

ENFORCEMENT DECREE OF THE UNFAIR COMPETITION PREVENTION AND TRADE SECRET PROTECTION ACT

Wholly Amended by Presidential Decree No. 16065, Dec. 31, 1998
Amended by Presidential Decree No. 17255, Jun. 27, 2001
Presidential Decree No. 21691, Aug. 18, 2009
Presidential Decree No. 22151, May 4, 2010
Presidential Decree No. 23153, Sep. 22, 2011
Presidential Decree No. 25050, Dec. 30, 2013
Presidential Decree No. 25121, Jan. 28, 2014
Presidential Decree No. 25840, Dec. 9, 2014
Presidential Decree No. 26774, Dec. 30, 2015
Presidential Decree No. 27751, Dec. 30, 2016
Presidential Decree No. 29176, Sep. 18, 2018
Presidential Decree No. 29421, Dec. 24, 2018
Presidential Decree No. 30509, Mar. 3, 2020
Presidential Decree No. 31632, Apr. 20, 2021
Presidential Decree No. 33913, Dec. 12, 2023

Article 1 (Purpose)

The purpose of this Decree is to prescribe the matters delegated by the Unfair Competition Prevention and Trade Secret Protection Act and matters necessary for the enforcement thereof.

Article 1-2 (Good Cause)

"Without good cause prescribed by Presidential Decree, such as the purpose of noncommercial use" in subparagraph 1 (c) (iii) of Article 2 of the Unfair Competition Prevention and Trade Secret Protection Act (hereinafter referred to as the "Act") means any of the following cases: <Amended on Sep. 27, 2023>

1. Where a mark is used for non-commercial purposes;
2. Where a mark is used in a news report or commentary;
3. Deleted; <Jun. 27, 2023>

4. Where it is deemed that the use of another person's name, trade name, trademark, container or packaging of goods, or other mark indicating the goods or business of another person does not violate fair commercial practices.

Article 1-3 (Scope of and Procedures for Fact-Finding Surveys)

(1) "A compelling reason not to do so as prescribed by Presidential Decree, such as the maintenance of corporate business or trade secrets" in the latter part of Article 2-4 (2) of the Act means any of the following cases:

1. Where it is deemed that legitimate interests of a corporation are likely to be seriously undermined if its business or trade secrets become known due to the submission of data;
2. Where the duty of confidentiality arises from statutes or regulations or from a contract.

(2) The specific scope of data to be prepared for purposes of fact-finding surveys under Article 2-4 (1) of the Act (hereafter in this Article referred to as "fact-finding survey") shall be as follows:

1. Matters regarding the awareness of corporations about unfair competition practices and their business environment;
2. Matters regarding the status of holders of trade secrets and those regarding the acquisition, use, and management of such trade secrets;
3. Matters regarding disputes, such as types of unfair competition practices and infringement of trade secrets as well as remedies for damage;
4. Other matters deemed necessary by the Commissioner of the Korean Intellectual Property Office for formulating and implementing policies aimed at preventing unfair competition and protecting trade secrets.

(3) Before conducting a fact-finding survey, the Commissioner of the Korean Intellectual Property Office shall determine the standards for selecting survey candidates, prepare a fact-finding survey plan which contains the purpose, details, period, etc. of the survey, and give a prior notice thereof to such candidates.

(4) A fact-finding survey shall be conducted by means of either on-site survey or paper-based survey; and may be conducted using the information and communications network such as electronic mail where necessary.

(5) The Commissioner of the Korean Intellectual Property Office may entrust research institutes or organizations, or experts related to the prevention of unfair competition and protection of trade secrets with specialized review or survey in the process of a fact-finding survey.

[Previous Article 1-3 moved to Article 1-4 <Apr. 20, 2021>]

Article 1-4 (Methods of Investigation into Acts of Unfair Competition)

(1) Before entering business or manufacturing facilities to investigate relevant data, products, etc. or collecting and inspecting the least amount of products necessary for investigation under Article 7 (1) of the Act, the Commissioner of the Korean Intellectual Property Office; the Special Metropolitan City

Mayor, a Metropolitan City Mayor, a Special Self-Governing City Mayor, a Do Governor, or a Special Self-Governing Province Governor (hereinafter referred to as the "Mayor/Do Governor"); or the head of a Si/Gun/Gu (the head of a Gu means the head of an autonomous Gu; hereinafter the same shall apply) may ascertain whether an act of unfair competition provided in subparagraph 1 of Article 2 of the Act (excluding (h) and (m)) or an act in violation of Article 3 or 3-2 (1) or (2) (hereinafter referred to as "act of unfair competition, etc.") has occurred using the following methods: <Amended on Sep. 27, 2023>

1. Requesting the submission of relevant data, products, etc. regarding parties, interested parties, or reference witnesses;

2. Requesting the attendance of parties, interested parties, or reference witnesses and hearing their advice and statement.

(2) Where the Commissioner of the Korean Intellectual Property Office, the Mayor/Do Governor, or the head of a Si/Gun/Gu intends to conduct investigations or inspections under Article 7 (1) of the Act, he or she shall notify the parties of the purpose, date and time, and methods for investigation or inspection beforehand: Provided, That this shall not apply where urgent action is required or where it is deemed that such advance notification could lead to destruction of evidence, etc., thereby making the purpose of said investigation or inspection unattainable.

(3) Where an act subject to investigation or inspection under Article 7 (1) of the Act falls under any of the following cases, the Commissioner of the Korean Intellectual Property Office, the Mayor/Do Governor, or the head of a Si/Gun/Gu shall not launch any investigation or inspection; and where any investigation or inspection is already underway, he or she shall suspend it:

1. Where the act clearly does not constitute an act of unfair competition, etc.;

2. Where it is difficult to pinpoint the subject matter of investigation or inspection due to lack of basic data or where it is impracticable to identify the grounds for said investigation or inspection;

3. Where a final and conclusive judgment is issued affirming that the act does not constitute an act of unfair competition, etc.

(4) Where the mediation of a dispute referred to in Article 43 of the Invention Promotion Act is underway for the same case as the case subject to investigation, a person subject to investigation under Article 7 (1) of the Act may request the Commissioner of the Korean Intellectual Property Office, a Mayor/Do Governor, or the head of a Si/Gun/Gu to suspend such investigation. <Newly Inserted on Apr. 20, 2021>

(5) In accordance with Article 7 (3) of the Act, the Commissioner of the Korean Intellectual Property Office, a Mayor/Do Governor, or the head of a Si/Gun/Gu shall hear from both of the parties before suspending investigation referred to in Article 7 (1) of the Act. <Newly Inserted on Apr. 20, 2021>

(6) Except as provided in paragraphs (1) through (5), details regarding the methods and procedures for investigation into an act of unfair competition, etc. and for suspension thereof shall be determined and publicly notified by the Commissioner of the Korean Intellectual Property Office. <Newly Inserted on Apr. 20, 2021>

[Moved from Article 1-3; previous Article 1-4 moved to Article 1-5 <Apr. 20, 2021>]

Article 1-5 (Disposal of Collected Goods)

(1) Where the Commissioner of the Korean Intellectual Property Office, a Mayor/Do Governor, or the head of a Si/Gun/Gu collects the least amount of products necessary for investigation under Article 7 (1) of the Act, he or she shall issue a certificate of collection in attached Form 1 to the owner or possessor of such products.

(2) The Commissioner of the Korean Intellectual Property Office, a Mayor/Do Governor, or the head of a Si/Gun/Gu shall keep a record of and preserve information on the current status of, and the list of, the products collected under Article 7 (1) of the Act or submitted under Article 1-4 (1) 1. <Amended on Apr. 20, 2021>

(3) Where an inspection under Article 7 (1) of the Act or ascertainment under Article 1-4 (1) 1 is completed, the Commissioner of the Korean Intellectual Property Office, a Mayor/Do Governor, or the head of a Si/Gun/Gu shall immediately return the products collected under Article 7 (1) of the Act or submitted under Article 1-3 (1) 1 to the owner or possessor of such products as at the time of collection or submission. <Amended on Apr. 20, 2021>

(4) The certificate referred to in Article 7 (5) of the Act shall be as specified in attached Form 2. <Amended on Apr. 20, 2021>

[Moved from Article 1-4 <Apr. 20, 2021>]

Article 2 (Methods for Corrective Recommendation)

(1) A corrective recommendation prescribed in Article 8 (1) of the Act shall be made in the form of a document that specifies the following: <Amended on Sep. 18, 2018; Apr. 20, 2021>

1. Grounds for corrective recommendation;
2. Details of corrective recommendation;
3. Deadline for correction;

(2) The Commissioner of the Korean Intellectual Property Office, the Mayor/Do Governor, or the head of a Si/Gun/Gu may require a related public official to confirm the actual site, where deemed necessary to issue a corrective recommendation as prescribed in paragraph (1) or to verify whether such corrective recommendation is implemented. <Amended on Sep. 22, 2011>

(3) A public official who confirms the actual site under paragraph (2) shall carry a certificate indicating his or her authority and produce it to interested parties.

Article 2-2 (Methods and Procedures for Publication)

(1) In accordance with Article 8 (2) of the Act, the Commissioner of the Korean Intellectual Property Office, a Mayor/Do Governor, or the head of a Si/Gun/Gu may publish the following matters in the Official Gazette, website, or general daily newspapers distributed nationwide under the Act on the

Promotion of Newspapers:

1. Name and address of an offender;
2. Details of the offense committed;
3. Deadline for correction;
4. Grounds for, and details of, the corrective recommendation.

(2) Where the Commissioner of the Korean Intellectual Property Office, a Mayor/Do Governor, or the head of a Si/Gun/Gu intends to publish the matters specified in the subparagraphs of paragraph (1), he or she shall take into account the details and severity of the offense, the period and frequency of such offense, the extent and consequences of the resulting damage.

(3) Except as provided in paragraphs (1) and (2), matters regarding the procedures for publication shall be determined and publicly notified by the Commissioner of the Korean Intellectual Property Office.

Article 3 (Procedures for Hearing Opinions)

(1) If the Commissioner of the Korean Intellectual Property Office, the Mayor/Do Governor, or the head of a Si/Gun/Gu intends to hear opinions pursuant to Article 9 of the Act, he or she shall provide a written notice to the relevant party, interested person or witness of the corrective recommendation and publication or his or her agent at least ten days before a scheduled hearing date, and shall offer him or her an opportunity to state opinions. *<Amended on Sep. 22, 2011; Apr. 20, 2021>*

(2) The relevant party, interested person or witness of the corrective recommendation and publication or his or her agent, who has received the notice under paragraph (1), may go to the designated place at the designated date and time, and state opinions or submit written statements. *<Amended on Apr. 20, 2021>*

(3) If the relevant party, interested person or witness of the corrective recommendation and publication or his or her agent has appeared and stated opinions pursuant to paragraph (2), the relevant public official shall prepare written gists and require those who have stated such opinions to verify, sign or seal the details thereof. *<Amended on Apr. 20, 2021>*

(4) The written notice as prescribed in paragraph (1) shall clarify that, if a person does not comply with the details of the notification without justifiable grounds, he or she shall be deemed to have renounced the opportunity to state his or her opinions.

Article 3-2 (Criteria for Designation of Original Document Certification Agency)

The requirements for professional manpower and facilities that a person who intends to be designated as an original document certification agency shall fulfill under Article 9-3 (2) of the Act shall be as follows: *<Amended on Dec. 30, 2016>*

1. Professional manpower: The agency shall have at least two persons in charge of the operation of facilities necessary for performing the duties of certifying electronic documents containing trade secrets as the original by using electronic fingerprints (hereinafter referred to as "duties of certifying original documents"), who shall meet all the following requirements:

- (a) Each of them shall have national technical qualifications equivalent to or higher than those of the information communication engineer, information processing engineer, or computer system application engineer under the National Technical Qualifications Act;
 - (b) Each of them shall have served in the field of information technology or communications under the National Technical Qualifications Act for at least two years;
2. Facilities: The agency shall be equipped with the facilities necessary for performing the duties of certifying original documents, which meet the criteria prescribed and publicly notified by the Commissioner of the Korean Intellectual Property Office with respect to the following matters:
- (a) Matters concerning the safekeeping, transmitting, and receiving of information related to the duties of certifying original documents;
 - (b) Matters concerning the securities of network and system;
 - (c) Matters concerning the prevention system against disasters, including fire and flood damage;
 - (d) Other matters necessary for the operation and management of the duties of certifying original documents, including facilities related to the system for performing the duties of certifying original documents.

Article 3-3 (Procedures for Designation of Original Document Certification Agency)

(1) A person who intends to be designated as an agency that performs the duties of certifying original documents under Article 9-3 (2) of the Act (hereinafter referred to as "original document certification agency") shall file with the Commissioner of the Korean Intellectual Property Office an application for designation of an original document certification agency in attached Form 3 (including applications in the form of electronic documents; hereinafter referred to as "application for designation"), along with the following documents (including electronic documents):

1. Business plan;
2. Documents verifying that the applicant is equipped with professional manpower and facilities under the subparagraphs of Article 3-2;
3. Articles of a corporation or articles of the organization (applicable only to cases where the applicant is a corporation or an organization).

(2) Upon receipt of an application for designation under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall verify the corporation registration certificate (applicable only to cases where the applicant is a corporation) and the business registration certificate of the applicant through the shared use of administrative information under Article 36 (1) of the Electronic Government Act: Provided, That where the applicant fails to consent to the verification of the business registration certificate, it shall be required to append a copy thereof.

(3) Upon receipt of an application for designation under paragraph (1), where the application for designation is deemed to fulfill the criteria for designation under Article 3-2, the Commissioner of the Korean Intellectual Property Office shall designate the applicant as an original document certification

agency and shall issue the written designation of an original document certification agency in attached Form 4.

(4) If necessary for the designation under paragraph (3), the Commissioner of the Korean Intellectual Property Office may require a person who has submitted an application for designation to submit data or may hear the opinions of the person or the related experts.

(5) Upon designating a person as an original document certification agency, the Commissioner of the Korean Intellectual Property Office shall post such designation on the website of the Korean Intellectual Property Office without delay.

Article 3-4 (Measures to Secure Safety and Reliability of Original Document Certification Agency)

Matters to be complied with by an original document certification agency under Article 9-3 (4) of the Act shall be as specified in attached Table 1.

Article 3-5 (Criteria for Administrative Dispositions against Original Document Certification Agency)

(1) The criteria for the administrative dispositions against an original document certification agency under Article 9-4 (3) of the Act shall be as specified in attached Table 2.

(2) Upon revoking the designation of an original document certification agency or ordering the suspension of all or part of the duties of certifying original documents under Article 9-4 (3) of the Act, the Commissioner of the Korean Intellectual Property Office shall publicly notify the following matters:

1. Name and address of the original document certification agency (referring to the name of its representative and the location of its main office, in cases where the original document certification agency is a corporation or an organization);
2. Details of the disposition.

Article 3-6 (Handover and Takeover of Original Document Certification Agency Whose Designation Is Revoked)

(1) An original document certification agency whose designation has been revoked under the main clause, with the exception of the subparagraphs, of Article 9-4 (3) of the Act shall submit the following documents (including electronic documents) to the Commissioner of the Korean Intellectual Property Office:

1. Original copy of the written designation of the original document certification agency;
2. One copy of the contract for handover and takeover of the records related to the duties of certifying original documents under the main clause of Article 9-4 (4) of the Act.

(2) Where it is impossible to hand over the records related to the duties of certifying original documents under the proviso to Article 9-4 (4) of the Act, a written report on impossibility of handing over the duties of an original document certification agency in attached Form 5, along with the following documents, shall be submitted to the Commissioner of the Korean Intellectual Property Office. In such cases, the

Commissioner of the Korean Intellectual Property Office shall keep such records until the records related to the duties of certifying original documents are handed over to another original document certification agency:

1. A copy of written reasons for impossibility of the handover;
2. Each copy of the records related to the duties of certifying original documents and the list thereof.

Article 3-7 (Imposition and Payment of Penalty Surcharges)

(1) The criteria for imposing penalty surcharges in terms of the types, gravity, etc. of violations of an original document certification agency under Article 9-5 (1) of the Act shall be as specified in attached Table 3.

(2) Where the Commissioner of the Korean Intellectual Property Office intends to impose a penalty surcharge under Article 9-5 (1) of the Act, he or she shall give a written notice to make payment thereof, specifying the type of violation and the amount of the penalty surcharge.

(3) A person who receives a notice under paragraph (2) shall pay the relevant penalty surcharge within 20 days from the receipt of the notice to the collecting agency specified by the Commissioner of the Korean Intellectual Property Office. *<Amended on Dec. 12, 2023>*

(4) A collecting agency that has received a penalty surcharge under paragraph (3) shall issue a receipt to the payer and shall notify such fact to the Commissioner of the Korean Intellectual Property Office without delay.

Article 3-8 (Standards for Payment of Monetary Rewards for Reports)

(1) Monetary rewards for reports receivable under Article 16 (1) of the Act (hereinafter referred to as "monetary reward for a report") shall not exceed 10 million won per year per person.

(2) A person who intends to receive a monetary reward for a report shall file an application therefor with the Commissioner of the Korean Intellectual Property Office.

(3) Upon receipt of an application under paragraph (2), the Commissioner of the Korean Intellectual Property Office shall verify the details thereof, make decisions on whether to pay a monetary reward for the report and the amount to be paid, and notify his or her decision to the applicant within 15 days from the date of such decision.

(4) In determining the amount of the monetary reward for a report, the Commissioner of the Korean Intellectual Property Office may take following matters into account:

1. Whether the relevant report has become a ground for the investigation by an investigation agency;
2. Profit acquired by a person who has conducted an act of unfair competition referred to in subparagraph 1 (a) of Article 2 of the Act and the gravity of damage suffered therefrom;
3. Results of the tasks performed by an investigation agency concerning the violation related to the relevant report.

(5) Matters necessary for the payment of monetary rewards for reports, such as the detailed standards for monetary rewards for reports and the methods and procedures for payment thereof, other than those prescribed in paragraphs (1) through (4), shall be prescribed by the Commissioner of the Korean Intellectual Property Office.

Article 4 (Entrustment of Duties)

(1) Deleted. <Sep. 22, 2011>

(2) Deleted. <Sep. 22, 2011>

(3) "Corporation or organization related to the duties of protection of industrial property rights or prevention of unfair competition prescribed by Presidential Decree" in Article 17 (2) of the Act means the following corporations or organizations: <Amended on Sep. 22, 2011; Apr. 20, 2021>

1. The Korea Invention Promotion Association established under the Invention Promotion Act;

2. A corporation or organization designated and publicly notified by the Commissioner of the Korean Intellectual Property Office from among those acknowledged as having expertise in the affairs referred to in Article 2-5 of the Act.

(4) Article 2 (2) and (3) shall apply mutatis mutandis to a person who engages in the support duties in accordance with Article 17 (3) and (4) of the Act. <Amended on Sep. 22, 2011>

(5) A corporation or organization that intends to receive a subsidy to cover expenses under Article 17 (5) of the Act shall file with the Commissioner of the Korean Intellectual Property Office an application for a subsidy to cover the expense incurred in performing the duties of unfair competition prevention and trade secret protection in attached Form 6, along with the following documents. In such cases, the Commissioner of the Korean Intellectual Property Office shall verify the corporation registration certificate (applicable only to a corporation) through the shared use of administrative information under Article 36 (1) of the Electronic Government Act: <Amended on May 4, 2010; Sep. 22, 2011; Jan. 28, 2014>

1. Work plan for unfair competition prevention and trade secret protection;

2. Articles of incorporation (applicable only to a corporation).

(6) The Commissioner of the Korean Intellectual Property Office shall determine and publicly notify the standards and procedures for designation of a corporation or organization provided in paragraph (3) 2. <Amended on Sep. 22, 2011>

Article 4-2 (Procedures for Administering Common Affairs)

The Commissioner of the Korean Intellectual Property Office shall determine and publicly notify the details which are necessary for the procedures for administering the affairs provided in Articles 7 through 9 and 20 of the Act and the guidance, etc. on such affairs.

Article 5 (Education)

The Commissioner of the Korean Intellectual Property Office may, where deemed necessary, provide education on duties to public officials engaged in unfair competition prevention.

Article 5-2 (Re-Examination of Regulation)

The Commissioner of the Korean Intellectual Property Office shall examine the appropriateness of the following matters every five years, counting from the relevant base date specified in the following (referring to the period that ends on the day before the base date of every fifth year) and shall take measures, such as making improvements:

1. Criteria for the designation of an original document certification agency under Article 3-2: January 1, 2021;
2. Matters to be observed by an original document certification agency under Article 3-4 and attached Table 1: January 1, 2021;

Article 6 (Criteria for Imposing Administrative Fines)

The criteria for imposing administrative fines under Article 20 (1) of the Act shall be as specified in attached Table 4. <Amended on Jan. 28, 2014>

ADDENDUM <Presidential Decree No. 16065, Dec. 31, 1998>

This Decree shall enter into force on January 1, 1999.

ADDENDUM <Presidential Decree No. 17255, Jun. 27, 2001>

This Decree shall enter into force on July 1, 2001.

ADDENDA <Presidential Decree No. 21691, Aug. 18, 2009>

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation.

Article 2 (Transitional Measures)

(1) Standards for imposing administrative fines with respect to any offense committed before this Decree enters into force shall be governed by the previous provisions.

(2) Where standards for imposing administrative fines per frequency of offense are applied pursuant to the amended provisions in attached Table, the first offense committed after this Decree enters into force shall be deemed one offense.

ADDENDA <Presidential Decree No. 22151, May 4, 2010>

Article 1 (Enforcement Date)

This Decree shall enter into force on May 5, 2010.

Articles 2 through 4 Omitted.

ADDENDUM <Presidential Decree No. 23153, Sep. 22, 2011>

This Decree shall enter into force on October 1, 2011.

ADDENDUM <Presidential Decree No. 25050, Dec. 30, 2013>

This Decree shall enter into force on January 1, 2014. (Proviso Omitted.)

ADDENDUM <Presidential Decree No. 25121, Jan. 28, 2014>

This Decree shall enter into force on January 31, 2014.

ADDENDA <Presidential Decree No. 25840, Dec. 9, 2014>

Article 1 (Enforcement Date)

This Decree shall enter into force on January 1, 2015.

Articles 2 through 7 Omitted.

ADDENDUM <Presidential Decree No. 26774, Dec. 30, 2015>

This Decree shall enter into force on the date of its promulgation. (Proviso Omitted.)

ADDENDA <Presidential Decree No. 27751, Dec. 30, 2016>

Article 1 (Enforcement Date)

This Decree shall enter into force on January 1, 2017. (Proviso Omitted.)

Articles 2 through 12 Omitted.

ADDENDA <Presidential Decree No. 29176, Sep. 18, 2018>

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation.

Article 2 (Applicability to Disposal of Collected Goods)

The amended provisions of Article 1-4 (2) and (3) shall also apply where products have been collected and are under inspection under Article 7 (1) of the Act as at the time this Decree enters into force or where a request for submission of products has been made with regard to acts of unfair competition, etc. and inspection is underway in response to such request.

Article 3 (Transitional Measures concerning Certificates)

A certificate issued under the previous attached Form 2 before this Decree enters into force may also be used concurrently with a certificate issued under the amended provisions of attached Form 2, for one month after this Decree enters into force.

ADDENDUM <Presidential Decree No. 29421, Dec. 24, 2018>

This Decree shall enter into force on January 1, 2019.

ADDENDUM <Presidential Decree No. 30509, Mar. 3, 2020>

This Decree shall enter into force on the date of its promulgation.

ADDENDUM <Presidential Decree No. 31632, Apr. 20, 2021>

This Decree shall enter into force on April 21, 2021.

ADDENDUM <Presidential Decree No. 33773, Sep. 27, 2023>

This Decree shall enter into force on September 29, 2023.

ADDENDUM <Presidential Decree No. 33913, Dec. 12, 2023>

This Decree shall enter into force on the date of its promulgation.

Last updated : - -