3 Developing Business and Living Infrastructure Contributing to Vitalization

1 Public Utility Sector

[Awareness of the Issues]

In order to improve the competitiveness of Japan's industry, the so-called "public utility sector," which serves as infrastructure for the livelihood of people and industrial activities, should expand the range of consumer choices through rate reduction and diversification and qualitative improvement of services to correct its high-cost structure.

The public utility sector includes the telecommunications, electricity, gas and transportation areas (hereinafter referred to as "network business areas") that require a massive initial investment in facilities. Since incumbents in these areas own facilities indispensable for services (so-called "essential facilities"), a certain degree of natural monopoly must be left.

Therefore, it is important to develop competition rules including conditions for equal and fair utilization of essential facilities to promote new market participants including those from other sectors. It is also important to establish a system for monitoring rule compliance to promote a shift from ex-ante regulations to ex-post-facto regulations.

Among the following measures, the Council expects the IT Strategic Headquarters to give positive consideration to information technology-related regulatory reform measures, based on arguments at the Council.

[Specific Measures]

(1) Promoting new market participants and developing competition rules

① Revising regulations and the like on new market participants to promote competition between all market participants including incumbents

In network business areas, demand and supply adjustment regulations to restrict new market participants have gradually been eliminated, based on reports such as the third report (June 19, 2002) by the Ad Hoc Council for the Promotion of Administrative Reform (the third administrative reform council) and "the Three-Year Plan for Promotion of Deregulation" (as decided on by the Cabinet on

March 31, 1998). The administrative reform report states "the government should consider eliminating regulations on new market participants and facilities to adjust demand and supply in competitive industries as early as possible within 10 years in principle." The three-year plan states "demand and supply adjustment regulations will be reviewed for elimination."

a. In the telecommunications area, consideration is being given to the elimination of the separation of Type I and II service providers, the substantial relaxation of regulations on new market participants (license system repeal) and other measures to further promote new market participants. However, the government should thoroughly review relevant institutions in a bid to generally lower regulation levels. In this respect, the government should consider legal interests and limit ex-ante regulations to the minimum necessary ones within an appropriate scope so that there are no obstacles to businesses freely demonstrating their creative ingenuity. **[Consideration and conclusion within FY 2002]**

   In July 1999, the Nippon Telegraph & Telephone Corp. group was reorganized giving NTT East and NTT West control of regional telecommunications services, NTT Communications long-distance and international services and NTT DoCoMo mobile phone services, under a holding company. The government should keep a close watch on the NTT group and encourage group members as independent firms to compete with each other.

b. In the electricity utility area, the government should consider and reach a conclusion on the following matters, as stipulated in the "(revised) Three-Year Regulatory Reform Promotion Plan:"

   As for the expansion of a range of customers for retail electricity deregulation, the government should develop the environment whereby customers can select suppliers, expand the range of customers for retail electricity deregulation to cover the high-voltage category of customers (customers receiving voltage at or above 6 kilovolts: small and medium-sized buildings and plants) and specify and implement a schedule for comprehensive deregulation to cover household customers as well as all others.

   In order to promote incumbents' mutual entry into their business turfs, allow a wider range of customers to benefit from electricity market

deregulation and encourage free business expansion of utilities, the government should develop a system to establish rules and plans for the construction of power transmission lines by companies not limited to incumbents, based on the need for developing backbone power transmission networks including linkage lines from a nationwide viewpoint.

Business entities that own private power generation facilities are barred from installing transmission lines for electricity supply to neighbors unless they are special electricity utilities for special supply. Instead, they have to pay fees to power utilities for transmission via these utilities' lines. Considering the national economic viewpoint, however, the government should allow power transmission lines to be constructed freely in principle. In this respect, the government should reconsider special supply approval regulations that would become unnecessary in deregulated areas where transmission line construction is liberalized. It should also consider open access to networks constructed by new market participants. **[Consideration and conclusion within FY 2002] <Relevant discussions in "Energy" 2>**

c. In the gas utility area, new market participants have been allowed in retail sales to large-lot customers. In order to promote active participation in gas services, the government should specify and promptly implement a schedule for expanding the deregulation of gas retail sales. It should also consider deregulating retail sales to households and other small-lot customers. **[Consideration and conclusion within FY 2002] <Relevant discussions in "Energy" 2>**

d. In domestic air, railway, maritime, taxi and other transportation services, demand and supply adjustment regulations were eliminated for deregulation under "the Three-Year Deregulation Promotion Plan" (decided on by the Cabinet on March 31, 1998). In future, the government should take the following and other measures to promote active new participation in these transportation services. **[Gradual implementation from FY 2002]**

(a) Regulations on port and harbor transportation services [Conclusion

within FY 2003 and measures to be taken promptly]

As for rural ports (other than the nine major ones), the government should reach a conclusion within FY 2003 on and promptly take measures for a deregulation plan to repeal demand and supply adjustment regulations and shift from a license system to an approval system. **<Discussed again in "Transportation" 1>**

(b) Revising emergency adjustment measures for taxi services [Gradual implementation]

While demand and supply adjustment regulations were repealed for taxi services in February 2002, an emergency adjustment measure has been created to implement demand and supply adjustment under certain conditions. In this respect, 140 zones were initially designated for special surveillance. Since the start of FY 2002, however, the emergency adjustment has been invoked in Okinawa and the number of special surveillance zones has sharply increased to 212. This sharp increase is attributable to one of the conditions for the designation of such zones, the condition being a decline of over 2% in the passenger transportation rate from the past five-year average for "non-standby zones (zones where the standby rate is extremely low)," far lower than 10% for "standby zones." Any increase in the number of zones for invocation of the emergency adjustment measure could fundamentally affect the purpose for the elimination of demand and supply adjustment regulations. The invocation must be strictly limited to cases where such adjustment is really necessary. As noted in the Council's first report, the government should expand the decline in passenger transportation rates as a condition for special surveillance zone designation especially in non-standby areas and persistently review relevant systems in a bid to prevent demand and supply adjustment regulations being revived easily. **<Discussed again in "Transportation" 7>**

② Equal allocation of limited precious public goods

The government allocates rights in the form of licenses, permissions and the like to use public resources including airport facilities and radio wave bands. An equal and transparent system must be developed to promote competition in this

respect.

a. On the reallocation of frequency bands in the telecommunications area, in order to take measures against the issues such as dealing with incumbent licensee, the government should consider an optimum reallocation system from the viewpoints of equity, transparency, promptness, frequency band utilization efficiency and the like over the investigation of foreign allocation methods such as auctions including their problems. **[Consideration in FY 2002 and conclusion in FY 2003]**

b. When arrival and departure slots for congested airports for domestic air transportation are reallocated in 2005, the government should set specific and concrete reallocation standards while considering ensuring objectivity and transparency and taking into account competition conditions between dominant players and others. **[Consideration in and after FY 2002]**

③ Measures to train new market participants to some extent

In network business areas, competitive environments should be developed, including a measure to require dominant players to separate competitive areas in accounting from non-competitive areas where natural monopoly may be left. Particularly in the initial phase of competition introduction where large gaps in equipment, personnel and the like exist between incumbents and new market participants, asymmetric regulations and other measures to train new market participants to some extent should be considered.

a. In electricity services, accounting for non-competitive areas should be separated from that for competitive ones to prevent internal subsidies from being provided from non-competitive areas to competitive ones. Other effective measures should also be considered to prevent internal subsidization. **[Consideration and conclusion in FY 2002]**

b. In domestic air transportation, there are complaints that in a bid to counter low fares set by startup carriers for certain routes, incumbent carriers lower fares only for certain flights on the same routes and timeframes affecting fair competition. The relevant authorities should make appropriate responses including strict measures against violations

of the Antimonopoly Act (Law 69, 1947).

As for boarding counters, boarding bridges and other airport facilities that are indispensable for air transportation services, the government should consider requests by startup carriers and ask incumbent carriers to cooperate in allowing startups to equally use facilities that have been used by incumbent carriers. **[Gradual implementation in and after FY 2002]**

④ Promoting business expansion beyond market borders [Measures to be considered and taken from FY 2002]

Electric, gas and telecommunications utilities are increasingly taking advantage of existing facilities to expand into new businesses beyond their traditional market borders. Such business expansion is desirable for promoting competition in network business areas. Therefore, the government should try to ensure the equity of such business expansion in order to promote it.

Future business expansion beyond market borders is expected to become vigorous. Relevant government agencies should take appropriate security measures to prevent players from taking advantage of their market dominance to expand into other markets. When problematic acts are found, relevant government agencies and the Fair Trade Commission should positively correct or eliminate such acts.

⑤ Wholesale market development

In order to promote service-based competition in network business areas where natural monopoly exists, markets should be created for transactions between diverse service providers to allow them to flexibly provide services meeting customer requests.

a. In the telecommunications area, guidelines have been produced for promoting resellers' participation in the mobile communications business. These guidelines should be revised to further enhance the transparency and predictability of the resale system. **[Gradual implementation in and after FY 2002]**

b. In the electricity utility area, the creation of an electricity wholesale market for nationwide transactions should be considered. **[Consideration**

and conclusion within FY 2002]

c. In order to promote competition in the retail market for the gas utility area, a system similar to the present consignation system should be introduced to allow new gas service participants as well as small and medium enterprises to easily secure natural gas supply for their services. **[Consideration and conclusion within FY 2002]**

⑥ Promoting infrastructure development [Consideration when necessary]

As for regulations on construction, land utilization and the like for the development of fiber-optic and other communication networks in the telecommunications area, linkage lines and other power transmission networks in the electricity utility area, and gas pipe networks in the gas utility area, the government should investigate whether regulations are causing higher costs, whether they are excessive, and other matters, from the viewpoint of competition promotion. If regulations are found to have affected infrastructure development, the government should take measures such as those to ease the regulations in question.

In order to promote diffusion of heat conduit pipe networks for distributed generation including cogeneration, the government should consider, regarding small-scale (less than 21 gigajoule per hour) heat conduit pipes outside the Heat Supply Business Law, to admit road occupancy subordinate to compulsory occupancy, if these pipes are legally positioned as public goods from energy policy and other viewpoints.

(2) Opening essential facilities

① Obligation to offer essential facilities

Essential facilities are indispensable for public utility service providers. In order to promote new participation in such services, the government should guarantee their equal use through such measures as obligating facility owners to offer their facilities to new market participants unless they have due reasons for refusing to do so.

a. In the telecommunications area, all firms are obliged to connect their networks to those of new market participants. As for the regional networks of NTT East and NTT West and the facilities of mobile phone

companies with certain market shares, interconnection rules have been developed to oblige these firms to produce interconnection contracts, receive regulators' approval or give reports to regulators on these contracts, and publish them.

b. In the electricity utility area, the government should consider developing a consignation system to ensure equality between incumbent companies and new market participants in consignation utilization. **[Consideration and conclusion within FY 2002] <Relevant discussions in "Energy" 1>**

c. In the gas utility area, the consignation system is now limited to the big four gas companies. In order to allow competition to really work in the gas market whose deregulation has been under way, however, the government should expand the consignation system promptly to cover other ordinary gas utilities and companies that have gas provision pipes. **[Consideration and conclusion within FY 2002] <Relevant discussions in "Energy" 2>**

② **Promoting separation in accounting, firewall against information, etc**.

In order to ensure the fair and equal utilization of essential facilities, the government should create a system to secure separation in accounting, firewall against information and the like and check whether competitive divisions of utilities and other companies can use essential facilities on an equal footing. Specific security measures should be based on the relevant behavioral regulations in principle. If such measures fail to secure such separation or firewall, the government should consider structural measures including those to split existing utilities into competitive and non-competitive divisions.

a. In the telecommunications area, NTT East and NTT West are obliged to compile and publish interconnection accounting data, and try to offer relevant information. In addition, they are prohibited from disadvantageous information provision treatment and the like.

b. As for the electricity utility area, the government should consider and reach a conclusion on the following matters as specified in "the (revised) Three-Year Regulatory Reform Promotion Plan."

Based on arguments such as considering the adverse effects on

electric power systems operation, measures should be taken to secure neutrality, equality and transparency.

Specific measures follow:

(a) Revising rules for electric power systems operation (rules based on overseas measures to allow neutral parties, instead of existing utilities, to establish rules and implement the fair and neutral operation of electric power systems; a mechanism to allow new market participants to open their technological information at ease to electric power system operators; rules to allow technological and other information on electric power systems to be opened to new market participants; a mechanism for checking the unutilized capacity of transmission lines at any time)

(b) Implementation of stricter separation in accounting.

(c) Securing the firewall between power transmission and other divisions at incumbents. **[Consideration and conclusion within FY 2002]**

c. In the gas utility area, a utility's gas pipe division subject to the consignation system should be separated more strictly from other divisions in accounting and a tough firewall should be developed between these divisions. **[Consideration and conclusion within FY 2002]**

③ Essential facility utilization fees, etc. [Consideration and conclusion in and from FY 2002]

When utilities that monopolistically own essential facilities open them to new market participants, the fees imposed on facility users should be set in the following way. The metered part of essential facility utilization fees should be based on marginal costs in principle. If essential facilities are congested, especially, facility owners should not give priority to vested rights unfairly but apply special congestion fees or set fees through bidding in principle in order to ensure the most valuable usage of such social facilities.

A system should be developed to allow the government to check the reasonability of fees for essential facilities utilization based on strictly separated accounting. At the same time, a mechanism should be created to secure the reasonability of such fees.

a. When the scope of liberalization is expanded in the electricity utility area and if the so-called principle of the same volume at the same time is applied to customers including those for low-voltage electricity, meter installation costs will be huge, raising the possibility that this could be a barrier against new market participation. Therefore, the government should consider and reach a conclusion on the following matter, as specified in "the (revised) Three-Year Regulatory Reform Promotion Plan."

For the means of securing the same volume at the same time, a review of the system toward making it more flexible should be undertaken while consideration is given to technical factors including the requirement for the principle to be observed in the electric power systems as a whole.

(3) Building an effective competition monitoring system

In the network business areas, relevant government agencies and the Fair Trade Commission have prepared guidelines and implemented competition monitoring, settlement of disputes and the like. In some areas, however, new market participants have complained about insufficient measures to forestall disputes, insufficient dispute-settlement systems and authority, time consuming dispute settlement, lack of special knowledge and other problems.

In order to ensure fair competition in the network business areas, laws for individual sectors, guidelines and the like must specify competition rules including the fair utilization of essential facilities owned by certain utilities. At the same time, regulators must monitor compliance with competition rules and settle disputes in a fair, transparent and prompt manner, backed by special market characteristics knowledge, legal systems and technologies.

It is desirable for discussions on competition monitoring system regarding securities and the like in terms of enhancing neutrality and monitoring functions.

① Revising guidelines timely and appropriately [Gradual implementation from FY 2002]

Based on the recommendations in (1) and (2) above, the government should develop the necessary provisions for competition rules in laws for individual utility areas. At the same time, the government should appropriately revise existing guidelines, including specific examples, for individual utility areas, based on progress in competition and specific disputes, in order to enhance market participants' predictability of law enforcement and forestall disputes and

violations.

② Enhancing enforcement in special areas

a. Enhancing market monitoring functions in the securities trading area
[Consideration and conclusion within FY 2003]

Japan is now urgently required to develop a market-based financial system in order to revive and develop the economy. In this respect, it is important to expand the range of market participants including ordinary investors. Presently, however, it is difficult to conclude that people have sufficient confidence in the securities market. On the other hand, financial and securities transaction rules are shifting from ex-ante to ex-post-facto types, with legal interests increasing in ex-post-facto rules. In order to increase ordinary investors' confidence in the market, Japan should further develop rules. At the same time, strict penalties for rule violators should be considered to be the minimum requirement. In view of increasing legal interests, such penalties should be toughened. Based on these points, the government should enhance, expand and double law enforcement means and revise penalty provisions in order to enhance market surveillance for securities transactions. At the same time, the government should secure sufficient personnel and outlays for the market surveillance and law enforcement system in order to further secure the soundness and fairness of the capital market. In developing administrative sanctions and necessary rules for surveillance and law enforcement regarding unfair trading, disclosure and the like in the capital market, the Securities and Exchange Surveillance Commission that is closer to market affairs should play a greater role. In line with this direction, the government should consider and reach a conclusion on desirable systems for market surveillance and law enforcement, including the enhanced independence of the commission. **<Discussed again in "Competition Policy" 3 (1)>**

b. Enhancing law enforcement in the telecommunications area
[Gradual implementation from FY 2002]

In the telecommunications area, the Telecommunications Business Dispute-Settlement Commission was created in 2001, allowing quicker dispute settlement responses. In order to further increase market participants' confidence in the market, the government should revise competition rules to

promptly meet market environment changes and should make comprehensive efforts to enhance law enforcement such as information collection, surveillance, settlement of disputes, sanctions and other matters. **<Discussed again in "Competition Policy" 3 (2) ①>**

c. Enhancing competition surveillance in the energy area [Measures to be taken within FY 2002]

In the electricity utility area, a surveillance body to monitor the market and settle disputes, as recommended by the Council in the previous fiscal year, should be given advanced checking functions. In the gas utility area as well, the government should consider establishing a body to monitor fair market management. **<Relevant discussions in "Competition Policy" 3 (2) ②, "Energy" 1 and 2>**

③ Functions and authority of special agencies [Consideration and conclusion within FY 2002]

,From the viewpoint of developing prompt settling disputes, securing the effectiveness of competition surveillance and cooperating with regulators in producing competition rules, government should consider to giving the following functions and authority when special agencies in the network business areas are created:

a. Conciliation, arbitration and other functions to settle disputes between market participants.
b. Authority to monitor and investigate competition rule compliance including firewall and accounting separation.
c. Authority to make recommendations to appropriately reflect surveillance and dispute-settlement achievements in establishing competition rules.

④ Enhancing functions of the Fair Trade Commission

The Fair Trade Commission's competition surveillance is very important for securing market functions working well. However, new participants in network business areas have complained about the FTC's specialization, its law enforcement speed and other matters. In order to secure fair competition in areas where markets are being opened, the FTC should enhance its investigation setup and functions and speed up its law enforcement regarding suspected Antimonopoly Act violations. **[Consideration and measures to be taken within FY 2002]**

<Relevant discussions in "Competition" 2 (1)>

As for positioning of the FTC, the government should consider its desirable position from the viewpoint of independence from regulators and neutrality. **[Consideration from FY 2002]**

⑤ **Relations between special organizations and the FTC [Gradual implementation from FY 2002]**

In order to secure effective competition surveillance and settle disputes in a fair, transparent and prompt manner, the FTC that enforces the Antimonopoly Act as the basic rule for competition, and government agencies or special organizations that enforce sectoral laws should monitor compliance with competition rules and settle disputes based on relevant laws. It is important for them to implement appropriate operations under competitive and tense relations.

Under such relations, the FTC, relevant government agencies and special organizations should implement effective cooperation through timely and appropriate information exchanges and the like so that rules are revised promptly and flexibly to improve dispute surveillance and settlement, based on progress in competition and specific disputes. **<Relevant discussions in "Competition Policy" 3 (2) ③>**

2 Developing Legal Services Infrastructure

[Awareness of the Issues]

As for legal service infrastructure development, Japan is urgently required to thoroughly increase the number of legal professionals, as has been urged for a long time. The government should design systems to increase legal professionals systematically and promptly, while considering giving qualifications to those other than law school graduates.

The Office for Promotion of Justice Reform should consider a wide range of matters steadily without reflecting the specific interests of legal professionals and relevant organizations.

[Specific Measures] <Discussed again in "Legal Affairs" 1>

(1) Further increasing the number of legal professionals [Continuous implementation]

In order to increase the number of successful candidates for the national bar examination to 3,000 a year, the government should implement relevant measures systematically and promptly to achieve this goal by the earlier-set target year of around 2010, while watching the development of a new legal professional training system including law schools, after achieving the interim goal of about 1,500 by the earlier-set target year of 2004.

The number of legal professionals working in various fields may be determined by market forces based on the actual needs of society. Even if the number of successful candidates is increased to 3,000 by around 2010, this should not be viewed as the upper limit. Based on this point, the government should conduct further research and study on the desirable number of legal professionals after achieving that goal.

(2) Ensuring qualifications of national bar examination candidacy for those other than law school graduates [Measures to be taken within FY 2002 for continuous implementation]

In the new national bar examination to be implemented in FY 2006, successful preliminary examination applicants other than law school graduates should be qualified as candidates for the bar examination just as law school graduates are.

The preliminary examination should be designed to check whether examinees are at the same standard as law school graduates. Therefore, the government should review the preliminary examination and the number of successful applicants to maintain equity between successful preliminary examination applicants and law school graduates thus avoiding as much as possible a gap between the ratio of successful bar examination candidates for successful preliminary examination applicants and that for law school graduates.

(3) Training lawyers well versed in specialized fields (intellectual property rights, international corporate legal affairs, medical services, etc.) [Measures to be taken within FY 2002 for continuous implementation]

As for law school establishment standards, lawyers and other professionals should be allowed to concurrently serve as full-time teachers. Part of the 93 credits required for a law school graduate should cover useful subjects other than positive law subjects. In order to train lawyers well versed in specialized fields, the government should consider and adopt appropriate measures, including a reduction in the required number of full-time teachers and that of credits for graduates, if necessary.

Law school establishment standards should allow individual law schools to give favors to certified public accountants, medical doctors and other professionals in their entrance examinations.

Measures should be considered to allow law schools to encourage law faculty graduates to acquire credits in other graduate schools. Measures should also be considered for allowing law school students other than law faculty graduates to graduate from law schools in two years just as law faculty graduates who have acquired some credits for other subjects than law are able to do.

In law school entrance examinations, such effective measures as information disclosure based on third-party assessment should be taken to prevent law schools from giving favors to examinees from their own universities and from allowing law faculty or course graduates to excessively dominate successful examinees.

(4) Law School Establishment [Measures to be taken within FY 2002]

In designing institutional arrangements for law schools, the government should allow universities to create law schools as far as they meet objective conditions for securing necessary quality. After their establishment, the government should take measures to secure correct and sufficient information disclosure that will allow these schools to improve their education quality through market assessment.

(5) Reviewing the legal training scholarship system [Consideration and conclusion within FY 2003]

Given the implementation of practical education at law schools, the government should consider revising or eliminating the legal training scholarship system of successful candidates for the national bar examination, while taking into account the overall legal professional training system including law schools. The government should also reconsider legal training details as the training period is shortened to one year.

(6) Reviewing Article 72 of the Lawyers Law [Measures to be taken by the end of FY 2003 at the latest]

As for Article 72 of the Lawyers Law (Law 204, 1949), the government should consider the provision's relations with corporate legal affairs in a bid to respond to changes in professions adjacent to legal affairs and in company forms and should take necessary measures to ensure the predictability of the scope and modes of activities that are subject to the restrictions.

Legal service providers should be encouraged to stimulate competition and improve the quality of legal services. In this respect, from the viewpoint of increasing the range of legal services provided by non-lawyer experts, the following opinions have emerged about Article 72 of the Lawyers Law that bans legal services by those other than lawyers. These opinions should be taken into account in the above conclusion.

① Article 72 of the Lawyers Law has a proviso that exempts legal services from the restrictions as authorized elsewhere in the law. Since the Judicial Scrivener Law (Law 197, 1950) and other laws provide for exemptions, the proviso should be revised.

② Non-lawyer legal experts (not limited to professionals in fields adjacent to legal affairs) should be allowed to provide legal services outside court. At the very least, parent companies should be allowed to provide charged legal services to other companies within their group. Legal services for business offices, where consumer protection does not necessarily have to be considered, should be exempted from restrictions under Article 72 of the Lawyers Law.

③ Company employees should be allowed to serve as representatives of their companies for litigation as far as they are authorized by their companies to do so.

④ As for patent attorneys' authority to represent clients in patent infringement lawsuits, the condition of their cooperation with lawyers should be repealed.

As for certified tax accountants and judicial scriveners, relevant laws have been revised to add certain legal services to the services of professionals in fields adjacent to legal affairs. Based on the Regulatory Reform Committee's second view, the Justice System Reform Council's opinions and the like, the government should closely watch developments after these law revisions in a bid to look into whether legal services of professionals in fields adjacent to legal affairs could be expanded further.

(7) Deregulating lawyers [A relevant bill to be submitted during the next ordinary Diet session]

In order to meet legal service demand in the age of globalization, Japan should promote alliance and cooperation between Japanese lawyers, and foreign practicing attorneys and the like. In this respect, the government should review relevant regulations, based on views that restrictions on purposes for joint undertakings between Japanese lawyers and foreign practicing attorneys should be repealed to liberalize such joint undertakings and that a provision prohibiting foreign practicing attorneys' employment of Japanese lawyers should be eliminated. Even if measures are taken to prevent adverse effects accompanying these deregulation measures, they should be limited to the minimum necessary ones.

The Justice System Reform Council has recommended that approval systems for lawyers' assumption of public duties as for provided in Article 30-1 of the Lawyers Law and for businesses as stipulated in Article 30-3 of the law should be replaced with notification systems to liberalize lawyers business. In this respect, the government should take necessary measures promptly.

3 Upgrading City Centers

[Awareness of the Issues]

Regarding the upgrading of city centers, the Construction Standard Law (Law 201, 1950), the Fire Service Law (Law 186, 1948) and other laws have different provisions for different purposes about various building standards. For example, the Fire Service Law provides for fire prevention and fireproof standards for the purposes of preventing, warning against and extinguishing fire (firefighting), and the Construction Standard Law covers such standards for the purposes of preventing the collapse of buildings in fire and ensuring safe fire evacuation.

When multiple laws have provisions on one object in the above way, these provisions and their reasonability should always be checked and reviewed with consideration given to changes in technological levels and in social needs, mutual relations between the relevant laws, and other matters. As a matter of course, those who review these provisions must achieve accountability for these provisions' specific purposes and necessity.

[Specific Measures]

(1) Streamlining and rationalizing multiple regulations

① Streamlining and rationalizing multiple regulations [Consideration to start in FY 2002 and measures to be taken consecutively]

Smoke control systems, which eliminate smoke in fire to protect human lives, are required not to affect firefighting under the Fire Service Law (Law 186, 1948) and not to affect evacuation under the Construction Standard Law. Initially, the Fire Service Law alone contained provisions on smoke control systems. As system provisions have been developed under the Construction Standard Law, however, the current enforcement rules broadly call for complying with standards in the law, even if the two laws are applicable. In such cases, relevant government agencies should fully cooperate in enforcing standards. If required by law revisions, they should decide on and publish procedures to unify enforcement rules.

The Construction Standard Law allows regulations on fire prevention zones and inflammable interior goods to be eased if sprinklers are installed, while the Fire Service Law doesn't require sprinklers to be installed at small fire prevention zones. Such alternative provisions should be streamlined and rationalized if

necessary, based on the development of technological levels. **<Discussed again in "Housing, Land, Public Works" 3 (1)>**

② Rationalization through a shift to performance provisions for the Fire Service Law and the Construction Standard Law [Consideration to start in FY 2002 and consecutive implementation]

As for the Construction Standard Law, in addition to provisions on specific materials, sizes and other details (so-called specification provisions), new provisions (so-called performance provisions) that allow diverse materials and structures to be adopted as far as certain structure performance is achieved, fire-prevention materials, the core structures of fireproof buildings and the like have been introduced as alternatives since 2000. Revisions that are compatible with performance provisions in the Construction Standard Law should be made to the Fire Service Law. At the same time, performance provisions concerning fire-prevention systems and facilities for firefighting operations should be introduced as much as possible to the Fire Service Law. In line with the introduction of performance provisions for the Fire Service Law, such provisions of the Construction Standard Law should be streamlined and rationalized. **<Discussed again in "Housing, Land, Public Works" 3 (2)>**

③ Reviewing procedures for pressurized smoke prevention and control systems

The Construction Standard Law requires ministerial approval on pressurized smoke prevention and control systems, since they are advanced systems to control air supply and smoke elimination with evacuation safety ensured for specific building shapes. The systems feature high safety levels as far as they are appropriately planned and controlled. They are now adopted mainly for high-rise buildings. On the other hand, rooms with evacuation stairs had been allowed to serve as an emergency elevator lobby before the Construction Standard Law was revised in 2000. Such concurrent use had been introduced in many cases. But the revision has banned such concurrent use.

In future, the government should consider allowing pressurized smoke prevention and control systems to be adopted on approval by district surveyors or the like, rather than the minister, while taking technicality into account. In this respect, the government should consider permitting ventilation fans for ordinary air conditioners to serve as smoke control systems. **[Consideration to start in FY 2002 for conclusion to be reached in FY 2004]**

As for the introduction of performance provisions for the Fire Service Law, the government should consider allowing rooms with evacuation stairs to be concurrently used as an emergency elevator lobby. Based on the results of consideration, the government should consider revising the Construction Standard Law to allow such concurrent use. **[Gradual consideration] <Discussed again in "Housing, Land, Public Works" 3 (3)>**

④ Improving fire prevention and construction guidance [Measures to be taken within FY 2002]

As for high-rise buildings, fire prevention divisions of local governments may give guidance beyond legal obligations. For example, they may request the establishment of emergency heliports to support rescue operations upon fire and other disasters.

There are complaints that certain administrative agencies and designated authorization and inspection agencies dealing with building construction authorization request old procedures, such as disaster-prevention and structural assessments (for 45-to-60-meter-high buildings) that had been required before the introduction of the performance provisions.

The government has notified local governments and the like that these kinds of guidance only call for voluntary cooperation and have no binding power. But the notification should be made again. **<Discussed again in "Housing, Land, Public Works" 2 (4)>**

(2) Promoting three-dimensional utilization of road space and buildings [Consideration to start in FY 2002, conclusion in or after FY 2003]

The Construction Standard Law bans buildings on roads in principle. Exceptions include underground buildings, buildings required for public interest, buildings above or under roads for automobile traffic in zones subject to regional planning, public galleria, connecting corridors, buildings above roads for automobile traffic within efficient land utilization zones and the like, buildings under elevated roads, and rest stations on roads for automobile traffic. In order to meet the need for more efficient utilization of land in city centers, however, further three-dimensional utilization of road space and buildings will have to be promoted.

Therefore, the government should consider promoting the three-dimensional utilization of road space and buildings by positioning such utilization specifically in urban planning, as far as such utilization accompanies appropriate and

reasonable land utilization and has no adverse effects on evacuation, firefighting operations, prevention of fire expansion, development of good urban environments including natural lighting and draft, conservation of road structures, and road management including ensuring safe and smooth road traffic. **<Discussed again in "Housing, Land, Public Works" 1 (3)>**

(3) Rationalizing regulations related to the Aviation Law

① Rationalizing restrictions on building height and the like [Consideration to start in FY 2002, partial conclusion within FY 2003]

As for buildings and the like in areas adjacent to airports, the Aviation Law (Law 231, 1952) as well as the Construction Standard Law provides for height regulations in line with a specific distance from airports (so-called "restricted surface" regulations), in order to ensure flight safety.

Particularly, regulations for major airports adjacent to urban centers have been left untouched since their effectuation in the decade from 1955 and have become constraints on more efficient land utilization in urban centers.

Therefore, the government should reexamine the rationality of the present restricted surface regulations from specialized and technical viewpoints, based on the reality of Japan's recent aircraft operation and similar foreign cases, while giving full consideration to aviation safety and environmental requirements based on meteorological, geological and other natural and geographical conditions for Japan's airports, their locations including heavily populated urban areas and adjacent ports and harbors with shipping congestion, and flight realities. Moreover, the government should reconsider the restricted surface restrictions in view of the need for more efficient land utilization in urban centers. **<Discussed again in "Housing, Land, Public Works" 1 (4)>**

② Rationalizing airplane warning light regulations [Consideration to start in FY 2002, conclusion in FY 2003]

The Aviation Law requires airplane warning lights to be installed on buildings and the like that are 60 meters or higher in order to ensure safe flights. Since the requirement framework was established in 1960, the environment surrounding airplane warning light regulations has dramatically changed as architectural development has led to a sharp increase in high-rise buildings and the like and as urban development has brought about groups of high-rise buildings. The Council appreciates the substantial relaxation of standards for airplane warning lights

that came in 2000 and 2001.

In order to respond to further progress in efficient land utilization in urban centers and contribute to improving the cityscape including harmony with light-ups, however, the government should consider easing airplane warning light regulations further by minimizing regulations on the number of such lights, their brightness and lighting intervals or by allowing building light-ups to substitute for airplane warning lights, as far as safe flights are secured. **<Discussed again in "Housing, Land, Public Works" 1 (5)>**