

## **GUIDELINES ON APPLYING FOR A REVIEW OF THE SCOPE OF A HOLDING COMPANY**

Enacted on April 25, 1987

Amended on April 12, 1990

Amended on April 8, 1997

### **I. Purpose**

The purpose of these Guidelines is to set forth details, in reviewing the prohibition from establishment of (conversion into) a holding company in accordance with Article 8(1) of the Monopoly Regulation and Fair Trade Act (hereinafter, the "Act") and Article 15 of its Enforcement Decree (hereinafter, the "Decree"), in determining whether the holding company concerned shall be approved.

### **II. Review Guidelines**

1. Those subject to the prohibition from establishing (Converting to) a Holding Company
  - A. Those subject to the prohibition from establishing (converting to) a holding company means a corporation and person other than a corporation.
  - B. A corporation and person other than a corporation shall include foreign corporations and foreigners.
2. Criteria for Approving the Establishment of (Conversion into) a Holding Company
  - A. When it owns stocks of local firms for the purpose of controlling their businesses.
    - (1) if the relationship between an investor firm ("the concerned firm", hereinafter) and the invested firm ("the other firm", hereinafter) falls into any of the followings, the purpose of concerned firm's stock ownership of the other firm shall be deemed to control the businesses of the other firm.
      - (a) when the concerned firm owns 30% or more of the outstanding shares (including equities but excluding stocks without voting rights as defined in Article 370 of the Commercial Code; hereinafter, the same shall apply) issued by the other company and at the same time being the largest investor of the other company.
        - (b) regardless of either the concerned firm's owning less than 30% of the outstanding shares issued by the other company or the concerned firm's owning more than 30% thereof but not being the largest investor, when the concerned firm is deemed to be exerting significant influence over the other firm's management pursuant to Subparagraph 2 under Article 3 of the Decree.
        - (c) when the purpose of controlling the other firm's management is obvious.

<Examples>

when the concerned firm acquires the stocks of the other firm in a take-over bid for the purpose of controlling the other firm's management.

when the concerned firm requests the court to call for a general meeting of shareholders in association with the appointment of officers of the other firm.

when the concerned firm files an injunction or action with the court in association with disputes over managerial control such as appointing officers, suspending officers' exercise of duties and nullifying decisions reached at the general meeting of shareholders.

- (2) In applying the preceding (1), a specially-related person to the concerned firm as defined in the Article 11 of the Decree shall be deemed identical with the concerned firm.
- (3) Each of the following shall not be considered as the stocks owned for the purpose of controlling other firms.
  - (a) stocks acquired or owned by start-up SME investment firms and financial institutions supporting new technology businesses which are created in accordance with the Support for Small and Medium Enterprise Establishment Act and the Financial Assistance to New Technology Business Act, respectively.
  - (b) stocks commissioned by customers to stock companies.
  - (c) stocks acquired or held by banks as trust property over money and securities in trust (limited to cases where the commissioner or the beneficiary cannot exercise their voting rights).

B. The concerned firm's "primary business" shall be the controlling of other domestic firms.

In case where the aggregate sum of the stocks owned for the purpose of controlling other firms exceeds 50% of the total assets of the concerned firm, the primary business of the concerned firm shall be deemed controlling other firms.

- (1) In assessing the aggregate sum of the stocks, only those owned for the controlling purpose shall be counted in.
- (2) The stock or asset value shall be the book value as put forth on the balance sheet of the immediately preceding business year; provided, however, that if the concerned firm submitted the balance sheet as of the month-end of the concerned business year, after an audit by certified public accountants, due to changes in the stocks and asset value that had occurred after the immediately preceding business year, the stock and asset value as put forth on the on such balance sheet shall apply.
- (3) In case where the ratio of the owned stocks to total assets changes from less than 50% to more than 50%, due to the decrease in assets, the concerned firm shall

not be deemed a holding company for a one year period.