periods, shall make them available to the public by means of posting them at the administrative office which is designated to receive the subject Applications or by some other appropriate method.<sup>8</sup>

#### Article 7

##### Review and Response to Applications

Upon the arrival of an Application at the administrative offices of an administrative agency, the agency shall commence its review of the Application without delay, and unless an Application conforms to requirements that the contents of the application form be in order, that the application form be appended with necessary documents, that the Application be filed within a specified time period, or to other *pro forma* requirements provided by Statutes, the agency shall promptly either

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<sup>8</sup> Organs referenced in this Article might not necessarily be the same as Administrative Organs defined in Article 2, clause 5. For example, private banks may be designated as receiving agents for Applications, in which case they would be included in the reference in this Article but would not come within the confines of Article 2, clause 5.

request the persons who filed the Application (hereinafter referred to as "applicants") to correct the Application and specify a suitable time limit [for such correction to be made] or deny the permission, etc. sought by the Application.

#### Article 8 Declaration of Reasons

(1) Administrative agencies shall, in cases where they render Dispositions denying the permission, etc. sought by Applications, concurrently set forth reasons for the subject Disposition. However, where either the requirements provided by Statutes for the permission, etc. or the review standards that have been made available to the public are clearly specified in terms of quantitative indices or other objective indices, and where the fact that an Application does not conform to these requirements or standards can easily be seen from the contents of the application form or from its appended documents, [providing the reasons for a denial] only upon request of the applicants is sufficient.

(2) When Dispositions rendered in accordance with the preceding paragraph are rendered in writing, then the reasons [for such Dispositions] as provided for in the preceding paragraph shall also be set forth in writing.

#### Article 9 Furnishing Information

(1) Upon the request of applicants, administrative agencies shall endeavor to indicate the progress of the review of an Application and the prognosis when a Disposition relating to that Application may be expected.

(2) Upon the request of applicants or of persons planning to file Applications, administrative agencies shall endeavor to provide information concerning the contents of application forms, documents to be appended to them, and other information necessary with regards to [filing] Applications.

Article 10  
Public Hearings, etc.

Administrative agencies, when rendering Dispositions upon Applications, and where applicable Statutes provide that the interests of persons other than the applicants be considered in granting the relevant permission, etc., shall, where circumstances make it necessary, endeavor to provide opportunities for the opinions of such persons other than the applicants to be heard, by holding public hearings or by other appropriate methods.

Article 11  
Dispositions Involving More Than One Administrative Agency

(1) The fact that related Applications filed by applicants may be simultaneously under review by other administrative agencies shall not excuse the administrative agencies handling the pertinent Applications acting to intentionally postpone their appointed review or determination whether to grant a permission, etc. or similar conduct.

(2) Where more than one administrative agency is concerned with either a Disposition relating to a single Application or to several related Applications from a single applicant, the various agencies concerned shall strive to expedite their review by maintaining contact with one another and by jointly hearing explanations from the applicant, etc., where circumstances make it necessary.<sup>9</sup>

**CHAPTER 3**  
**Adverse Dispositions**

**Section 1: General Rules**

Article 12  
Disposition Standards

(1) Administrative agencies shall endeavor to enact standards (hereinafter referred to as "disposition standards"), [such standards] being necessary for judging, in accordance with the provisions of relevant Statutes, whether Adverse Dispositions shall be rendered, and [as the case

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<sup>9</sup> Reflecting a distinction in the original Japanese, the verb form "shall strive" suggests a marginally weaker directive than the use of "shall endeavor" elsewhere. Compare Chapter 2, Articles 9 (1) - (2) with Article 10.

may be], what kind of Adverse Dispositions shall be rendered, and [the agencies] shall endeavor to make such standards available to the public.

(2) Administrative agencies, in enacting disposition standards, shall make them as concrete as possible in light of the nature of the particular Adverse Disposition in question.

### Article 13

#### Procedures Prerequisite for Adverse Dispositions

(1) Administrative agencies shall, with regard to rendering Adverse Dispositions and pursuant to terms of the following clauses, establish procedures for hearing statements of opinion of persons who will become the subject parties of such Adverse Dispositions, in accordance with the categories specified in the following clauses and [generally] in the manner set forth in this Chapter.

- 1) *Formal Hearings.* When any of the following apply:
  - a. When rendering Adverse Dispositions that will revoke some permission, etc.;
  - b. In addition to the circumstances specifically described in sub-clause (a) above, when rendering [any other] Adverse Dispositions which will directly deprive the subject parties of some conferred qualification or status;
  - c. With regards to Adverse Dispositions rendered to juridical persons, when rendering Adverse Dispositions that order the dismissal of the officers of such juridical persons, that order the dismissal of the persons engaged in the affairs of subject parties, or that order the expulsion of persons who are members of the subject parties; or
  - d. Other than as described in sub-clauses a. – c. above, when cases occur which administrative agencies recognize as appropriate.
- 2) *Grant of opportunity for explanation and rebuttal.* When none of the circumstances described in sub-clauses a. – d. of the preceding clause apply.

(2) The provisions of the preceding paragraph [Article 13, paragraph 1] shall not apply where any of the following specified provisions are applicable:

- 1) When, for the public interest, it is necessary to render an Adverse Disposition urgently, and procedures for statements of opinion as provided for in the preceding paragraph cannot therefore be [timely] implemented;
- 2) When rendering Adverse Dispositions which must be rendered when it is ascertained that qualifications required by Statutes are lacking or have been lost, and when the non-existence of the qualifications or the fact of their loss has been expressly established by a written judicial judgment or decree, or by the written documentation of a person with appointment authority [pertaining to the issuance of the qualifications in question] which documentation also corroborates that person's position, or by some other objective documentation;
- 3) Where Statutes clearly provide that matters relating to the establishment, maintenance, or management of facilities or equipment, or to the production or sale of goods, or to other conduct should be done in accordance with technical standards, then when Adverse Dispositions which are solely based upon the fact of non-conformance with applicable standards are rendered to order compliance with such standards, and provided further that the fact of non-conformance has been confirmed by measurement, experimentation, or some other objective method for the determination;
- 4) When rendering Adverse Dispositions which determine an amount of money to be paid, which order the payment of a pre-determined amount of money, or which nullify a decision to pay money or otherwise restrict the payment of money; or,
- 5) When rendering Adverse Dispositions, which are specified by Cabinet Order as being not subject to the requirement to hear the opinion of those who will become subject parties owing to the fact that, in light of the nature of such Dispositions, the contents of the duties imposed are markedly slight.

Article 14  
Declaration of Reasons for Adverse Dispositions

(1) At the time of rendering Adverse Dispositions, administrative agencies shall indicate to the subject parties the reasons therefor; provided however, the preceding shall not apply when there are compelling needs for rendering [Adverse] Dispositions without setting forth the reasons concerned.

(2) In cases where the limiting proviso of the preceding paragraph applies, but excepting cases where the whereabouts of the subject parties have become unknown and other cases where circumstances make it difficult to set forth the reasons after the rendering of the Disposition, administrative agencies shall set forth the reasons for the Disposition concerned within an appropriate period after its rendering,

(3) When Adverse Dispositions are rendered in writing, the reasons as prescribed in the preceding two paragraphs shall also be set forth in writing.

**Section 2: Formal Hearings**

Article 15  
Manner of Notice of Formal Hearings

(1) In conducting formal hearings, administrative agencies shall provide to the anticipated subject parties of Adverse Dispositions written notice of the following specified items, [which notice shall be provided] with an appropriate allowance of time before the assigned date of the formal hearing:

- 1) The contents of the anticipated Adverse Disposition and the specific provisions of Statutes on which it will be based;
- 2) The facts upon which the [anticipated] Adverse Disposition will be based;
- 3) The assigned date and place of the formal hearing; and,
- 4) The name and location of the [governmental] organization responsible for matters relating to the formal hearing.

(2) The following points shall be included in the written notice stipulated in the preceding paragraph:

- 1) That the addressee may appear and be heard on the assigned date of the formal hearing, may present documentary evidence or exhibits (collectively referred to hereinafter as "documentary evidence, etc.") at that time, or may, in lieu of appearing on the assigned date of the formal hearing, offer [*in absentia*] written arguments and documentary evidence, etc.; and,
- 2) That the addressee, until the formal hearing is concluded, may demand inspection of records and other materials which substantiate the facts upon which the anticipated Adverse Disposition will be based.

(3) Administrative agencies may, in cases where the whereabouts of an anticipated subject party of an Adverse Disposition is unknown, accomplish the notice stipulated in paragraph 1 [of this Article] by posting on the notice board of their offices: the name of the addressee, the matters described in said paragraph 1, clauses 3 and 4, and a statement that the applicable agency will deliver to the addressee in question at any time a document addressing each of the matters listed in the several clauses of said paragraph 1. Accordingly, notice shall be deemed to have reached the addressee two weeks after its posting.

## Article 16

### Agents

(1) Persons who have received the notice stipulated in paragraph 1 of the preceding Article (including persons to whom notice is deemed to have reached pursuant to the latter provision of paragraph 3 of the same Article), (all such persons collectively hereinafter being referred to as "parties") may designate agents.

(2) Agents can perform all actions relating to formal hearings individually on behalf of parties.

(3) The authority of agents shall be substantiated in writing.

(4) When an agent becomes divested of his or her authority, the parties who designated that agent shall give written notice thereof to the administrative agencies [concerned].

Article 17  
Intervenors

(1) Persons who preside over formal hearings as provided in Article 19 *infra* (hereinafter referred to as "presiding officials"), may in accordance with need, request persons who are not parties, but who are recognized, in accordance with the Statutes on which an [anticipated] Adverse Disposition is to be based, as having an interest in the [anticipated] Adverse Disposition (also being referred to in Article 19, paragraph 2, clause 6 as "interested parties") to intervene in the formal hearing process or may permit [such interested parties'] intervention in the formal hearing process.

(2) Persons who intervene in the formal hearing process as provided for in the preceding paragraph (hereinafter referred to as "intervenors") may designate an agent.

(3) The provisions of Article 16, clauses 2 through 4 shall apply to the agents provided for in the preceding paragraph. Accordingly, the term "intervenors" should be substituted where "parties" are referenced in clauses 2 and 4.

Article 18  
Inspection of Records, etc.

(1) Parties and intervenors whose interests would be harmed by a particular Adverse Disposition (collectively referred to in this Article and in Article 24, paragraph 3 as "parties, etc.") may, between the time when notice of a formal hearing is given and the time when the formal hearing is concluded, request from the administrative agency concerned the inspection of records indicating the results of investigations on the matter in question and other materials which substantiate the facts upon which the anticipated Adverse Disposition will be based. Accordingly, administrative agencies may not reject inspection [requests] unless there is a risk that the interests of third parties would be harmed or unless there is some other justifiable reason for not allowing the inspection.

(2) The provisions of the preceding paragraph shall not preclude the parties, etc. from making additional requests for the inspection of materials, the need for which arises during the course of hearing sessions on the assigned date of formal hearings.

(3) Administrative agencies may designate the time and place for inspections arising pursuant to the preceding two paragraphs.



## Article 19

### Presidency of the Formal Hearing

(1) Formal hearings shall be presided over by an official designated by the administrative agencies or such other persons as may be provided for by Cabinet Order.

(2) The following specified persons may not preside over a formal hearing:

- 1) Parties to or intervenors in the formal hearing concerned;
- 2) Spouses, relatives within the fourth degree of kinship, or [other] relatives living with the persons described in the preceding clause;
- 3) Agents of the persons described in clause 1 [of this paragraph] or the assistants described in clause 3 of the next Article;
- 4) Persons who could formerly be described by any of the preceding three clauses;
- 5) Guardians, supervisors of guardians, or assistants of the persons described in clause 1 [of this paragraph]; and,
- 6) Interested parties other than intervenors.

## Article 20

### Manner of Conducting the Formal Hearing

(1) The presiding official shall, at the outset of the first assigned date of the formal hearing, direct officials of the administrative agency concerned to explain to the persons who have appeared there: the contents of the anticipated Adverse Disposition, and the specific provisions of Statutes and the underlying facts upon which [the Adverse Disposition] will be based.

(2) Parties and intervenors may, by appearing on the assigned date of the formal hearing, express their views, present documentary evidence, etc., and, with the approval of the presiding official, address questions to the officials of the administrative agency concerned.

(3) In accordance with the terms of the preceding paragraph, parties and intervenors may, with the approval of the presiding official, appear together with assistants.

(4) The presiding official may, in accordance with need, address questions to parties and intervenors, call upon them to state their views or present documentary evidence, etc., or require officials of the administrative agency concerned to provide explanations.

(5) Notwithstanding the fact that some parties or intervenors may be absent, the presiding official may conduct the hearing session on the assigned date of the formal hearing.

(6) Excepting occasions which administrative agencies perceive suitable to be open, hearing sessions on the assigned date of formal hearings shall be closed to the public.

#### Article 21

##### Submission of Written Arguments, etc.

(1) Parties and intervenors may, in lieu of appearing on the assigned date of a formal hearing, submit written arguments and documentary evidence, etc. to the presiding official on or before the assigned date of the formal hearing.

(2) If so requested by persons appearing on the assigned date of the formal hearing, the presiding official may exhibit [to persons in appearance there] the written arguments and documentary evidence, etc. [submitted by parties and intervenors *in absentia*] provided for in the preceding paragraph.

#### Article 22

##### Designation of Continuance Date

(1) When the results of the hearing session on the assigned date of a formal hearing suggest that continuation of the formal hearing is necessary, the presiding official may assign a date for continuance.

(2) In accord with the preceding paragraph, the parties and intervenors shall be given advance notice in writing of the assigned date and the location of the next formal hearing. However, an announcement of the above matters which is made on the assigned date of the formal hearing suffices for parties and intervenors who appeared there.

(3) The provisions of Article 15, paragraph 3 shall apply to the means of giving notice in accordance with the main text of the preceding paragraph when the whereabouts of parties or intervenors are unknown. Accordingly, the phrases "parties or intervenors" and "two weeks after its posting (but [in the case of] second notifications being made to the same parties or intervenors, [then] the day following posting)" should be substituted respectively for the references in the original paragraph regarding "an anticipated subject party of an Adverse Disposition" and "two weeks after its posting."

#### Article 23

##### Conclusion of the Formal Hearing with Absent Parties, etc.

(1) The presiding official may, where some or all of the parties fail to appear on the assigned date of a formal hearing without justifiable reasons therefore and [such parties] do not present written arguments or documentary evidence, etc. as provided for in Article 21, paragraph 1, or, where some or all of the intervenors fail to appear on the assigned date of the formal hearing, conclude the formal hearing without granting such persons any further opportunity to express their views and present documentary evidence, etc.

(2) Aside from the mechanism described in the preceding paragraph, in cases where some or all of the parties fail to appear on the assigned date of the formal hearing and do not present written arguments or documentary evidence as provided for in Article 21, paragraph 1, and when such persons are not expected to appear on an assigned date for formal hearings for a substantial period of time, the presiding official may solicit submission of written arguments and documentary evidence, etc. from them by announcing a limited filing period the end of which will become the closing of the formal hearing.<sup>10</sup>

#### Article 24

##### Record and Report of the Formal Hearing

(1) The presiding official shall draw up a record of the proceedings of the formal hearing, and the record shall clearly indicate the essential elements of the arguments raised by parties and intervenors with

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<sup>10</sup> Note that, for parties, paragraph 1 applies only where the failure to appear is "without justifiable reason"; on the other hand, paragraph 2 may be applied even in cases of justifiable absence.

regard to the facts upon which the [anticipated] Adverse Disposition will be based.

(2) The record provided for in the preceding paragraph shall be prepared on each assigned date of the formal hearing when hearing sessions are conducted, and, where hearing sessions are not conducted, then promptly after the formal hearing is concluded.

(3) The presiding official shall, promptly after the formal hearing is concluded, draw up a report containing his or her opinion as to whether the claims of the parties, etc. concerning the facts upon which the [anticipated] Adverse Disposition will be based are justified, which [report] shall be submitted to the administrative agency concerned together with the record provided for in paragraph 1 [of this Article].

(4) Parties and intervenors may demand inspection of the records provided for in paragraph 1 [of this Article] and the report provided for in the preceding paragraph.

#### Article 25

##### Reopening of the Formal Hearing

Administrative agencies may, in light of the circumstances arising after the conclusion of the formal hearing and in accordance with need, direct the presiding official to reopen a formal hearing by returning [to the presiding official] the report submitted in accordance with the provision of paragraph 3 of the preceding Article. Accordingly, the provisions of the main text of Article 22, paragraph 2 and of paragraph 3 of the same Article shall apply.<sup>11</sup>

#### Article 26

##### Decisions to Issue Adverse Dispositions Following Formal Hearings

In deciding to issue an Adverse Disposition, administrative agencies shall do so only after careful consideration of the contents of the record provided for in Article 24, paragraph 1 and of the opinion of the presiding official entered in the report drafted pursuant to paragraph 3 of the same Article.

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<sup>11</sup> The "main text" refers to the text without the accompanying provisional clauses. In this instance, the reference is to the first sentence of Article 22, paragraph 2.

### Article 27

#### Limitations Upon Administrative Appeals

(1) Administrative appeals challenging Dispositions rendered by administrative agencies or presiding officials in accordance with the provisions of this Section may not be raised pursuant to the Administrative Complaint Investigation Law, Law No. 160 of 1962.

(2) Requests for reconsideration by parties or intervenors challenging Adverse Dispositions that have been rendered subsequent to a formal hearing may not be raised pursuant to the Administrative Complaint Investigation Law; provided however, that the proceeding clause shall not apply to persons who became parties as a consequence of the applicable notice being deemed to have reached them in accordance with the terms of the latter clause of Article 15, paragraph 3 and who did not appear on any assigned date for the formal hearing described in paragraph 1, clause 3 of the same Article (including when that provision applies pursuant to the provisions of Article 22, paragraph 3) as referenced in Article 15, paragraph 3.

### Article 28

#### Special Provisions Concerning Formal Hearings Prerequisite for Adverse Dispositions Ordering the Dismissal of Officers, etc.

(1) For the purpose of applying the provisions of this Section, where formal hearings relating to an Adverse Disposition will arise under Article 13, paragraph 1, sub-clause 1 c., then as concerns the notice described in Article 15, paragraph 1 pertaining to such hearings, [when notice is given to the juridical person], the officers of the juridical person which is the subject party, the persons engaged in the subject party's affairs, and the subject party's members shall be deemed to have received said notice; ([this provision] being expressly limited to [applying to] those persons being ordered in the pertinent Disposition to be dismissed or expelled).

(2) In cases where formal hearings have been conducted pertaining to Adverse Dispositions described in the preceding paragraph that order juridical persons, as the subject party thereof, to dismiss their officers or persons engaged in their affairs (collectively referred to in this paragraph as the "officers, etc."), then, notwithstanding the provisions of Article 13, paragraph 1, administrative agencies need not conduct [subsequent] formal hearings for the officers, etc., with regard to Adverse Dispositions which, in accordance with the provisions of Statutes, dismiss

the officers, etc. because the [original] subject party did not follow the [initial] Disposition in question.<sup>12</sup>

### **Section 3: Grant of Opportunity for Explanation and Rebuttal**

#### Article 29

##### Manner of Granting an Opportunity for Explanation and Rebuttal

(1) Unless administrative agencies authorize presentation to be made orally, explanation and rebuttal shall be made by submitting a written statement of explanation and rebuttal (hereinafter referred to as an "explanation and rebuttal statement").

(2) When offering explanation and rebuttal, documentary evidence, etc. may be submitted.

#### Article 30

##### Manner of Notice of Grant of Opportunity for Explanation and Rebuttal

(1) Administrative agencies shall provide written notice of the following specified items to the anticipated subject parties of Adverse Dispositions, [which notice shall be provided] with an appropriate allowance of time before the submission deadline (or in the case of oral presentation, [before] the date and time of that presentation) :

- 1) The contents of the anticipated Adverse Disposition and the specific provisions of Statutes on which it will be based;
- 2) The facts upon which the [anticipated] Adverse Disposition will be based;

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<sup>12</sup> Under some statutes, where a juridical person fails to comply with an order to dismiss its officers or persons carrying out its affairs, an administrative agency may itself act to directly dismiss the involved persons. Accordingly, pursuant to Article 28, paragraph 2, if a formal hearing was initially conducted on behalf of the juridical person as the subject party pertaining to an order to dismiss, then if the juridical person fails to comply with that order and an order directly dismissing the involved persons becomes necessary, the administrative agency is not obligated to provide a second formal hearing for the involved persons being directly dismissed. Although technically the subject parties of the two orders differ (that is, the juridical person in the first instance, and the involved parties ("officers, etc.") in the second), having conducted the original hearing suffices for purposes of both the initial and follow-up orders.

- 3) The deadline and place for submitting an explanation and rebuttal statement (or in the case of oral presentation, the time, date, and place of that presentation).

#### Article 31

##### Applicability of Procedures pertaining to Formal Hearings

The provisions of Article 15, paragraph 3 and Article 16 shall apply to the grant of opportunities for explanation and rebuttal [provided for in this Section]. Accordingly, the terms "Article 30" and "Article 30, clause 3" should be substituted where "paragraph 1" and "paragraph 1, clause 3 and clause 4" are respectively referenced in Article 15, paragraph 3, and, "Article 30" and "latter provision of paragraph 3 of Article 15 as applied in Article 31" [should be substituted] where "paragraph 1 of the preceding Article" and "latter provision of paragraph 3 of the same Article" are respectively referenced [in Article 16].

### CHAPTER 4

#### Administrative Guidance

#### Article 32

##### General Principles pertaining to Administrative Guidance

(1) In rendering Administrative Guidance, persons imposing Administrative Guidance shall take care that their actions not exceed, in the slightest degree, the scope of the duties or designated functions of the Administrative Organ concerned and that the substance of the Administrative Guidance is, to the utmost degree, realized based solely upon the voluntary cooperation of the subject party.<sup>13</sup>

(2) Persons imposing Administrative Guidance shall not treat the subjects of Administrative Guidance disadvantageously owing to the subjects' non-compliance with the Administrative Guidance [in question].

#### Article 33

##### Administrative Guidance Related to Applications

With regard to Administrative Guidance seeking either modification of the contents or withdrawal of an Application, persons imposing Administrative Guidance shall not act in disregard of an

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<sup>13</sup> See *supra* note 3 regarding "designated functions."

applicant's manifestation that he or she has no intent to comply with the Administrative Guidance in question to obstruct the applicant's exercise of rights by conduct such as continuing the Administrative Guidance in question.

#### Article 34

##### Administrative Guidance related to Authority over Permissions, etc.

With regard to Administrative Guidance rendered by an Administrative Organ with the authority to grant some permission, etc. or to render Dispositions pertaining to some permission, etc., where [the Administrative Organ is] either unable to or has no intent to exercise its authority, a person imposing Administrative Guidance shall not engage in conduct in the nature of compelling a subject party to comply with the Administrative Guidance in question by deliberately [*i.e.*, misleadingly] suggesting that he or she is capable of exercising the said authority.

#### Article 35

##### Administrative Guidance Manners

(1) Persons imposing Administrative Guidance shall make clear to the subject party the purpose and content of, and the parties responsible for, the Administrative Guidance in question.

(2) Where Administrative Guidance is rendered by word of mouth, the person imposing the Administrative Guidance in question shall, if so requested by the subject party, provide the matters stipulated in the preceding paragraph in writing, so long as no extraordinary administrative inconvenience arises thereby.

(3) The provisions of the preceding paragraph shall not apply to the following [instances of] Administrative Guidance:

- 1) [Administrative Guidance] that seeks the subject party to carry out actions on the spot; and,
- 2) [Administrative Guidance] that seeks, in content, matters that the subject party has already been notified of in writing (including [where notice is given by] written materials described in the preceding paragraph [Article 35, paragraph 2]).



Article 36  
Administrative Guidance Directed to Several Persons

When an Administrative Organ wishes to render Administrative Guidance to more than one person by applying standardized conditions in order to achieve a common administrative objective, then, in advance and in accordance with the circumstances of the particular case, the Organ shall, establish the contents and matters to be uniformly applied in the Administrative Guidance, and so long as no extraordinary administrative inconvenience arises thereby, make such matters known to the public.<sup>14</sup>

**CHAPTER 5**  
**Notifications**

Article 37  
Notifications

Where Notifications conform to requirements that the contents of notification form be in order and the notification form be appended with necessary documents, and to other *pro forma* requirements provided by Statutes, procedural requirements for filing the Notification in question shall be fulfilled upon its arrival at the administrative office of the organ designated by Statutes to receive the Notification in question.

**CHAPTER 6**  
**Supplemental Provisions**

Article 38  
Measures by Local Public Entities

Local public entities shall, with regard to procedures for Dispositions, Administrative Guidance, and Notifications to which the provisions of Chapters 2 through 5 are made inapplicable by Article 3, paragraph 2, endeavor to adopt necessary measures in order to advance the

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<sup>14</sup> This Article pertains to "outline guidance," where administrative agencies establish general guidelines pursuant to which guidance is issued, and may often include cases where the ultimate number of subject parties are extremely numerous.

The directive to make information "known to the public" differs from references to make information "available to the public," *see supra*. Making matters "known to the public" suggests an affirmative obligation to cause the information to be generally known, as compared to a lesser obligation of open public examination intended by the latter reference. *Compare* references at Articles 5, 6, and 12, *supra*.

guarantee of fairness and progress towards transparency in administrative process, consistent with the intent of the provisions of this law.

## **APPENDIX**

### **Additional Rules**

#### Effective Date

(1) This law shall become effective on a date to be provided for by Cabinet Order, but not more than one year from the date of promulgation.

#### Interim Measures

(2) Where, before this law comes into effect, actions functionally equivalent to the notice described in the Article 15, paragraph 1 and Article 30 are taken, then, notwithstanding the provisions of Chapter 3 [*supra*], procedures for the Adverse Dispositions which pertain to such actions equivalent to the applicable notice may be carried out in accordance with prior practice.<sup>15</sup>

(3) When, before this law comes into effect, Notifications or other acts as may be provided for by Cabinet Order (hereinafter referred to as "Notifications, etc.") relating to Adverse Dispositions which [Adverse Dispositions] may be rendered only during a fixed period after the Notifications, etc. are made, then, notwithstanding the provisions of Chapter 3 [*supra*], procedures for the Adverse Dispositions [which pertain to such Notifications, etc.] may be carried out in accordance with prior practice.<sup>16</sup>

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<sup>15</sup> Rule 2 pertains to notices given by administrative agencies up until the law's effective date. If administrative agencies give notice (that is, something comparable to the notice described in Article 15, paragraph 1 or Article 30) of an impending Adverse Disposition before the law's effective date, then, even as to Dispositions rendered after the effective date, the formal hearing requirements of Chapter 3 may be avoided.

<sup>16</sup> Rule 3 pertains to Notifications (or other similar matters that may be added by Cabinet Order) filed by the public up until the law's effective date. Where filing of the Notification precedes the law's effective date, and if the matter is one that has a fixed period for administrative action (such as a 30-day waiting period), then Adverse Dispositions pertaining to that Notification, even if rendered after the law's effective date, are also not subject to the formal hearing requirements of Chapter 3.

(4) In addition to the matters provided for in the preceding two paragraphs, interim measures concerning this law's coming into effect may be provided for by Cabinet Order.<sup>17</sup>

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<sup>17</sup> While an effort has been made generally to consistently use a single English word for a given Japanese word, it should be noted that this has not been done with the verb *motomeru*. In accordance with the context of its usage, and reflecting especially who is the subject of the verb in each usage, *motomeru* has been variously translated as "request," "demand," "solicit," "seek," or "require." Similarly, the translation of *mitomeru* varies with the context as "perceive," "recognize," or "authorize," and *teishutsu* has been variously translated as "present" or "submit."