

ACT ON LITIGATION TO WHICH THE STATE IS A PARTY

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Wholly Amended by Act No. 3466, Dec. 17, 1981
Amended by Act No. 3563, Nov. 29, 1982
Act No. 4201, Jan. 13, 1990
Act No. 4835, Dec. 31, 1994
Act No. 5427, Dec. 13, 1997
Act No. 5587, Dec. 28, 1998

Article 1 (Purpose)

The purpose of this Act is to prescribe matters necessary for the performance of litigation in which the State is a party or an intervenor (hereinafter referred to as the "state litigation") and administrative litigation (including cases in which administrative authority is an intervenor; hereinafter the same shall apply), thereby ensuring the efficient performance of litigation and reasonable regulation of litigation affairs.

Article 2 (Representative of State)

In case of the state litigations, the Minister of Justice shall represent the State.

Article 2-2 (Scope of Administrative Authority)

For the purpose of applying this Act, administrative authority shall include administrative agency, public organization and its agency or natural person delegated or entrusted with administrative power under Acts and subordinate statutes.

[This Article Newly Inserted by Act No. 5427, Dec. 13, 1997]

Article 3 (Designation of State Litigation Representatives and Appointment of Process Attorneys)

(1) The Minister of Justice may designate staff of the Ministry of Justice, public prosecutors of the prosecutor's office at each level (hereinafter referred to as "public prosecutors") or public-service advocates determined by the Public-Service Advocates Act (hereinafter referred to as "public-service advocates") and have them perform the state litigation. *<Amended by Act No. 4835, Dec. 31, 1994>*

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(2) In case it is deemed necessary for any state litigation relating to the matters which an administrative agency manages or supervises, the Minister of Justice may, after listening to the opinion of the head of the administrative agency concerned, designate staff of the administrative agency and have them perform the litigation concerned.

(3) Persons designated under paragraph (2) shall be under the direction of the Minister of Justice in relation to the litigation concerned.

(4) The Minister of Justice may appoint attorneys-at-law as process attorneys and have them perform the state litigation.

Article 4 (Presentation of Opinion)

The Minister of Justice, in relation to the state litigation and administrative litigation having an important bearing on the national interest or public welfare, may present a judicial opinion to the court upon the permission of the court, or may have the staff of the Ministry of Justice, public prosecutors or public-service advocates designated by him present the opinion. *<Amended by Act No. 4835, Dec. 31, 1994>*

Article 5 (Designation of Administrative Litigation Performers and Appointment of Process Attorneys)

(1) The head of an administrative agency may designate staff of the agency or staff of a superior agency (in which case, he shall obtain the approval of the head of the superior agency concerned in advance) and have them perform the administrative litigation.

(2) The head of the administrative agency may appoint attorneys-at-law as process attorneys and have them perform the administrative litigation.

Article 6 (Directions of Minister of Justice to Head of Administrative Agency, etc.)

(1) In the performance of the administrative litigation, the head of the administrative agency shall be under the directions of the Minister of Justice.

(2) If the Minister of Justice deems it necessary for the administrative litigation, he may designate staff of the Ministry of Justice, public prosecutors or public-service advocates and have them perform the litigation, and may instruct the head of the administrative agency to dismiss the persons designated or appointed by the head of the administrative agency pursuant to the provisions of Article 5 (1) or (2). *<Amended by Act No. 4835, Dec. 31, 1994>*

Article 7 (Authority of Designated Attorneys)

The persons designated by the Minister of Justice, the chief of prosecutor's office at each level (this shall be confined to the case where the authority

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is delegated under the provisions of Article 13) or the head of the administrative agency pursuant to the provisions of Article 3 (1) and (2), 5 (1) or 6 (2) may conduct all legal acts except the appointment of an attorney in relation to the litigation.

Article 8 (Appointment of Litigation-Superintendent)

(1) The head of a central administrative agency shall, pursuant to the provisions of the Presidential Decree, appoint one litigation-superintendent, who shall manage the relevant litigation functions, from among the staff of not less than the Grade IV of his office who take charge of juridical and litigation functions.

(2) The litigation-superintendent shall be under the directions of the Minister of Justice in relation to the relevant litigation functions.

(3) The litigation-superintendent shall direct and supervise the staffs of the agencies designated as the litigation performers in relation to the litigation of the agencies concerned.

Article 9 (to Whom Process to be Served)

(1) In case of state litigations, the process to be served to the State shall be served upon the chief of the public prosecutor's office corresponding to the competent court (in case the competent court is a branch of the district court, referring to the chief of the district public prosecutor's office): *Provided*, That where a case is brought to a district court within the jurisdiction of a high public prosecutor's office (including a branch which belongs to the district court), the process shall be served on the chief of said office.

(2) Where there are litigation representatives or process attorneys, the process shall be served upon them, notwithstanding paragraph (1).

[This Article Wholly Amended by Act No. 5587, Dec. 28, 1998]

Article 10 (Procedure for Voluntary Performance, etc.)

In a case where the State intends to perform an obligation voluntarily, because in the state litigation a claim for payment of money has been decided against the State, the agency, procedure, method of payment and other necessary matters shall be prescribed by the Presidential Decree.

Article 11 (Appropriations for Costs of Litigation)

(1) The appropriations for the costs of state litigation shall be integrated into the budget under the jurisdiction of the Ministry of Justice.

(2) The costs of matters or businesses managed under special accounts including the costs of state litigation shall be treated as annual revenues accrued to the general accounts of the Ministry of Justice from the relevant

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special accounts pursuant to the notice to that effect issued by the revenue collector of the Ministry of Justice.

Article 12 (Application *Mutatis Mutandis* to Conciliation Cases, etc.)

The provisions of Articles 2 through 8 shall apply *mutatis mutandis* to conciliation cases, arbitration cases and to other non-contentious litigation cases. <Amended by Act No. 5427, Dec. 13, 1997>

Article 13 (Delegation of Authority)

The Minister of Justice may, pursuant to the provisions of the Presidential Decree, delegate a part of his authority prescribed in Articles 3, 6 and 8 (2) to the Prosecutor General, the chief of the high prosecutor's office, or the chief of the district public prosecutor's office.

Article 14 (Enforcement Decree)

Matters necessary for enforcement of this Act shall be prescribed by the Presidential Decree.

ADDENDA

(1) (Enforcement Date) This Act shall enter into force on February 1, 1982.

(2) (Repeal of Act) The Act on the Costs of Litigation to Which the State is a Party shall be repealed.

ADDENDUM <Act No. 3563, Nov. 29, 1982>

This Act shall enter into force on January 1, 1983.

ADDENDA <Act No. 4201, Jan. 13, 1990>

Article 1 (Enforcement Date)

This Act shall enter into force on September 1, 1990.

Articles 2 through 8 Omitted.

ADDENDUM <Act No. 4835, Dec. 31, 1994>

This Act shall enter into force on January 1, 1995.

ADDENDUM <Act No. 5427, Dec. 13, 1997>

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

ADDENDUM <Act No. 5587, Dec. 28, 1998>

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