

美國行政法官制度建構及相關問題研究

委託機關：行政院法規委員會

受託人 財團法人戴炎輝文教基金會

計畫主持人：郭介恒

第一章 緒論

第一節 研究緣起

美國雖採司法一元之司法制度，惟其透過行政程序法等各項立法，對於行政機關之運作貫徹正當法律程序之憲政原則，對於依法行政產生深遠之影響，更進一步影響歐陸及日本立法，採行行政程序法及資訊公開法等立法，作為行政程序合法之準據，我國行政程序法早於 90 年 1 月 1 日施行，資訊公開法制亦已完成各項立法準備，並以資訊公開辦法予以落實執行，惟各項行政程序中所應備之聽證及委員會準司法審查之制度，仍未能落實執行，有參考美國法制建構行政法法官（Administrative Law Judge）之法制及相關制度之必要。

美國行政法法官制度經多年之運作已取代原有之聽證官（examiner）¹制度，對於行政聽證程序客觀中立之確保及各種行政委員會之運作，須強調其準司法特性者，均有極大之助益，我國行政聽證制度之主持人問題，亦為導致行政聽證程序在我國無法全面推動之主要原因之一，益以行政委員會之各種裁決程序在我國機關組織再造後之委員會中亦有再予辨明之必要，美國行政法法官制度之引入，將有助於我國行政機關及行政委員會對於行政裁決或處分程序之客觀公正，並能進一步促進行政效能，落實依法行政。

本研究之目的以引介美國行政法法官制度，兼及美國反托辣斯法規定之相關裁決及救濟程序之介紹，釐清美國採用行政法法官之背景

¹ 本報告將 examiner 譯為聽證官，如直譯應為審查員，惟因其設置，除調查或審查個案事實及法律問題外，主要功能在於主持聽證，部分文獻資料稱其為「hearing examiner」，亦係本於此旨。

及目的，以評估其引入我國相關程序(尤以訴願及聽證程序)之可能。同時將訴願法予以逐譯，作為法制比較參考之用。

第二節 研究內容

基於上述研究目的，本研究之研究大綱如下所述：

- 一、緒論。
- 二、美國行政法法官制度之起源及其背景。
- 三、美國行政法法官在實務上之運用及其優劣，並以美國反托辣斯案裁決及救濟程序作為特例之簡介。
- 四、我國引進美國行政法法官制度之可能，含我國聽證制度及訴願法之因應。
- 五、我國訴願法英譯參考。
- 六、結論。

我國聽證制度之研究報告中，如林明鏘，行政命令之聽證程序——以全民健保醫事服務機構特約及管理辦法為例，結論中即指出中央及地方法規會應予調整充實人力，並於中央法規標準法中，將法規公聽之規定，列為審議之標準程序；林秀蓮，行政程序法有關聽證制度之檢討（法務部法律事務司撰擬）之研究報告，則具體指出，可考慮建立類似美國「行政法法官」制度，以確保聽證程序之客觀中立及聽證結果之正確可行。

第三節 研究方法

茲分別敘述本研究所使用之資料蒐集方法如下：

一、文獻分析

本研究群將蒐集美國有關行政法法官之起源、背景、運作機制、組織架構、法規條文與個案成果報告。不論是期刊論文、專業書籍、報章雜誌、網站資料均加以蒐集，俾能掌握美國行政法法官機制之精神及其應有之配套措施。

二、比較方法

本研究係以美國行政法法官制度與我國相關制度作比較分析，冀能取得相關之共同點及可資借鑑之處，雖則美國行政法法官制度背景下之行政委員會，亦有批判為不受管制之第四權²者，本研究以制度介紹為主，對於該制度之相關批判，則未再作深入檢討，而係以我國相關行政程序法及訴願法規定，引入該項制度之可能出發，予以探討。

三、研究工作小組會商

本研究擬於研究期間，舉行小組討論，對於相關法制之資料，作必要之討論，釐定各專有名詞之統一用字用語。

² 論者有以美國行政委員會為三權分立以外，所設之第四權，且屬合議制，致形成無頭之第四權（headless forth branch）。

第四節 小結

本研究之進行，採理論與實務兼顧之作法，在翻譯我國相關條文時，並著重其實務運作之可行性與可認識性，對於美國法制之引介，則以美國聯邦行政程序法為基準，並輔予美國反托拉斯中之裁決程序為例，作為具體運作時，在個別行政作用領域中，仍可視需要適度調整，以為因應。惟以本研究主要在於制度之介紹及引進，未能深入探討美國行政法法官之制度運作，對我國制度之評析比較，亦僅提出初步之原則性建議，在制度結合上，仍須再為更一步之分析及檢討我國法制上之可能配套措施，始能深入檢討問題及提出具體作法。

第二章 美國行政法法官制度之起源

第一節 美國行政法法官之起源³

美國行政法法官之起源係源於美國南北戰爭之後，隨著工業化國家之發展，美國鐵路公司所擁有的強大政治及經濟力量，造成極為重大的問題，強大的船運公司得以與鐵路公司協商取得優惠之運價，小農及較無商業利益之者，則被過度的收取高額費用，對於不公平之費率結構，固得尋求司法救濟，惟法院對於此類救濟案件之決定，仍屬個案，無法為全面公平性之考量，此與其他國家鐵路為國營事業有別，亦造成美國政治上之極大爭議，部分州為因應政治壓力，遂成立州立機關對於鐵路予以規範，惟此類機關未能完成其原定成立之目的，鐵路公司強力抗拒，法院亦未能對於行政費率決定之最終性，予以肯認，且經常否准州委員會規範州際費率⁴。

在 1887 年美國國會通過設置具複合功能之機關，即州際商務委員會（Interstate Commerce Commission）以因應政治壓力，此一商務機關結合調查、起訴及裁決⁵之功能，且為獨立於行政控制之委員會，此為美國聯邦管制委員會之原型機關，具有迫使私人企業基於公

³ 下列有關美國行政法法官之起源，係援引自 National Administrative Law Judge Foundation & Michael Asimow, *The Administrative Judiciary: ALJ's Historical Perspective*, Journal of the National Association of Administrative Law Judges, Spring 2000，並酌作部分增刪。

⁴ 美國為一聯邦制之國家，除憲法列舉賦予聯邦立法之事項外，其餘立法權歸於各州，惟美國憲法第 3 條第 8 項第 3 款對於聯邦國會之權限，明定有所謂州際貿易條款（interstate commerce clause）為聯邦立法權，在涉及跨州商務時，州並無立法權，法院對於依州法設置機關並執行之事務，即得以違反聯邦管轄之規定，予以駁回。

⁵ 裁決（adjudication）一詞，依美國聯邦行政程序法第 551 條 7 項定義為：機關命令（order）形成之程序；同條 6 項定義命令為：機關訂定規則（rule）以外，包括許可（licensing），部分或全部之最終處置（deposition），不問是肯定、否定、禁止或宣示之形式，此項定義造成裁決與規則訂定間之混淆，尤以其多機關之規範費率，可定義為裁決，亦可定義為規則訂定，前者適用之程序要求較高，從而在許可發給伴隨有拘束性之命令時，均被法院認為屬聯邦行政程序法所作之裁決。See KENNETH CULP DAVIS & RICHARD J. PIERCE, JR., *Administrative Law Treatise*, Vol. I, 3rd Ed., Little Brown and Company, at 377-78.

益運作之功能及權力，惟 1887 年所設置之委員會並無實質之武器可供使用，致造成諸多更具敵意之法院判決。至 1920 年，隨著優異之委員及幕僚，伴隨著法規之修正及司法有利之判決，該委員會始漸次成為有力、有效及受尊重之鐵路管理人（regulator）。

美國州際商務委員會經由涉及運送人與托運人有關特定費率之個案裁決行使其職權，美國聯邦最高法院之判決則要求在裁決程序中須遵守正當法律程序條款，因為案件數量眾多，美國州際商務委員會未能全體或分組聽取個案之爭議，乃由委員會之職員以聽證官（examiner）之名取代委員之聽證，聽證官作審訊、製作紀錄，同時於一段期間後，開始發布決定初稿（recommended decision）。最初此類初稿被認為無拘束力且不重要，制度上，州際委員會之職員須與委員合作提出機關詳附理由格式之最終決定，歷經一段時間後，機關聽證官日趨專業，而其決定亦取得較多之尊重，事實上，聽證官與委員經常密切配合提出最終之決定，而美國州際委員會聽證官制度亦為日後美國行政法法官制度之起源。

美國州際商務委員會為 1914 年成立處理獨占問題之聯邦貿易委員會（Federal Trade Commission）之範本，美國聯邦貿易委員會聽證官（亦經常身兼調查員）行使聽證並與機關首長密切合作提出最終之決定。在 1930 年代新政時期（New Deal），許多獨立委員會兼具多項功能應運設置，以處理實際或可能發生之大蕭條（great depression），理念上，在於藉由機關之專業職能，以解決市場失靈所無法解決之問題，而州際商務委員會及聯邦貿易委員會則為此類機關（含聯邦及各州所設置之獨立委員會）之典型。

於此同時，聯邦複合功能之機關所發布之法規，漸成為具極度爭議性。多數人尊重州際商務委員會或認同其不可或缺性，惟對新設立之委員會則未必相同視之，新政時期所設之機關開始著力於原不受法規管制，而係由市場機制決定之商業決定，舉如勞工關係、公司財務、通訊、銀行、農業及各種定價與產量之決定，行政裁決從而大量增加。除對行政管制之普遍厭惡外，亦有其他對機關決定形成公平性之合理懷疑，機關本身並無職能分工，且機關首長常被認為對私人產業存有偏見，縱使是新政支持者，亦質疑機關裁決作成之方式。美國聯邦最高法院在一段時期內，對新政採反對之立場，惟自 1937 年始，美國聯邦最高法院放棄其阻止行政國家形成之立場，相對宣告計畫無效或提高機關行政程序之要求，從而促使 1946 年通過美國聯邦行政程序法，並將行政法法官之制度予以引入⁶。

美國聯邦行政機關採用聽證程序作為個案裁決之基礎並非始於行政程序法之施行，在此之前即已有「聽證官 hearing examiner」之存在，但聽證官並非具有制度保障之獨立性，故常被譏為「行政機關提出預擬事實之工具」⁷。故 1939 年司法部長行政程序委員會(The Attorney General's Committee on Administrative Procedure)即開始研議如何改良行政決定程序(decision process)之公正性，並於 1941 年公布其報告。在該報告中，不論多數意見或少數意見，對於聽證官之制度則達成共識，認為應使其具有「部分獨立於其所屬行政機關之特性(partially independent of the agency by which they were employed)」，而其方法則以給予任期制之保障，其中多數意見主張給予七年之任期，而少數意見則主張給予十二年之任期，惟相

⁶ 美國聯邦行政程序法第 556 條 (b) 規定：機關、機關構成員或依第 3105 條規定指派之行政法法官一人或數人，得主持聽證。

⁷ See BERNARD SCHWARTZ, *Administrative Law*, at 535, 538 (Fourth Ed.) (Little Brown, 1994).

關法律及意見之整合則因二次大戰之原因而延宕，迄至行政程序法制定⁸。

第二節 美國行政法法官之職能

正當法律程序為美國憲法之核心價值，在涉及人民權益受侵害或有受侵害之虞時，行政機關亦應遵守正當法律程序之要求，賦予人民聽證權，以落實正當法律程序之保障，由美國行政法法官源起於獨立行政委員會之裁決功能上，亦可窺知，美國行政法法官在裁決程序上，亦扮演起訴者及調查者之角色，在在皆須有客觀公正之人員，始足當之，機關首長或機關職員由於在身分職位上之定位，具有政策執行之任務，無法脫免公正性之質疑。美國聯邦行政程序法在第 3105 條⁹規定，機關得指派一名或多名行政法法官行使第 556 條及第 557 條之職權¹⁰，從而美國行政程序法導入行政法法官，該法主要規範下列各項職權，賦予行政法法官¹¹，爰分別臚述如下：

第一項 主持聽證

美國聯邦行政程序法第 556 條(b)(3)規定：「機關、機關構成員或依第 3105 條規定指派之行政法法官一人或數人，得主持聽證。」

⁸ See *Id.*, at 536.

⁹ 美國聯邦法典為一整合各相關法律後，依英文字母排序之法典，稱之為 United States Code，本文所引法條係由美國聯邦法典中引出，其條次亦因有相關法律條文夾雜其中故而條次較多，並非意謂美國聯邦行政程序法多達三千多條，爰予敘明。

¹⁰ 美國聯邦行政程序法第 556 條係對職證及其相關程序之規定，以作為機關決定之基礎；第 557 條係規定決定初稿及定稿，以及相關應作為決定之內容及紀錄。

¹¹ 美國行政程序法規定得為證據取得主持人者，包括機關及機關構成員，亦包括行政法法官，本部分；而其他聽證權行使部分，包括機關職員，惟行政法法官均得行使。

其立法上在於藉由獨立行使職權之行政法法官之專業性及獨立性，以確保人民權益，並符正當法律程序之保障，惟行政法法官之裁決僅係供機關首長作最後決定之參考，最後決定之權限仍由機關首長為之，在具體個案之裁決上，機關首長與行政法法官之意見相左之情形，亦常可見之，惟在機關首長與行政法法官意見不一時，法院判決見解較傾向支持獨立行使職權之行政法法官，此亦為行政法法官設置之主要目的。故而美國聯邦行政程序法第 556 條(b)僅賦予行政法法官主持聽證之職權。同時在同法第 556 條(c)(5)規定有權規定聽證之程序¹²。

第二項 調查證據

美國聯邦行政程序法第 556 條(c)(1)，設有行政法法官除機關另有規定外，得作為聽證主持人，且得依職權行使相關權限，詳情請參照後文第三章第二節第五項部分之說明。

第三項 和解及簡化爭點

依美國聯邦行政程序法第 556 條(c)(6)規定，行政法法官得主持和解會議或經雙方同意簡化爭點，或使用替代解決紛爭之方案¹³。並適時通知雙方有關一項或多項替代解決紛爭方案可資應用，並鼓勵雙方使用此類解決糾紛方案¹⁴。

¹² regulate the course of the hearing;

¹³ hold conference for the settlement or simplification of the issues by consent of the parties or by the use of alternative means of dispute resolution as provided in subchapter IV of this chapter;

¹⁴ inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such method; (美國聯邦行政程序法第 556(c)(7)條規定)

第四項 程序處置

依美國聯邦行政程序法第 556 條(c)(8)規定，行政法官要求至少有一方當事人之代表須出席依法舉行之聽證，此一代表人須對於爭議解決方案之爭點有權調處¹⁵。此外，行政法官亦得對於程序上之請求予以處理，或為類似事項之處理¹⁶。

第五項 研提審議初稿¹⁷

依美國聯邦行政程序法第 556 條(c)(10)規定，行政法官得依第 557 條規定作成建議決定¹⁸。

第三節 美國行政法官之特性

美國行政法官在美國行政程序中所司職掌，在美國行政及司法二項權限之外，亦可較有彈性的處理各項爭議，雖則美國行政法官之客觀獨立要求，在職權保障及行使上，與法官幾無二致，惟其究屬行政程序之進行，縱為裁決至多亦僅稱為準司法程序，與法官之司法判決嚴格遵守法定程序有所不同，在個案裁決上，可發揮之功能，與法庭訴訟之功能亦殊，爰將行政法官所能發揮之功能臚述如下：

¹⁵ require the attendance at any conference held pursuant to paragraph (6) of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;

¹⁶ dispose of procedural requests or similar matters;

¹⁷ 美國行政法官所作成之決定建議，有類於我國訴願審議規則第 11 條第一項所定承辦人擬具處理意見，爰稱為「審議初稿」。

¹⁸ make or recommend decisions accordance with section 557of this title;

第一項 客觀公正—獨立性之保障

行政法法官係配屬於各機關內部，而屬於機關構成員之一，並受到所屬組織法及機關政策之約束，且辦公所在、組織部門間之互相協助、薪資等均由各該機關提供及給付，然而行政法法官基本上並受該機關內部之管理，從任命到解任，行政法法官均享有制度上獨立性之保障，其所屬機關僅在有正當理由(for good cause)時，始得對其解任或施以紀律監督¹⁹。首先，行政法法官之薪資俸給係由 Office of Personnel Management (OPM)設定或建議²⁰，亦即行政法法官之薪資俸給與一般機關構成員必須得到機關首長對其工作表現給予評定後再確定薪給之方式有所不同，使行政法法官得免於機關首長在薪資方面之可能挾制。其次，行政法法官之解任亦與其他機關構成員有所不同，使其免於被機關首長免職之威脅，除此之外，OPM 並明定機關不得對行政法法官之工作表現進行等級之評定，使其工作表現不受機關之評分壓力²¹。

然而此一獨立性並非使行政法法官得獨立於其所屬機關之外作成最終決定，而僅係使其作成初步決定或建議時，能夠不受機關之壓力而屈從上意並為違背法律之決定，各機關仍保有及所屬職權範圍內對於個案裁決之最終決定權，亦即機關首長得審核行政法法官初步決定之法律結論，有時甚至對於事實亦可重新審查認定(review de novo)，以確保行政法法官不致於完全逸脫於機關之外²²。

¹⁹ See L. Hope O’Keeffe, *Administrative Law Judge, Performance Evaluation, and Production Standards: Judicial Independence versus Employee Accountability*, 54 GEO. WASH. L. REV. 591, at 592.(1986).

²⁰ 關於行政法法官之薪資俸給等級及統計可自 OPM 之官方網站取得資訊，available at <http://www.opm.gov/>

²¹ See O’Keeffe, *supra* note 19, at 594. See also, James P. Timony, *Performance Evaluation of Federal Administrative Law Judges*, 7 ADMIN. L. J. AM.U. 629, at 633 *infra* (1994).

²² See O’Keeffe, *supra* note 19, at 595. 此種事後審查(after the fact)對於機關之一體性或完整

總的來說，美國行政法法官制度之設計，為確保其職權行使之獨立，對於行政法法官與機關首長職權行使之分際上，設有相互制衡之機制，雖則行政機關得為最終之決定，行政法法官僅得為建議性之初擬意見，在二者有衝突時，美國法院在相關判決上，仍以行政法法官之認定為較有利之判斷，論者亦以美國行政法法官制度本即含有與機關首長職權衝突之可能，特賦予其特殊之身份保障，以避免行政上不必要之干預，對於行政法法官之身份保障，除明定得予降職或改敘等制度，在評鑑上，亦不得僅以其辦理案件數之多寡作為評鑑之標準，仍須以其實質上有無違法失職等原因，始得對之作成懲處。

第二項 程序彈性

正當法律程序為美國憲法所揭櫫之重要法則，在行政程序或司法程序中均有其重要性，而行政法法官在行政程序中所能規定之聽證程序，其可能採行各種彈性作為，以兼顧正當法律程序之保障及與相對人之溝通協調。此乃因行政法法官有別於行政機關之職員，較無立場之混淆，人民對之不易存有成見，而其非正式法官之角色，尚不致有

性而言仍屬傷害，故制度之存在必有其缺陷。因為 OPM 及 APA 禁止機關對於行政法法官之表現進行直接評價，因此有些機關乃迴避對於其所配屬行政法法官所作成決定進行「質 quality」的評價，而以「量 quantity」為評鑑基準，亦即就各別行政法法官所解決之個案數量與全部行政法法官裁決之平均數作一比較，以了解該行政法法官之表現，但此種方式目前仍存有爭議。*Id.* at 596 *infra*. 在 SSA v. Goodman (19 M.S.P.R. 311, 1984) 案中，SSA (Social Security Administration) 以 Goodman 行政法法官所處理之案件量僅有全國平均量之半數，並依此「量」的評鑑主張對其免職，但法院認為「量」並無法表現出具體個案的困難度是否有所不同，而造成量上的差異，因此不得以量作為評鑑行政法法官表現之基準。惟學者有認為既然行政法法官之案件分配係以「亂數」分配，則特殊案件之困難度應不致於造成落差達一半之結果。See Timony, *supra* note 21, at 638. 該見解並非 Timony 法官之意見而係 Richard J. Pierce 教授之意見。

嚴格之法庭程序必須遵守，對人民而言，亦不致有法院訴訟之心理或財務負擔。從而可在最低限度之程序保障內²³，確保人民之權益。

第三項 主動積極

美國行政法官之特質之一為有異於一般司法機關之法官，不以消極被動處理事務，而代之主動積極之協調者角色，在個案裁決程序中，除程序之進行，行政法官得為必要之調整及裁定外，並須主動積極告知當事人在行政程序中之可能選擇之其他替代方案，或提出相關簡化爭點之提議，取得當事人之同意，以減少或消弭爭議，故行政法官一方面具有法官獨立行使職權之功能，亦同時具有機關職員從事行政事務之功能，對於相關爭議之解決，較能本於主動積極之角色予以處理。

第四項 替代方案

美國行政爭議解決法（Administrative Dispute Resolution Act of 1990）一如其他國家之爭議解決替代方案，賦予行政機關在行政程序中採行各種可能之解決方案，包括和解等，以解決行政爭議，並不以一成不變之行政處分或裁決方式處理機關與人民間之事務，美國上開法案並強調，在以行政程序處理爭議下，應以替代方案為優先以解決爭議，法院之裁判被視為最後之手段，從而行政法官在取得授權上，可較一般行政機關之職員，擁有更大之裁量空間。

²³ 正當法律程序因為美國憲法所保障之程序請求權，惟程序保障之最低限度為何，則須視個案而定，美國行政法官在程序處理上，有關取得證據部分或聽證部分，間亦可採以書面方式提

第四節 小結

美國行政法法官制度，將行政法法官定為為法官，其起源主要係源自行政委員會之準司法職能，對人民之權益具有重要影響之行政裁決上，須以客觀公正及專業之立場予以處理，始能獲取人民之信賴，在歷經多年之運作後，美國行政法法官已形成類似法官之制度，在職權行使及身分保障上，均有其定位，且頗受人民之敬重，雖則仍不免行政法法官之考核評鑑問題之爭議，惟對人民權益保障及公共利益之維護上，行政法法官確已發揮相當之功能。

美國行政法法官之制度自聯邦行政程序法始成定制，其中賦予行政法法官之聽證權及相關事務處理權限，可見行政法法官在職權行使上係與機關首長併行，同時亦能在相當程度上影響個案之判斷，而其相較與司法機關之依法裁判又顯具更多之彈性運用，對於個案爭議之解決，更具效能與實益。

供，以替代正式之程序要求。

第三章 美國行政法官之實務運作

一 以美國反托拉斯案裁決及救濟程序為例

第一節 前言

根據美國聯邦行政程序法 (Administrative Procedure Act) 第 3105 條之規定，每一個聯邦行政機關均必須任命足夠數量之行政法官 (Administrative Law Judge) 以踐行該法第 556 條及第 557 條所規定之職權，包括聽證程序之踐行 (Hearings)、發出傳票 (issue subpoenas)、裁定關於證據之提供及接受相關證據 (rule on offers of proof and receive relevant evidence)、聽取證言 (take depositions)、處理程序問題，以及作成初步決定 (initial decisions) 等²⁴。

依此規定，聯邦行政法官 (ALJs) 雖屬於行政機關之內部組成份子，並踐行行政機關之部分職權，詳言之，行政法官之主要任務在於踐行行政機關之命令制定權 (rule making) 及個案裁決 (adjudication) 之前置程序或初步決定等，故其雖名為法官，但其所執行之任務則係屬於行政權之範疇。

是則，美國聯邦行政法官究竟應被視為具有法官之身份或應被認為係行政機關團隊之一份子？而其所踐行之職權究竟應定位為行政權或類似司法權而具有救濟性質？乃具有比較法上研究之意義，本文擬以美國聯邦貿易委員會 (Federal Trade Commission) 在執行聯邦貿易法第 5 條所授予之管制競爭狀態之職權及聯邦反托拉斯法

²⁴ See Federal Administrative Procedure Act, §§556-§557, §3105.

(Sherman Act)之程序為例，探討行政法法官之職權、踐行程序之要件、初步決定之性質及其救濟等問題，以提供我國現行行政救濟制度之參考。

第二節 美國行政法法官制度及其獨立性

第一項 行政法法官之定位

依照上述條文之規定，行政法法官係配置於聯邦各行政機關內部，並協助行政機關執行其在行政程序法之程序職權，然而行政法法官仍被視為在事實上(*de facto*)與法律上(*de jure*)獨立於行政機關之外之地位²⁵。但是，行政法法官，包括聯邦行政法法官及各州之行政法法官，其最主要之任務係針對具體個案作成必須進行「司法審查式聽證為基礎 trail-type hearings」之個案初步決定，此種個案決定稱為「正式個案決定 formal adjudication」，而此等初步決定若未經相對人或利害關係人依法提出不服(*appeal*)者，則將成為行政機關之最終決定²⁶。但若相對人或利害關係人對行政法法官之初步決定向該行政機關聲明不服者，則該機關有權維持或廢棄該初步決定，而該決定則成為行政機關之最終決定(*final decision*)²⁷。而相對人或利害關係人則仍可對行政機關之最終決定循民事程序向法院提起訴訟，並由單一之司法機關對行政機關最終決定之適法性進行審查。

²⁵ See ARTHUR EARL BONFIELD & MICHAEL ASIMOW, STATE AND FEDERAL ADMINISTRATIVE LAW, at 175 (West Publishing Co., 1989).

²⁶ *Id.*

²⁷ See APA §557(b); 1981 MSAPA §4-216(a).

在行政程序法制定過程中，對於行政法法官應授予何種程度之獨立性非無爭議，其最後之結果係給予行政法法官在任命、解任(下述)及薪資評鑑等均獨立於所屬機關之外，但機關畢竟保有對行政法法官所作決定或認定之審查權，此種妥協究竟在司法審查上如何解釋非無疑義。聯邦最高法院在 Ramspeck v. Federal Trial Examiners Conference 一案中²⁸，表示行政法法官「係一個特別的準獨立聽證官 (semi-independent subordinate hearing officers)，其薪資給付、升遷、或免職不受機關或政治因素之控制，且行政法法官不再是機關或機關首長表現其對事實認定之工具(tools)」；在 Butz v. Economou 一案中²⁹，聯邦最高法院闡釋行政法法官之地位及職權認為：「現行聯邦聽證官或行政法法官在功能上係與法官可相比擬(functionally comparable to that of a judge)……，而行政機關對於個案裁決之程序設計亦係要求聽證官能基於證據，免於身為當事人一方之機關或其他官員之壓力，而獨立作成認定，因此確保聽證官之公正性乃被認為是個案裁決之中心(the heart of formal administrative adjudication)」。此外，該案並進一步授予行政法法官與其他聯邦法官相同免於職權行使行為之侵權責任，進一步確保其獨立性³⁰。

第二項 聯邦及各州行政法法官編制之比較

如上所述，聯邦之行政法法官係配置於機關內部，而各州之行政法法官則有二種基本配置方式：(1)與聯邦行政法法官相同，係配置於各行政機關之內部，而該行政機關則仍保留命令制定及個案裁決之

²⁸ See Ramspeck v. Federal Trial Examiners Conference, 345 U.S. 128(1953).

²⁹ See Butz v. Economou, 438 U.S. 478 (1978)., See also SCHWARTZ, *supra* note 7, at 537-8.

³⁰ *Id.*

最終決定權；(2)由各州對行政法官設置一個「中央法庭 central panel」，各機關則無行政法官之編制，在有需要由行政法官進行聽證或其他程序之必要時，則由中央法庭進行安排，使行政法官能夠在形式獨立於機關之組織之外，但仍屬於行政權組織之一環，而非司法權組織之一環³¹。聯邦行政程序法施行初期，全國僅有 197 位聽證官，至 1950 年代中期已有近四百位，並持續成長，至 1992 年之正式統計已有近 1200 位行政法官配屬於三十個聯邦機關中，但其中有超過 850 位係配屬於「社會安全署 Social Security Administration, SSA」³²，與此相比大約亦有包括聯邦破產法庭法官在內約 1200 位聯邦法官，在量上二者大約相同，但並無實地或正確的統計資料顯示二者間之工作量或所處理案件數量之比較³³。在計算至 2003 年則已有超過 1400 位行政法官配屬於各聯邦機關，而其中有超過 1100 位係配屬於社會安全署，與此相較，聯邦郵務部(U.S. Postal Service)則僅有一位行政法官之配置³⁴。

除此之外，各州亦偶有制度上之差異，例如緬因州(Maine)及密蘇里州(Missouri)採行列舉項目之「機關最終決定權」係由行政權下之「行政法院 Administrative Court」行使，而該行政法院之最終決定則仍得向民事法院聲明不服。

³¹ See 1981 MSAPA §4-202(a), §4-301.

³² See SCHWARTZ, *supra* note 7, at 543.

³³ See SCHWARTZ, *supra* note 7, at 538.

³⁴ See OWEN M. FISS & JUDITH RESNIK, *Adjudication And Its Alternatives—An Introduction to Procedure*, at 40 (Foundation Press, 2003). 依該書作者所述，除行政法官之存在外，某些機關仍設有自己之「聽證官」並扮演類似於行政法官之功能，惟作者並未深論其根據或理由及其是否存在合法性之問題。

第三項 行政法法官之任命

聯邦司法法官係受憲法終身職之保障，以確保其得以獨立行使職權，免於行政權或立法權之干涉；而聯邦行政法法官則是直到一九四六年聯邦行政程序法制定施行時始正式制度化，在此之前，各機關雖有配置人員進行相關之聽證程序，但尚無法官之稱號，且因其主要任務係進行聽證程序，故被稱為「聽證官」，且當時對聽證官並無制度性之保障，其任命亦係由行政機關自行挑選任用，再者因行政程序法尚未施行，故機關首長亦有權直接影響聽證官在程序決定或實質決定之內容，更甚者，機關得不經任何人對聽證官之決定聲明不服，即可自行重新審查並作成新決定(*de novo decision*)，基此種種因素，在一九四六年之前，聽證官雖然存在，但無法經由制度性保障確保其客觀性及獨立性。³⁵

一九四六年聯邦行政程序法通過初期，其名稱仍未改變而稱為「Hearing Examiners」，但對於聽證官之獨立性則已經具有共識，故行政程序法施行初期乃有大量之意見討論如何將聽證官轉換(*transform*)為「法官 judges」，其中行政程序法之提出者，Pat McCarran 參議員建議聽證官應與聯邦法官相同，由總統進行任命，惟並未得到支持。此後，直到一九七八年始將其名稱直接改為「行政法法官 Administrative Law Judge」，但其權力與責任則未曾改變，一般認為此種名稱的直接更換為成本最低之方法³⁶；同時行政程序法授權「人事管理室 Office of Personnel Management, OPM」針對擔任行政法法官之條件資格及認證進行審查，而非由各機關任意制定任

³⁵ See Jeffrey S. Lubbers, *Federal Administrative Law Judges: A Focus on Our Invisible Judiciary*, 33 ADMIN. L. REV. 109 (1981).

³⁶ See SCHWARTZ, *supra* note 7, at 537.

用標準³⁷。依 OPM 之規定，行政法法官之選任基本上須得到二十位專業人士之推薦，七年以上之訴訟經驗，書面意見撰寫測驗且必要得到行政法法官之讚賞，始符合擔任行政法法官之基本資格³⁸。對於行政法法官之任用是否要求具有法學院學位資格至今仍有爭議，持肯定見解者認為行政法法官之工作與法律有緊密關聯，而更現實的因素則是要求具有法律相關學位可以提升其學位之價值；而持反對意見者則認為，經由實際研究顯示是否具有法律學位與行政法法官之工作表現之間並無直接關係，某些不具法律學位之行政法法官表現甚至比法學院畢業者更優秀³⁹。但似乎大多數意見支持行政法法官應具有律師資格且至少曾經有一段時間的實務工作經驗，較能了解法律程序之運作方式，而不致於產生更多爭議⁴⁰。惟必須注意的是，與我國長期以來律師考試錄取率相比，美國各州的律師考試錄取率均相當高，且若在收入或其他方面之保障未能酌予提高或比照司法人員之保障者，在我國恐怕不易吸引具有律師資格者轉任行政法法官，當然此一論點係基於我國將採用行政法法官制度而言除此之外，聯邦行政法法官之薪資報酬係由 OPM 獨立決定，而可不受各該機關之建議，而已任用之行政法法官除非有正當理由，且經「Merit Systems Protection Board」之聽證程序，否則不得予以免職⁴¹。為更進一步確保行政法法官之獨立性，行政法法官並得免於各機關內具有調查或起訴權人員之監督，以避免機關藉此控制行政法法官之獨立性⁴²。

³⁷ See APA §5372. 在行政程序法施行初期，聽證官係由 Civil Service Commission 進行資格認定及薪資認定等工作，迄至 1978 年聽證官更名為行政法法官時，則改由 OPM 處理相關事務。See SCHWARTZ, *supra* note 7, at 539.

³⁸ See Timony, *supra* note 21, at 633.

³⁹ See Thomas E. Ewing, *Oregon's Hearing Officer Panel*, 23 J. NAT'L A. ADMIN. L. JUDGES 57, at 81(2003).

⁴⁰ *Id.*

⁴¹ See APA §5372 & §7521.

⁴² See Lubbers, *supra* note 35, cited from BONFIELD & ASIMOW, *supra* note 27, at 178.

第四項 行政法法官承辦案件之分配

若機關首長得依其意志分配特定具體個案予特定行政法法官，則將甚難期待該行政法法官不受該長官之影響，故一般司法體系分配案件予承審法官均係採「亂數分配 rotation」，已避免經由指定承辦法官之手段，影響其獨立性。美國聯邦行政法對於各機關分配案件予行政法法官亦係採亂數分配，以達到獨立性之確保⁴³。除此之外，行政機關亦不得命行政法法官從事與其任用為法官之目的不相符合之工作，使其能免於其他業務之干擾而得專職其工作⁴⁴。在案件分配予特定行政法法官之後，若有足夠事證足以證明該行政法法官對當事人有偏頗之虞者，則可自行迴避亦可經由當事人之聲請而為迴避，若行政法法官在有足夠事證之情況下仍拒絕迴避而作成初步決定，而初步決定復為行政機關所接受者，則法院除可就該決定之合法性進行審查外，並得就該事由是否足夠使行政法法官迴避進行審查⁴⁵。

第五項 行政法法官之職權

依美國聯邦行政程序法第 556 條(c)之規定，行政法法官幾乎擁有與聯邦法官在「無陪審團審判程序相同型態之職權與責任 same type of authorities and responsibilities as a federal judge in a trial without a jury」，依該條規定，行政法法官於主持聽證程序調查證據時有如下權限⁴⁶：

⁴³ See APA §3105.

⁴⁴ See APA §3105.

⁴⁵ See DONALD P. ROTHSCHILD & CHARLES H. KOCH, JR., *Fundamentals of Administrative Practice and Procedure*, at 180 (MICHIE BOBBS –MERRILL PUBLISHER, 1981). See *Grolier Inc. v. FTC*, 615 F.2d 1215 (9th Cir. 1980).

⁴⁶ See SCHWARTZ, *supra* note 7, at 539.

- (1) 主持及批准宣釋(administer oaths and affirmations)；
- (2) 依法發出傳票(issue subpoenas authorized by law)；
- (3) 裁定關於證據之提供及接受相關證據(rule on offers of proof and receive relevant evidence)；
- (4) 聽取證言(take depositions)或命為證言之聽取(have depositions taken)
- (5) 主持聽證程序之進行(regulate the course of the hearing)；
- (6) 主持試行和解會議或與雙方協調減少爭點或採用其他爭端處理方式(hold conference for the settlement or simplification of the issues by consent of the parties or by the use of alternative means of dispute resolution)；
- (7) 告知當事人關於其他爭端處理方式之存在並建議採行之(inform the parties as to the availability of one or more alternative means of dispute resolution and encourage use of such methods)；
- (8) 要求參與會議之當事人必須至少有一位代表有權對爭議問題進行協商(require the attendance at the conference held at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy)；
- (9) 處理程序問題(dispose of procedural requests or similar matters)；

- (10) 依行政程序法第 557 條之規定作成決定或建議決定(make recommend decisions in accordance with section 557 of this title)；
- (11) 採取機關命令或規則所授權而符合行政程序法之行為(take other action authorized by agency rule consistent with this subchapter 5 U.S.C.§556(c)) 等⁴⁷。

以上所述者為行政法法官於聽證程序中之權限，在聽證程序進行中，若當事人之一方提出試行和解或非正式和解(informal settlement)方案者，行政法法官亦得與之討論並為接受或拒絕，或接受該和解方案者，則必須先暫停聽證程序並將和解方案送交行政機關進行審核，若行政機關接受該和解內容者，則聽證程序即告終結⁴⁸。若和解未能成立或被拒絕者，則行政法法官將可能必須作成「初步決定 initial decision」。此外，行政法法官對於證據或程序所為之處理，亦得於程序中提起「中間不服 interlocutory appeal」，並將該爭議直接交由行政機關決定之⁴⁹。

按行政機關在決定將聽證調查交由行政法法官時，得同時決定是否亦授權該行政法法官依其調查所得證據作成初步決定；或僅授權該行政法法官完成調查證據之正式紀錄(formal record)以作為行政機關自行作成決定之基礎。通常而言，行政機關係將作成初步決定之權限亦一併授予承辦之行政法法官⁵⁰。行政法法官作成之初步決定或建

⁴⁷ See WILLIAM F. FUNK & SIDNEY A. SHAPIRO & RUSSELL L. WEAVER, *ADMINISTRATIVE PROCEDURE AND PRACTICE—PROBLEMS AND CASES*, at 200 (West Publishing Co., 1997). See also Laurence S. Moy & Linda A. Neilan & Hollis Pfitsch, *Whistleblower Claims Under The Sarbanes-Oxley Act of 2002*, 1509 PLI/CORP. 999, at 1012-3 (2005).

⁴⁸ See JERRY L. MASHAW & RICHARD A. MERRILL & PETER M. SHANE, *Administrative Law—The American Public Law System*, at 353 (West Publishing Co., 1992).

⁴⁹ See DONALD P. ROTHSCHILD & CHARLES H. KOCH, JR., *Fundamentals of Administrative Practice and Procedure*, at 179-180 (MICHIE BOBBS-MERRILL PUBLISHER, 1981).

⁵⁰ *Id.*

議，均包括「事實認定 finding of fact」、「法律結論 conclusions of law」、作成決定或認定之理由及基礎、以及決定或建議之內容等幾大部分⁵¹。而為了進行聽證及調查證據之程序，大部分機關均已仿倣聯邦民事訴訟法之規定制定關於聽證及採認證據之規定⁵²。

就事實認定之職權，行政法法官亦僅得依其所調查所得之證據而為認定，雖然其所須遵循之證據法則未如一般民刑事訴訟所須遵循之證據法則般嚴謹，然而依行政程序法之規定，不論是行政法法官或行政機關對於事實之認定均不得「武斷(arbitrary)、恣意(capricious)、濫用裁量(abuse of discretion)，或其他與法律不符之認定(not in accordance with law)」，否則該決定仍須受到司法法院之審查⁵³。此外，就事實之認定，行政法法官所為之認定亦非最終之認定，其所屬機關仍得就所調查之證據對事實作最終之認定⁵⁴。而即使其所屬機關接受行政法法官對事實之認定及法律結論，並進而接受其所為之建議決定或初步決定者，該初步決定除非有當事人之一方聲明不服，否則於該具體個案有拘束(binding)雙方當事人(包括機關本身)之效力；然而該初步決定並不因此而成為具有拘束行政機關在未來相同個案之「行政先例 binding precedent」⁵⁵。

⁵¹ See APA §557(c).

⁵² See FUNK & SHAPIRO & WEAVER, *supra* note 47, at 201.

⁵³ See APA §706(2)(A).

⁵⁴ See James P. Timony, *Demeanor Credibility*, 49 CATH. U. L. REV. 903, at 925 (2000).

⁵⁵ See Thomas W. Merrill & Kristin E. Hickman, *Chevron's Domain*, 89 GEO. L. J. 833, at 908 (2001).

第六項 美國現行行政法法官制度之檢討

因為制度上本身即存有缺陷，例如行政法法官所執行者為行政權之一部份，且其屬行政機關編制內之人員，雖然給予其部分獨立行使職權之制度保障，然而於具體個案中，行政機關畢竟為當事人之一方，如何使行政法法官能夠真正的獨立於機關之外，而作成公正之初步決定，事實上仍存有疑慮。此外，因為行政法法官畢竟屬於行政機關之組織一員，且必須中立而獨立的行使其職權，然而行政法法官仍然不得質疑、忽略、或廢棄其所屬機關已經採用之法律見解，亦即行政法法官並無司法審查權，而僅具有事實認定並基此作成決定之職權。例如，若某機關擬對特定當事人以違反相關行政法規為理由而裁以金錢處罰者，該當事人可能主張該行政法規違反憲法之規定、或逾越行政機關之法定職權、或行政法規之制定程序違反母法之規定等，上述爭議即使存在亦非屬行政法法官所得審查之事項，係即行政法法官於執行職務時，若遇有合法性之爭議時，應一概予以忽視並假設所有未被宣告失效或違憲之行政法規均屬有效存在之法令⁵⁶。

故近年來有許多針對行政法法官制度之設計提出修改意見者，其中包括美國行政法會議(The Administrative Conference of the United States, ACUS)所提之建議，使其在制度上能夠更為獨立行使職權，包括行政法法官自治及內部自行監督、行政法法官執行職務之指導綱要等⁵⁷。其中，制度變革較大者係將目前配屬於各機關之行政法法官統一配屬於一獨立單位，並擬稱為「ALJ Corps.」，其目的在更提升行政法法官之獨立性，使其免於因任職於特定機關而存在先天之偏見，並由 ALJ Corps 對於有須要進行聽證之機關依行政法法官之

⁵⁶ *Id.* at 203.

⁵⁷ *Id.* at 202.

專長、表現、工作量等，分配於個案進行處理⁵⁸。

就行政法法官之職權，尤其究竟是否應授予行政法法官有幾近於「最終決定權」或「最終認定權」亦為近年來之重要議題，有認為行政法法官即使不應授予最終之認定權或法律結論權，亦應限縮所屬機關之審查權限，使其推翻行政法法官所為認定之機會降低，以進一步落實行政法法官之獨立性及其功能性目的，故有些州在州法範圍內倡議：(1)將行政法法官僅得作成「建議決定」之「建議 recommended」予以刪除，而授予行政法法官實質初步決定權，不再僅是建議權；(2)限制所屬機關限於行政法法官所為之事實認定係明顯的與證據相左 (clearly contrary to the preponderance evidence)」時，始得棄而不採，否則應採用行政法法官之認定⁵⁹。

此外，在某些法律範圍內，若行政法法官依調查所得之證據認定事實之後，若其所屬機關之政策(policy)與該爭議於法院之判例有所衝突時，行政法法官應避免作成初步決定，而應僅作成建議決定，但若該所屬機關認為行政法法官所遵循之法院判例有不妥之處，而有藉由此一個案對該判決先例再為訴訟以取得不同見解之必要者，則此時機關可請司法部提供意見後採取與行政法法官不同見解之決定，以取得再次司法審查之機會⁶⁰。

其次，在制度上授予行政法法官獨立性之結果亦不可避免的衝擊

⁵⁸ See SCHWARTZ, *supra* note 7, at 541.

⁵⁹ See Julian Mann, III, *Administrative Justice: No Longer Just A Recommendation*, 79 N.C.L.REV. 1639, at 1641-2 (2001). 該文係討論北卡羅萊那州(North Carolina)行政程序法修法其發展方向之文章。此外，南卡羅萊那州(South Carolina)及路易斯安那州(Louisiana)亦均有此種立法趨勢。See Panel Discussion, NCALJ Panel Discussion: *ALJ Decisions—Final or Fallible?* 25 NAT'L A. ADMIN. L. JUDGES 191 (2005). 其他類似發展趨勢可參 James F. Flanagan, *An Update on Development in Central Panels And ALJ Final Order Authority*, 38 IND. L. REV. 401 (2005).

⁶⁰ See Samuel Estreicher & Richard L. Revesz, *Nonacquiescence By Federal Administrative Agencies*, 98 YALE L. J. 679, at 696.(1989). 該文章係討論社會安全署 (Social Security

到行政機關「政策制定權」的基本功能，因此如何調整獨立性與政策決定權之間之衝突，亦為近年來討論之議題。⁶¹

第三節 美國聯邦行政法官與反托拉斯法案件之關係

第一項 美國聯邦反托拉斯法之範圍

競爭法範圍依各國立法例之不同，可以包括二大範圍：一為限制競爭法，二為不公平交易法。前者即為通稱之美國聯邦反托拉斯法，而事實上美國聯邦之反托拉斯法包括三部法律之組合：(1)一八九〇年制定之休曼法(Sherman Act)，主要管制獨占及聯合行為；(2)一九一四年制定之聯邦貿易委員會法(Federal Trade Commission Act)；及(3)一九一四年制定之克萊登法(Clayton Act)。

休曼法 (Sherman Act)，主要管制跨州際及跨國際之商業行為，此為美國憲法規定聯邦僅能就跨州際之商業 (interstate commerce) 進行管轄之限制聯邦權力所致，因此若一商業行為係單純某特定州內之商業，則即使該商業有反競爭行為，聯邦法律亦不得對之進行管制，必須保留給各該州主管機關依據各州所分別訂立之州反托拉斯法予以處理。美國休曼法為全世界第一部反托拉斯法，共有八條條文。§1 規定聯合行為，與我國公平交易法 §7、14 類似；§2 規定獨占，類似我國公平交易法 §5、10。該法除 §1、2 為實體法規定外，其他皆為相關罰則之規定。

Administration, SSA)及其政策。

⁶¹ See Mashaw & Merrill & Shane, *supra* note 48, at 389. 其中該書作者以社會安全署為例，強調該署盡力避免行政法官經由個案之決定而形成政策或經由個案裁決而改變其政策，為達此目的，不可避免的將會對其署內之行政法官於執行其職務時有某種形式之「控制」，其衝突即因此產生。

聯邦貿易委員會法 (Federal Trade Commission Act)，此為行政委員會進行競爭管制之先例 (美國已先有其他行政委員會之成立，例如州際商業委員會等)，此一行政委員會具有準立法、準司法及行政的功能與權力，因此對於委員會的中立性要求甚高，同一政黨之委員不得超過半數，以確保其執行法律之公正公平，其委員係有任期(七年)之規定。該法 §5 為不公平競爭之管制，授權聯邦貿易委員會(FTC)對於「不公平競爭行為」具有管轄權，經由 FTC 之解釋及法院之判決，目前 FTC 對於違反獨占及聯合行為均與主管反托拉斯法的司法部 (Department of Justice) 共同具有管轄權。因此實務上此二部會常對共同事件由某一機關進行初步調查，認為應由他機關進行起訴或續行調查較為合適時，便移轉予他機關續行之。亦有某機關調查後認為應結案不予起訴，但他機關有不同意見而續行調查並予起訴者。此外，聯邦貿易委員會法除授權聯邦貿易委員會得管轄休曼法之限制競爭行為外，亦同時授予聯邦貿易委員會得針對不公平競爭行為進行管制，故其管轄範圍較司法部更廣泛。

克萊登法 (Clayton Act)，則詳細規定相關違反反托拉斯法被害人之損害賠償請求權時效、除斥期間、法院管轄、聯邦及州檢察長之訴訟權限、公益訴訟、其第 6 條明文將勞工或勞動團體之行為排除於反托拉斯法之範圍，其目的當係對人性的基本尊重，不將人力視為商業交易客體，此外並包括結合之管制，並將部分重要反競爭行為案例類型化或條文化如杯葛 (boycott)。

第二項 美國聯邦貿易委員會對於反托拉斯法執行之程序

以美國聯邦貿易委員會對於反托拉斯法之執行程序，尤其是以其內部所配屬之行政法法官職權之運作作為比較研究之範圍，具有無法避免的先天缺陷，因為聯邦貿易委員會於美國法上之地位係屬於所謂的「獨立委員會 (independent regulatory commission or independent regulatory agency)」，其依國會所授權具有行政、準立法及準司法之職權功能，與我國大陸法系一般行政機關並無司法權或準司法權有所不同。然而，因為另一主管聯邦反托拉斯法之機關為司法部反托拉斯部門 (Department of Justice, Antitrust Division) 係主要以提起刑事控訴及民事訴訟為主要職權行使之方式，欠缺聯邦貿易委員會法第五條授予聯邦貿易委員會有一下命權，而得對被檢舉人命以停止再為違法或不公平競爭行為之處分 (cease and desist order)，當然同時聯邦貿易委員會仍具有對違法行為人提起民刑事訴訟之職權。故，本報告仍選擇以聯邦貿易委員會為研究對象，以了解該機關內部行政法法官對於個案裁決所扮演的角色與功能。

聯邦貿易委員會之初始調查若未動用任何強制權力者，則可以由委員會中之相關主管指定職員主動調查，而不須要得到來自委員會的正式授權⁶²。經過初步調查後，若認為有進一步調查其違法事實或蒐集證據之必要者，則可經由包括發出傳票 (subpoenas) 等方式對被檢舉人施以強制處分權，而行政法法官則在此程序中執行聽證及採認事實證據等任務，除非別有特殊情況之存在，否則行政法法官必須於正式行政控訴 (administrative complaint) 開始後一年內作成初步決定

⁶² See ABA, *Antitrust Development* (Fifth Ed.), at 674. 依聯邦貿易委員會之內部運作準則規定，若係對報紙、雜誌、出版社、廣播電台或電視台發動任何初步調查者，均須得到來自委員會之正式授權。See FTC OPERATING MANUAL, §3.1.2.4.2.

(initial decision)⁶³。行政法法官係依循聯邦貿易委員會之內規執行聽證程序，而該程序則大略與聯邦民事訴訟法所規定之程序相似，因此行政法法官可以經由口頭訊問(oral examination)、書面詢問(written questions)、命令提供文書證據(production of documents)及其他民事訴訟所允許之證據等⁶⁴。若檢舉人或被檢舉人請求傳訊專家證人或取得專家證言者，行政法法官對此具有裁量權限⁶⁵。行政法法官對於不遵守其所發之程序命令時，得以強制力進行之亦得對違反者施以制裁，且此種強制係屬行政權內之強制，而不需經由法院介入，除非依行政權之強制將使當事人之救濟有所不足之情形，始需經由法院之介入以執行該強制⁶⁶。

在程序進行中，若第三人認為該事件對其有法律上之利害關係者，可向行政法法官請求參加其程序(intervention)，但該利害關係限於參加人係以提起重大法律或事實爭點且有即時提起之必要，而且其費用並無過度者，若行政法法官拒絕該程序參加之請求者，則不論是檢舉人、被檢舉人或參加請求人均可向聯邦貿易委員會直接提起申訴(appeal)，而聯邦貿易委員會則有最終決定權。

基本上，聯邦貿易委員會並非司法機關，故其採認證據之要求並未如法院採認證據之嚴謹，亦即聯邦證據法則之規定對行政法法官並不具有當然的拘束力，故一般法院必須予以排除之證據，在行政法法官聽證程序中是可以被接受的，且即使欠缺足夠的證據支持某種重大事實，行政法法官仍可以在事實認定(conclusion of fact)之部分予以

⁶³ See 16 C. F. R. Rules of Practice, Part 3. §3.1

⁶⁴ See 16 C.F.R. §3.31(c)(1)(2001).

⁶⁵ See ABA, Antitrust Development, at 682.

⁶⁶ See 16 C.F.R. §3.38(2001); ABA, Antitrust Development, at 684.

記載，但必須給予當事人以反證推翻之機會⁶⁷。在調查證據方面，行政法官有權限制調查證據之範圍以保障證人在證據法上之豁免或特權(immunity or privilege)，尤其是民事訴訟法所確認之「文件特權 product doctrine」亦已在行政法官調查證據階段得到最高法院之承認⁶⁸。若行政法官在調查證據程序中，被傳訊人主張其證言將陷自己入罪者，則行政法官必須經由聯邦貿易委員會正式向司法部長請求授予豁免權，並於取得正式授予後始可進行證據調查⁶⁹。

聯邦貿易委員會在進入初步調查程序後，不論是在對被檢舉人正式提起正式行政控訴(administrative complaint)前或後，均得由承辦初步調查人員隨時與被檢舉人就爭議事項試行成立和解。在提起控訴前，被檢舉人得與調查人員以「同意命令 consent order」方式嘗試成立和解，在此試行和解命令中，通常會包括被檢舉人所應同意之義務或改正、對於初步事實認定之承認、管轄權存在不爭議、並由被檢舉人同意免除聯邦貿易委員會作成正式事實認定及法律結論之義務，尤其會包括被檢舉人將放棄請求司法審查該和解之條款⁷⁰。聯邦貿易委員會收到該試行和解命令後，得向社會大眾徵求意見，並得拒絕該試行和解命令而正式提起訴訟，亦得為其他其認為適當之行為⁷¹。

在提起正式控訴，並由行政法官開始進行具有強制性之證據調查程序後，得由檢舉人與被檢舉人共同(jointly)向行政法官提出另一階段之試行和解，若和解成立並得因此而撤回控訴而免於作成個案裁決⁷²。若聯邦貿易委員會三局之一之首長核准該試行和解之內容者

⁶⁷ See 16 C.F.R. §3.43(d)(2001).

⁶⁸ See 16 C.F.R. §3.31(c)(2),(3), see Hickman v. Taylor, 329 U.S. 495 (1946), see also FTC v. GlaxoSmithKline, 202 F.D.R.8 (D.D.C.2001).

⁶⁹ See 16 C.F.R. §3.39(2001).

⁷⁰ See ABA, Antitrust Development, at 686.

⁷¹ *Id.*

⁷² See 16 C.F.R. §3.26(2001).

⁷³，則在聯邦貿易委員會審核該和解內容時，所有調查程序將一概暫時停止⁷⁴。若被檢舉人未與檢舉人共同向行政法官提出和解方案，或檢舉人反對該和解方案者，行政法官有權對該單方和解方案進行審核，若行政法官認為和解內容可行者，可向聯邦貿易委員會提出接受和解之建議，此時聯邦貿易委員會仍會暫時停止該控訴程序之進行，⁷⁵。若行政法官拒絕該和解方案者，則該調查程序及個案裁決程序(adjudication)繼續進行而不予暫停，若行政法官認為和解方案可茲接受者，則聯邦貿易委員會亦將暫停該個案之調查，進行和解之審查，其結果若聯邦貿易委員會拒絕該和解方案，則該個案將繼續由行政法官進行調查程序⁷⁶。

當行政法官就證據之調查認為足以認定事實時，該調查程序即可終結，並依所得證據作成事實認定及法律結論，若聯邦貿易委員會有所授權，則並可作成初步決定，然而有以下數點應予補充者：(1)於和解程序中，因證據調查尚未完畢，故行政法官於接受被檢舉人單方或與檢舉人共同提出之和解方案時，必須作成和解方案是否妥當之初步判斷，並予以呈報至聯邦貿易委員會；此時，聯邦貿易委員會得直接就相關事證進行認定，若其認為和解方案不妥者，自得拒絕該和解方案，使個案裁決回到行政法官繼續進行；但聯邦貿易委員會亦得在拒絕和解方案時，同時將正式的行政控訴撤回，亦即認為該個案之基礎事實有所錯誤或不需由聯邦貿易委員會進行調查者，此時不論行政法官對該個案之態度如何，該個案於聯邦貿易委員會之繫屬均告終結，行政法官不得擅自繼續進行任何調查程序，除非再度得

⁷³ 聯邦貿易委員會內部組織尚分為三局，各有職掌：競爭局(Bureau of Competition)、消費者保護局(Bureau of Consumer Protection)、及經濟局(Bureau of economics)。其組織及職權內容與本報告無直接相關茲不贅。

⁷⁴ See 16 C.F.R. §3.25(c)(2001).

⁷⁵ See 16 C.F.R. §3.25(d)(f)(2001).

到聯邦貿易委員會之指派⁷⁷。(2)行政法法官雖有權調查事實認定證據，並作成法律結論，惟其所作之法律結論並非最終法律結論，被檢舉人或檢舉人若對於行政法法官對於法律之結論或初步決定有所不服者，可以向聯邦貿易委員會聲明不服(appeal)。聯邦貿易委員會所執掌之法律或法規範圍內之事項，聯邦貿易委員會本身保有最終之法律適用及法律解釋權(當然受司法之審查)，而不受行政法法官法律解釋之結論拘束⁷⁸。

第四節 小結

自以上說明可知，配屬於聯邦貿易委員會之聯邦行政法法官執行其職務時，與其他機關之行政法法官並無太大不同，其權限除行政程序法所提供之權力外，則依聯邦貿易委員會內部規則相關規定執行其職務，最大之特色在於聯邦貿易委員會屬性上係屬於管制性委員會，對違法行為具有提起行政控訴之權限，並得另外於正式調查後提起民事及刑事訴訟，在此種司法力量為後盾之情況下，被調查之相對人多數願意接受某種程度之和解方案，而聯邦行政法法官即在和解程序中扮演初審者之角色，亦即通過行政法法官之和解條件才會最快速的上呈到各主管局，並在此同時暫停相關行政調查之程序進行，以免更多的違法事證因而曝光。故行政法法官之存在可以為聯邦貿易委員會爭取到較佳之和解談判地位。

其次，聯邦貿易委員會之行政法法官與配屬於社會安全署(SSA)之行政法法官相同，僅能對事實作成認定及法律結論，並提出其初步

⁷⁶ See 16 C.F.R. §3.25(f).(2001).

⁷⁷ See *In re Times Mirror Co.*, 100 F.T.C. 252(1982).

決定或建議決定，若其初步決定涉及形成或改變某種競爭政策之效果者，則其最終決定權仍在聯邦貿易委員會，亦即行政法官不適於經由個案裁決之程序累積案例形成某種「行政先例」或「行政慣例」，此種政策形成權屬於行政權之本質，仍應由行政權之核心：聯邦貿易委員會本身形成。

⁷⁸ See In re Union Oil Co. of California, No. 9305 (FTC 2004), Westlaw 2004 WL 1632816.

第四章 我國法制之適用可能

第一節 我國法制現況

我國行政程序法第 57 條規定：「聽證，由行政機關首長或其指定人員為主持人，必要時得由律師、相關專業人員或其他熟諳法令之人員在場協助。」本條規定聽證主持人係以機關首長任之為原則，其指定之人員亦僅止於取代機關首長之地位，對於聽證主持人所應具之法律及各該領域內之專業，均未及之，縱有後段「必要時，得由律師、相關專業人員或其他熟諳法令之人員在場協助」亦僅止於提供協助而非主持聽證程序之進行，在制度設計上，機關本身首長實無充裕之時間或法律專業，足以為聽證程序之指揮，人民對於非由機關首長或由機關首長主持之聽證，於前者，有信心不足之問題，後者，則有先入為主判斷之疑慮，而我國行政程序法規定之聽證，雖於第 62 條第 1 項明定「聽證主持人應本中立公正之立場主持聽證。」同條第 2 項明定聽證主持人之職權，惟於實務運作上，機關舉行聽證之情形極為罕見⁷⁹，其中或以法規明定應行聽證者，較為少見，且法制施行初期，機關亦無法一時間因應聽證之程序之運用，而究其實乃在聽證主持人不易決定，其身分亦無法定保障，難保聽證所需之客觀公正立場，能為社會大眾所接受，亦為機關無法順利推動聽證制度之重要原因。

我國訴願法第 64 條規定：「訴願審議委員會主任委員得指定委員聽取訴願人、參加人或利害關係人到場之陳述。」本條由各訴願審議機關主任委員指定委員聽取陳述意見之制度，已行之有年。惟委員聽取陳述意見之制度，究竟可行使之職權為何？委員是否應具法律專

⁷⁹ 目前須經聽證程序者，例如貿易調查之案件，其他還包括行政程序法§164 I、行政罰法§43、農村社區土地重劃條例§6、放射性物料管理法§8、17、貨品進口救濟案件處理辦法§13、平衡稅及反傾銷課徵實施辦法§3、23 等規定；環境影響評估法原有聽證之規定，於修法後，

業？等，法律上仍付諸闕如，機關亦有訂定陳述意見相關規定，據以執行者，在法制建構上仍顯不足，對於訴願決定之作成，委員之意見是否應為主要依據？委員應否出席全體委員審議會議，仍有待法制再予補強。而委員為外聘時，在聽取陳述意見上，亦無法如機關職員得以全程參與決定之作成或意見書之撰寫，基於訴願制度之強化及效能提升，仍有待建構專職委員或行政法法官制度，較能因應需要。

第二節 我國法制相關程序規定之定位

美國行政法法官制度主要是應用在機關作為裁決者，基於專業公平性之考量予以建制，我國行政程序法法制之建構，亦係本於行政程序中當事人權益保障而設，行政程序法第 62 條第 1 項明定「聽證主持人應本中立公正之立場主持聽證。」即在為確保行政決定之作成，須能兼顧當事人有利及不利之情形，俾能作成公正客觀之決定，而我國相關法制中，雖未有等同美國行政委員會之制度⁸⁰，惟於行政處分之作成上，經聽證作成之行政處分則毋須經訴願或其他先行程序⁸¹，亦足見聽證程序在我國法制設計上，實具有取代準司法之訴願效果，聽證主持人之客觀公正與否，攸關行政決定之能否取得人民信賴，在聽證制度設計上，參採美國行政法法官之制度，可強化行政決定作成之公正性及正當性，對機關決定過程，亦可避免聽證主持人不易決定之困窘。

在訴願決定過程中，訴願法於 1998 年修正後，增設陳述意見之制度，增加訴願人於訴願決定過程中之參與，而訴願法第 64 條以委

亦改為公聽，而不採聽證之用語。

⁸⁰ 我國公平交易委員會制度，被認為屬類似於美國行政委員會制度者，惟其決定之作成仍須經由訴願程序，始得提起行政訴訟。

⁸¹ 行政程序法第 109 條規定：不服前條作成之行政處分，其行政救濟程序，免除訴願及其先行

員一人或數人聽取陳述意見，參照訴願審議委員會之組成，須有二分之一以上外聘之學者專家以觀，其立法本旨在於確保聽取陳述意見時，亦能客觀公正，且委員得於審議中出席參與審議，惟機關所設訴願審議委員會間有以機關本身高級職員兼任，亦有非法律專長⁸²者，對於相關聽取陳述意見之程序為何？訴願法亦欠缺規範，對於聽取陳述意見之委員亦難免於程序進行上無法可據之困擾，而委員如係兼職，對於個案之探討及程序之參加，每有時程安排上之障礙，美國行政法法官之制度，以機關專職之人員取代現行委員之設置，或可更進一步落實實施言詞辯論⁸³之制度。

第三節 我國引入美國行政法法官制度之可能

本節擬由比較法制觀察，對我國引入美國行政法法官制度之可能性及可行性，分別就該制度所特有之優點及缺點予以分別探討如下：

第一項 優點

一、擴大人民參與之意願及機會

美國行政法法官之建制，對於諸多如費率或營運路線等之決策等，在聽證過程中提供機關可行之解決之方案，其一方面具有行政機關解決問題之本質，毋須遵循繁複之法庭訴訟程序，同時亦具有法官公正超然之立場及身份保障，較易取得人民信賴，可提升人民參與政策形成或處分作成之意願，尤以在行政行為形成過程中，提供人民合法有效之意見表達機制，並可運用可能之替

程序。

⁸² 例如經濟部訴願審議委員會，即須有科技領域專長之學者專家參與。

⁸³ 言詞辯論為訴願法第 65 條及第 66 條所明定之制度，惟現行訴願採合議制審議，且委員二分之一以上須為外聘，以受理案件數較多之機關而言，逐案實施言詞辯論，殆無可能。

代方案，作成雙方可行之決定，有利行政之推動執行。在機關之運作上，亦得藉由行政法法官之法律及專業素養，主持聽證及協助專業委員會之審議等，擴大舉行聽證，以增加人民參與行政機關作成決定之機會。

二、確保行政決定作成之客觀公正

美國行政法法官制度之建構，在以客觀公正之立場解決行政易受政商干擾之困擾，建立行政機關超然公正之形像，在個案決定過程中，往往涉及二個以上當事人利益及公共利益之抉擇，由行政法法官作為裁決者，有助於釐清各項程序及實體問題，對人民，不致因不當之利益團體或政治力介入產生偏頗，有助於提升人民對行政公權力行使之信賴。

三、行政程序之合法性不致產生爭議

在各項行政程序之作成上，行政機關人員非必有專業法律素養及運作經驗，尤以人民權益保障要求日增之今日，各種法律之適用對不具專業法律訓練之人員而言，往往有顧此失彼之法律爭議滋生，影響行政效能及人民之信賴，行政法法官在個案處理上，較能兼顧程序合法及實質正義之實現。

四、行政程序可較具彈性

美國行政法法官制度，賦予行政法法官彈性運用之權限，在個案處理上較法院裁判，更能切合機關與人民之需要，同時搭配美國替代方案解決之立法，對於行政程序之進行，較具彈性，並可防免不必要之爭議。

五、行政行為之選擇多元化

美國行政法法官於其職權範圍內，得採不同之爭議解決方案，包括和解及其他替代行為，以與人民間訂定契約或其他協議

方式等解決爭議，可使行政行為之選擇多元化，同時不失其合法性及公平性。以稅捐稽徵協談作業為例，因協談不具拘束力，致協談結果，無法作為認定事實之依據⁸⁴，稽徵機關亦僅能於行政訴訟中，因法官之喻令和解，始克與當事人達成和解契約，對行政及司法資源，均屬不必要之浪費及負擔⁸⁵。

六、減少訴願或行政訴訟之訟源

美國行政法法官制度之建構，可透過準同司法程序之進行，以行政法法官主持聽證等程序，增進個案之合法性判斷，同時兼顧個案認定之妥當性，行政機關於個案決定之初，即可將事實及法律充分使當事人知悉，從而在行政事務之推動上，可因相對人或利害關係人之參與及協力，減少阻力，杜免不必要之紛爭，疏減訴願及行政訴訟之案源。

第二項 缺點

一、行政法法官未必能獲信賴

美國行政法法官制度之建構，除賦予行政法法官獨立客觀之地位及任期保障外，亦因其行之有年之聽證官制度，演化而來，人民對於聽證官之信賴，於轉換為行政法法官後，乃更進一步加強與深化，我國本無聽證官之制度，行政法法官之設置仍難免隸

⁸⁴ 最高行政法院 89 年度 2810 號判決略以：「按稽徵機關於審查階段中，就課稅事實之認定或證據之採認，有協談必要者，稽徵機關得與納稅義務人協談，又依該要點達成之協談結果，對稽徵機關及納稅義務人並無拘束力，僅供雙方參考，復為財政部八十一年九月二日台財稅第八一一六七五二六五號函頒稅捐稽徵機關稅務案件協談作業要點第二條第一款及第十三條所明訂。」且行政訴訟法第 134 條明定，他造自認仍應調查必要證據。

⁸⁵ 最高行政法院 94 年度 962 號判決略以：「本件上訴人已就本案爭訟標的，具文向被上訴人提出申請，而被上訴人本於職責，就上訴人申請追認部分全部准許，且上訴人亦表示其餘部分確已同意不再續行與被上訴人爭執，則本件爭訟既已實質終結，已無續行訴訟之必要，自屬欠缺權利保護必要，則上訴人之上訴為欠缺權利保護之必要，應予以駁回上訴。至於上訴人聲請本院進行和解，無非欲就前揭上訴人之申請書之內容及被上訴人重核結果之行政處分重複記載於和解筆錄而已，並無訴訟和解之實質意義，況本件訴訟已欠缺實質之權利保護必要，本院自無再試行訴訟上和解之必要。」即為協談後，仍續訴訟之個案。

屬行政機關首長之下，能否獲取人民信賴仍不無疑慮，且行政首長仍有最終決定權限，在個案決定累積形成前，恐不易獲取人民信賴，有失行政法法官制度之建構之本旨。

二、行政法法官增加國家財政支出

行政法法官之設置，如準用司法人員人事條例，給與準用法官之司法加給，則將增加國家龐大之財政支出，如不給與準用司法官之待遇，則對行政法法官之身份保障，似嫌不足，且亦不易網羅優秀法律人才，在行政法法官職務之保障及專業要求上，均不無缺憾。

三、行政法法官身分保障不易評鑑

行政法法官之評鑑，縱以美國之制為例，亦頗具爭議，一方面，行政法法官須獨立行使職權，在身份上不宜由機關首長介入；另一方面，行政法法官為機關成員之一，機關首長之考評如無法及之，則又與行政倫理之貫徹相違。而行政法法官之評鑑項目究應為何？得否以案件數為準？抑應以案件品質為據，均不無爭議，美國之評鑑，由 Merit Systems Protection Board 為有權決定之委員會，對於機關首長之介入已有所限縮，仍未免於再進而為檢討之議論，我國法官法草案有關法官評鑑制度之建構，仍尚待觀察之今日，引入美國行政法法官制度，對其評鑑考核機制之建構，仍不無商榷之餘地。

四、行政法法官與機關首長之權限易致混淆

美國行政法法官制度，因力求其獨立客觀之保障，對於機關首長之政策形成間，造成可能之衝突，在個案決定上，究應以行政法法官之認定為準，抑須兼顧機關首長之決策判斷，為行政法法官宜否司法化之爭議問題，美國現制雖兼及機關首長之決策形

成，惟仍不免行政法法官與首長權限衝突之爭議，我國向無聽證官之背景，機關首長仍須署名始得對外行文，引入美國行政法法官制度，勢將產生更大之衝擊，有待進一步釐清行政法法官適用之領域⁸⁶，始克減輕可能之衝擊。

五、行政法法官無規範審查權

由於行政法法官乃行政權之一環，本質乃執行法令之機關，對於現行有效之法令僅能負責執行，與司法機關在個案判決上，可行使附帶之規範審查不同，於個案決定上，不具有法官造法或拒絕適用法令之權限，無法發揮法官個案司法審查之功能，尤以行政事件之判斷，對於法規命令之審查，為司法審查之重要功能，行政法法官因屬行政體系，其功能之發揮極為有限，甚或僅能依法令辦理，無從發揮應有之審查及制衡功能。

第四節 小結

美國行政法法官制度之建構，由其起源及相關設置之目的等而觀，在我國法制上可能之運用，應屬具有獨立性之裁決機關較具意義，而非適用於全體行政機關，從而在制度建構上，或可以美國聯邦政機關中採行行政法法官制度者，作個別之檢討深入分析，始克一窺制度之引入可行性，似不宜全盤引入，以免形成法制建構上之衝突與混淆。

美國行政法法官制度在我國可能之運用，應考量行政法法官之職權與機關首長之可能衝突，在行政效能之維持與客觀獨立行使職權間，尤應取得可行之平衡。相對的，鑒於行政法法官之定位，仍屬行政之一環，其身份保障及考評等，如異於行政官，其制度之建構及可

⁸⁶ 例如公平交易委員會乃委員制之組織，機關首長之政策決定權，顯較其他機關弱化，各機關

能之影響，在美國亦仍有部分爭議，我國如予引入，在人事制度部分仍有進一步釐清之必要。

美國行政法法官制度係由原聽證官制蛻變而來，我國在參酌美國行政法法官制度時，似可併予考量先由聽證官制度之建構著手，或可減輕行政或整體法制之衝擊，藉由聽證官制度之推動，逐漸建構客觀可行之法律專業判斷機制，再行研議引入行政法法官制度之必要，應較能獲取人民之信賴，以免遽然引入，無法達成設置行政法法官之本旨。

訴願審議委員會之審議亦然，則行政法法官之採行，或較具可行性。

第五章 結論

美國行政法官制度之發展，有其獨特之歷史背景及美國產業管理特質，而在美國聯邦行政程序法將行政法官制度正式納入立法後，其運作仍須待各項行政作用法之配套，亦即美國行政法官在美國聯邦行政法立法完成後，仍須依各該行政領域之法令規定運作，而非僅修正美國聯邦行政程序法即可，從而在法制之建構上，個別行政作用法之立法，應具決定性之影響。在建構行政法官制度上，允宜考量不同行政類別之特性，而非以一項單一之立法，即可全盤引進推動，而具有準司法職能之機關，其行政首長之決策權較致與行政法官之職權產生爭議，由美國行政法官由獨立行政委員會之聽證官演化而成，亦可窺其一二。

美國行政法官之職能固係以聽證之主持為主，惟其亦負有調查事實等相關之權限，在個案之審查上，並可就事實問題及法律問題併予審酌，以美國反托拉斯及貿易調查案件之調查及決定為例，行政法官得發出傳票及行使強制處分等，以蒐集證據認定事實，於聽證程序中並得行使口頭訊問、書面詢問、命令提供文書證據及其他民事訴訟所允許之證據等，並於調查程序結束後一年內，作成初步決定，其認事用法之過程及職權之行使與職司審判之法官無殊，以確保行政決定之客觀、專業，我國行政權之運作，不問行政程序或訴願程序，均無相類似之制度建制，致聽證程序在機關實務運用上，相對少見⁸⁷，引入行政法官制度，對於行政處分客觀中立或認事用法之正確性，應有其正面之意義。

⁸⁷ 我國行政事件採聽證程序者，目前僅見於貿易調查委員發動反傾銷稅及衡平稅時，採聽證之方式，以認定是否有傾銷或補貼事實及產業有否受有實質之損害（相關題請參見郭介恆，貿易

鑒於美國行政法官制度運作之背景及法制建構特殊，我國在參酌美國行政法官制度時，仍應考量各項可能之法制衝擊，在身份保障及任用等機制上，亦須完整之配套制度，始不致與窒礙難行或無從發揮其應有之效益，而我國現行法制向乏聽證官制度之概念，為避免爭議，似可考量先由聽證官制度之建構著手，並以較具可行性之領域採行，毋須即行全面推動建構全盤引入之行政法官制度，藉由個案實務之運作，逐步建構客觀可行之法律專業判斷機制，再行研議引入行政法官制度之必要，或為務實可行之作法。

救濟案件行政爭訟程序相關問題之研究—以貿易法上傾銷案件為例，貿易救濟案件行政爭訟程序相關問題之研究研討會，經濟部貿易調查委員會、東吳大學合辦，2004年7月）。

參考書目：

(一) 專書著作

1. ARTHUR EARL BONFIELD & MICHAEL ASIMOW, STATE AND FEDERAL ADMINISTRATIVE LAW, West Publishing Co., 1989.
2. BERNARD SCHWARTZ, Administrative Law, Fourth Ed., Little Brown, 1994.
3. DONALD P. ROTHSCHILD & CHARLES H. KOCH, JR., Fundamentals of Administrative Practice and Procedure, MICHIE BOBBS –MERRILL PUBLISHER, 1981.
4. JERRY L. MASHAW & RICHARD A. MERRILL & PETER M. SHANE, Administrative Law—The American Public Law System, West Publishing Co., 1992.
5. KENNETH CULP DAVIS & RICHARD J. PIERCE, JR., Administrative Law Treatise, Vol. I, 3rd Ed., Little Brown and Company.
6. OWEN M. FISS & JUDITH RESNIK, Adjudication And Its Alternatives—An Introduction to Procedure, Foundation Press, 2003.
7. WILLIAM F. FUNK & SIDNEY A. SHAPIRO & RUSSELL L. WEAVER, ADMINISTRATIVE PROCEDURE AND PRACTICE—PROBLEMS AND CASES, West Publishing Co., 1997.

(二) 期刊論文

1. James F. Flanagan, *An Update on Development in Central Panels And ALJ Final Order Authority*, 38 IND. L. REV. 401 (2005).
2. James P. Timony, *Demeanor Credibility*, 49 CATH. U. L. REV. 903, at 925 (2000).
3. James P. Timony, *Performance Evaluation of Federal Administrative Law Judges*, 7 ADMIN. L. J. AM.U. 629 (1994).
4. Jeffrey S. Lubbers, *Federal Administrative Law Judges: A Focus on Our Invisible Judiciary*. 33 ADMIN. L. REV. 109 (1981).
5. Julian Mann, III, *Administrative Justice: No Longer Just A Recommendation*, 79 N.C.L.REV. 1639 (2001).
6. L. Hope O'Keeffe, *Administrative Law Judge, Performance Evaluation, and Production Standards: Judicial Independence versus Employee Accountability*, 54 GEO. WASH. L. REV. 591 (1986).
7. Laurence S. Moy & Linda A. Neilan & Hollis Pfitsch, *Whistleblower Claims Under The Sarbanes-Oxley Act of 2002*, 1509 PLI/CORP. 999 (2005).
8. National Administrative Law Judge Foundation & Michael Asimow, *The Administrative Judiciary: ALJ's Historical Perspective*, Journal of the National Association of

Administrative Law Judges, Spring 2000.

9. Panel Discussion, *NCALJ Panel Discussion: ALJ Decisions—Final or Fallible?* 25 NAT'L A. ADMIN. L. JUDGES 191 (2005).
10. Samuel Estreicher & Richard L. Revesz, *Nonacquiescence By Federal Administrative Agencies*, 98 YALE L. J. 679 (1989).
11. Thomas E. Ewing, *Oregon's Hearing Officer Panel*, 23 J. NAT'L A. ADMIN. L. JUDGES 57 (2003).
12. Thomas W. Merrill & Kristin E. Hickman, *Chevron's Domain*, 89 GEO. L. J. 833, (2001).

附錄 1：美國行政程序法

(Administrative Procedure Act)

§ 551. Definitions

For the purpose of this subchapter--

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include--

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia; or except as to the requirements of section 552 of this title--

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; subchapter II of

chapter 471 of title 49; or sections 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix;

- (2) "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;
- (3) "party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;
- (4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;
- (5) "rule making" means agency process for formulating, amending, or repealing a rule;
- (6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;
- (7) "adjudication" means agency process for the formulation of an order;

- (8)** "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;
- (9)** "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;
- (10)** "sanction" includes the whole or a part of an agency--
- (A)** prohibition, requirement, limitation, or other condition affecting the freedom of a person;
 - (B)** withholding of relief;
 - (C)** imposition of penalty or fine;
 - (D)** destruction, taking, seizure, or withholding of property;
 - (E)** assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;
 - (F)** requirement, revocation, or suspension of a license; or
 - (G)** taking other compulsory or restrictive action;
- (11)** "relief" includes the whole or a part of an agency--
- (A)** grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;
 - (B)** recognition of a claim, right, immunity, privilege, exemption, or exception; or

- (C)** taking of other action on the application or petition of, and beneficial to, a person;
- (12)** "agency proceeding" means an agency process as defined by paragraphs (5), (7), and (9) of this section;
- (13)** "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act; and
- (14)** "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.

§ 554. Adjudications

- (a)** This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved--
- (1)** a matter subject to a subsequent trial of the law and the facts de novo in a court;
 - (2)** the selection or tenure of an employee, except a administrative law judge appointed under section 3105 of this title;
 - (3)** proceedings in which decisions rest solely on inspections, tests, or elections;

- (4) the conduct of military or foreign affairs functions;
 - (5) cases in which an agency is acting as an agent for a court;
or
 - (6) the certification of worker representatives.
- (b) Persons entitled to notice of an agency hearing shall be timely informed of--
- (1) the time, place, and nature of the hearing;
 - (2) the legal authority and jurisdiction under which the hearing is to be held; and
 - (3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

- (c) The agency shall give all interested parties opportunity for--
- (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and
 - (2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with section 556 and 557 of this title.
- (d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the

recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not--

- (1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or
- (2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings.

This subsection does not apply--

- (A) in determining applications for initial licenses;
 - (B) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or
 - (C) to the agency or a member or members of the body comprising the agency.
- (e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

- (a) This section applies, according to the provisions thereof, to

hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence--

- (1)** the agency;
- (2)** one or more members of the body which comprises the agency; or
- (3)** one or more administrative law judges appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c) Subject to published rules of the agency and within its powers, employees presiding at hearings may--

- (1)** administer oaths and affirmations;
- (2)** issue subpoenas authorized by law;
- (3)** rule on offers of proof and receive relevant evidence;
- (4)** take depositions or have depositions taken when the ends of justice would be served;

- (5)** regulate the course of the hearing;
 - (6)** hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternative means of dispute resolution as provided in subchapter IV of this chapter;
 - (7)** inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods;
 - (8)** require the attendance at any conference held pursuant to paragraph (6) of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;
 - (9)** dispose of procedural requests or similar matters;
 - (10)** make or recommend decisions in accordance with section 557 of this title; and
 - (11)** take other action authorized by agency rule consistent with this subchapter.
- (d)** Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes

administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

- (e)** The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

- (a)** This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.
- (b)** When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at

hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses--

- (1)** instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or
 - (2)** this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.
- (c)** Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions--
- (1)** proposed findings and conclusions; or

- (2)** exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and
- (3)** supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of--

- (A)** findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and
 - (B)** the appropriate rule, order, sanction, relief, or denial thereof.
- (d)(1)** In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law--
- (A)** no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;
 - (B)** no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional

process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

- (C)** a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

 - (i)** all such written communications;
 - (ii)** memoranda stating the substance of all such oral communications; and
 - (iii)** all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;
- (D)** upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and
- (E)** the prohibitions of this subsection shall apply beginning at

such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress.

§ 3105. Appointment of administrative law judges

Each agency shall appoint as many administrative law judges as are necessary for proceedings required to be conducted in accordance with sections 556 and 557 of this title. Administrative law judges shall be assigned to cases in rotation so far as practicable, and may not perform duties inconsistent with their duties and responsibilities as administrative law judges.

附錄 2：訴願法英譯

第一節 前言

由於國內目前關於訴願或行政訴訟相關法制的專有名詞部分之英譯文獻甚為欠缺，故本文嘗試就此部分暫為定名，並將可能之數種翻譯方式列舉於後，祈就教於學者先進。以下以名詞種類之方式為區分，而非依條文順序為準，合先敘明：

一、行政行為及行政訴訟

- (一) 行政處分：administrative action (惟此一譯法與民事訴訟譯為 civil action，或刑事訴訟譯為 criminal action，用 action 指稱訴訟者有所衝突，似有不妥之處。另外，美國行政程序法中針對個案處分之名詞為 adjudication，可考慮用以指行政處分，且因原處分係於本件有爭執之處分，故稱為 disputed adjudication)
- (二) 訴願：administrative appeal
- (三) 訴願決定：administrative appeal decision
- (四) 行政訴訟：administrative litigation (因為已將原處分譯為 administrative action，故擬將行政訴訟譯為 administrative litigation 以為區分，行政訴訟法則譯為 Administrative Litigation Procedure Act)
- (五) 委託：delegated affairs
- (六) 委任：assigned affairs
- (七) 委辦：allocated affairs

二、 當事人及其他

- (一) 訴願人：administrative appellant (訴願程序譯為 administrative appeal，則訴願人直譯即為 appellant。此外，petitioner 因具有請願人之意義，而請願與訴願具有不同之法效果，故擬不採之；而 plaintiff 則係指訴訟中之原告，與訴願制度不同，故亦不採之)
- (二) 輔佐人：assistant
- (三) 參加人：intervenor appellant
- (四) 訴願代理人：administrative appeal representative
- (五) 利害關係人：third party with interest at stake

三、 書類

- (一) 訴願書：administrative appeal pleading (訴願書譯為 written petition 或 written statement 似均可，若依美國民事訴訟法，則該文件稱為 pleading)
- (二) 文書：document
- (三) 書面：a written
- (四) 繕本、影本或節本：the hand writing, copies, citation of the documents

四、 機關團體

- (一) 原行政處分機關：the agency which the administrative action was made
- (二) 應為行政處分之機關：the agency with the obligation to made the administrative action

- (三) 受理訴願機關：the agency with jurisdiction of administrative appeal (受理訴願機關即為有管轄權之機關；又訴願原則上係向原處分機關之上級機關提起，故最簡譯法是否將原處分機關譯為 Inferior Agency，而將上級訴願機關譯為 Superior Agency；然對院所為處分不服時係向法院提起訴願，此時並無上下級關係，則上開譯法並不妥當)
- (四) 訴願審議委員會：the administrative appeal review committee (訴願審議應否譯為 trial，若譯為 trial 則訴願之再審程序譯為 retrial 以前後呼應，但若審議譯為 review，則訴願再審似乎即不應譯為 retrial)
- (五) 地方自治團體：autonomy

五、 其他

- (一) 依職權：by its ex officio (ex officio 拉丁文，亦有譯為 motu proprio)
- (二) 言詞辯論：oral argument (另一譯法為 oral debate)
- (三) 出庭、到場：appear
- (四) 不到場：default
- (五) 申請：file an application
- (六) 記明、載明：declare
- (七) 囑託：request (亦得譯為 rogatory)
- (八) 鑑定：examination (鑑定人則為 expert witness，鑑定亦有譯為 expert evidence)

(九) 不受理：a judgment of case not entertained (另一譯法為 appeal decision of case not entertained)

第二節 訴願法英譯

訴願法 (民國 89 年 06 月 14 日 修正)

Administrative Appeal Act, as Amended on June 14, 2000

第一章 總則

Chapter 1 General Provision

第一節 訴願事件

Section 1 Administrative Appeal Affairs

第 1 條 人民對於中央或地方機關之行政處分，認為違法或不當，致損害其權利或利益者，得依本法提起訴願。但法律另有規定者，從其規定。

各級地方自治團體或其他公法人對上級監督機關之行政處分，認為違法或不當，致損害其權利或利益者，亦同。

Article 1

Anyone who's right or interest was unlawfully or improperly injured by a center or local government agency's administrative

action is entitled to file an administrative appeal according to this Act, provided that other Acts stipulated otherwise.

Each level of autonomy or other public law entity could have file an administrative appeal as well, while it's right or interest was unlawfully or improperly injured by the supervised agency's administrative action.

第 2 條 人民因中央或地方機關對其依法申請之案件，於法定期間內應作為而不為，認為損害其權利或利益者，亦得提起訴願。

前項期間，法令未規定者，自機關受理申請之日起為二個月。

Article 2

Anyone who's right or interest was unlawfully or improperly injured by a center or local government agency's inaction to his application according to Acts during the period stipulated by this Act is entitled to file an administrative appeal as well.

The period stipulated in last Paragraph is two month after the application was accepted by an agency provided that there is no other stipulation in other Acts or Regulations.

第 3 條 本法所稱行政處分，係指中央或地方機關就公法上具體事件所為之決定或其他公權力措施而對外直接發生法律效果之單方行政行為。

前項決定或措施之相對人雖非特定，而依一般性特徵可得確定其範圍者，亦為行政處分。有關公物之設定、變更、廢止或一般使用者，亦同。

Article 3

An administrative action stipulated under this Act is referred to as an ex parte administrative action which directly creates legal effect to the people by a decision or measures decided or adopted by a center or local government agency by its ex officio derived from public law in a concrete public law affair.

The decision or measures stipulated in last Paragraph is an administrative action as well, while the range might be ascertained under specified circumstance despite the parties affected is not specified. The creation, modification and decrease or use of public facility by the agency shall be treated as an administrative action too.

第二節 管轄

Section 2 Jurisdiction

第 4 條 訴願之管轄如左：

一、不服鄉（鎮、市）公所之行政處分者，向縣（市）政府提起訴願。

二、不服縣（市）政府所屬各級機關之行政處分者，向縣（市）政府提起訴願。

三、不服縣（市）政府之行政處分者，向中央主管部、會、行、處、局、署提起訴願。

四、不服直轄市政府所屬各級機關之行政處分者，向直轄市政府提起訴願。

五、不服直轄市政府之行政處分者，向中央主管部、會、行、處、局、署提起訴願。

六、不服中央各部、會、行、處、局、署所屬機關之行政處分者，向各部、會、行、處、局、署提起訴願。

七、不服中央各部、會、行、處、局、署之行政處分者，向主管院提起訴願。

八、不服中央各院之行政處分者，向原院提起訴願。

Article 4

The jurisdiction of an administrative appeal is stipulated as follows:

1. One can file an administrative appeal to a county government (or a province city hall) against an administrative action made by a village (town or district) office.

2. One can file an administrative appeal to a county government (or a province city hall) against an administrative action made by an agency under county government or province city hall.

3. One can file an administrative appeal to a ministry, council, bank, department, bureau or administration of central government in charge against an administrative action made by a county government (or a province city hall).

4. One can file an administrative appeal to a municipal city hall under Executive Yuan against an administrative action made by one of its agencies.

5. One can file an administrative appeal to a ministry, council, bank, department, bureau or administration of central government in charge against an administrative action made by a municipal city hall under Executive Yuan.

6. One can file an administrative appeal to a ministry, council, bank, department, bureau or administration of central government against an administrative action made by one of its agencies.

7. One can file an administrative appeal to the Yuan in charge against an administrative action made by a ministry, council, bank, department, bureau or administration of central government.

8. One can file an administrative appeal against a Yuan for an administrative action made by it.

第 5 條 人民對於前條以外之中央或地方機關之行政處分提起訴願時，應按其管轄等級，比照前條之規定為之。

訴願管轄，法律另有規定依其業務監督定之者，從其規定。

Article 5

One who files an administrative appeal against an administrative action made by a center or local government agency otherwise stipulated in last Article, the jurisdiction shall be referred to the agency's level as described in last Article.

The jurisdiction of an administrative appeal shall be decided according to an agency's authority of supervision under other Acts stipulation.

第 6 條 對於二以上不同隸屬或不同層級之機關共為之行政處分，應向其共同之上級機關提起訴願。

Article 6

The jurisdiction of an administrative appeal against an administrative action made by more than one agencies with different supervision or level jointly shall be filed to their concurrent supervised agency.

第 7 條 無隸屬關係之機關辦理受託事件所為之行政處分，視為委託機關之行政處分，其訴願之管轄，比照第四條之規定，向原委託機關或其直接上級機關提起訴願。

Article 7

An administrative action made by an agency in delegated affairs from an authority without supervision relationship shall be regarded as an administrative action made by the agency which delegates the power. The jurisdiction of an administrative appeal in such case shall be filed to the agency which delegates the power or its direct supervised agency as referred to Article 4.

第 8 條 有隸屬關係之下級機關依法辦理上級機關委任事件所為之行政處分，為受委任機關之行政處分，其訴願之管轄，比照第四條之規定，向受委任機關或其直接上級機關提起訴願。

Article 8

An administrative action made by an agency in assigned affairs from an authority with supervision relationship shall be regarded as an administrative action made by the agency which the power is assigned. The jurisdiction of an administrative appeal in such case shall be filed to the agency which the power is assigned or its direct supervised agency as referred to Article 4.

第 9 條 直轄市政府、縣（市）政府或其所屬機關及鄉（鎮、市）公所依法辦理上級政府或其所屬機關委辦事件所為之行政處分，為受委辦機關之行政處分，其訴願之管轄，比照第四條之規定，向受委辦機關之直接上級機關提起訴願。

Article 9

An administrative action made by a municipal city hall under Executive Yuan, a county government (or province city hall) or their agency and a village (town or district) office in allocated affairs from a supervised government or its agency according to law shall be regarded as an administrative action made by the agency which the power is allocated. The jurisdiction of an administrative appeal in such case shall be filed to the direct supervised agency of the agency which the power is allocated as referred to Article 4.

第 10 條 依法受中央或地方機關委託行使公權力之團體或個人，以其團體或個人名義所為之行政處分，其訴願之管轄，向原委託機關提起訴願。

Article 10

The jurisdiction of an administrative appeal against an administrative action made under the name of a legal entity or individual which is authorized to exercise power by a center or local government agency according to law shall be the agency which delegates the power.

第 11 條 原行政處分機關裁撤或改組，應以承受其業務之機關視為原行政處分機關，比照前七條之規定，向承受其業務之機關或其直接上級機關提起訴願。

Article 11

While the agency which the administrative action was made has been revoked or reformed, the agency which took over the authority shall be regarded as the agency which the administrative action was made. The jurisdiction of an administrative appeal in such case shall be filed to the agency which took over the authority or its supervised agency as referred to last seven Articles.

第 12 條 數機關於管轄權有爭議或因管轄不明致不能辨明有管轄權之機關者，由其共同之直接上級機關確定之。

無管轄權之機關就訴願所為決定，其上級機關應依職權或依申請撤銷之，並命移送於有管轄權之機關。

Article 12

While a conflict of jurisdiction among several agencies arose or there is ambiguity of jurisdiction which can not be identified the agency with jurisdiction, the jurisdiction shall be affirmed by the concurrent direct supervised agency.

While an administrative appeal decision was made by an agency without jurisdiction, its supervised agency shall revoke the decision by its ex officio or according to one's application and remand to the agency with jurisdiction with a command.

第 13 條 原行政處分機關之認定，以實施行政處分時之名義為準。

但上級機關本於法定職權所為之行政處分，交由下級機關執行者，以該上級機關為原行政處分機關。

Article 13

To decide the agency which the administrative action was made shall depend on the name of the administration action at the time it was issued. However, the administrative action was made by the supervised agency by its ex officio and commands the inferior agency to enforce, the supervised agency shall be the agency which the administrative action was made.

第三節 期日及期間

Section 3 Dates and Period

第 14 條 訴願之提起，應自行政處分達到或公告期滿之次日起三十日內為之。

利害關係人提起訴願者，前項期間自知悉時起算。但自行政處分達到或公告期滿後，已逾三年者，不得提起。

訴願之提起，以原行政處分機關或受理訴願機關收受訴願書之日期為準。

訴願人誤向原行政處分機關或受理訴願機關以外之機關提起訴願者，以該機關收受之日，視為提起訴願之日。

Article 14

An administrative appeal shall be filed within 30 days since one day after the date which administrative action is served or the expiration date of its publication period.

While the administrative appeal is filed by the third party with interest at stake, the period stipulated in last Paragraph shall calculate since the date which she/he knows. However, in such case it is not allowed to file an administrative appeal while it is over 3 years after the date which administrative action is served or the expiration date of its publication period.

Whether an administrative appeal is filed shall depend on the date which the administrative appeal pleading is received or processed by the agency which the administrative action was made or the agency with jurisdiction of administrative appeal.

An administrative appellant files an administrative appeal to an agency other than the agency which the administrative action was made or the agency with jurisdiction of administrative appeal, the date which the agency received or processed the administrative appeal pleading at the first place shall be regarded as the administrative appeal was filed.

第 15 條 訴願人因天災或其他不應歸責於己之事由，至遲誤前條之訴願期間者，於其原因消滅後十日內，得以書面敘明理由向受理訴願機關申請回復原狀。但遲誤訴願期間已逾一年者，不得為之。

申請回復原狀，應同時補行期間內應為之訴願行為。

Article 15

An administrative appellant files an administrative appeal to the agency with jurisdiction of administrative appeal after the administrative appeal period stipulated in last Article was expired due to act of god or other caused not contributed to her/him may file an application to restore her/his original status via a written which prescribes the reasons why act after the date is due within 10 days after the reasons were demolished. However, it is not allowed to do so while the date of administrative appeal period expired is over 1 year.

One who file an application for restoring her/his original status shall take action which is required to do according to the administrative appeal process within the period at the same time.

第 16 條 訴願人不在受理訴願機關所在地住居者，計算法定期間，應扣除其在途期間。但有訴願代理人住居受理訴願機關所在地，得為期間內應為之訴願行為者，不在此限。

前項扣除在途期間辦法，由行政院定之。

Article 16

An administrative appellant reside outside the area where the agency with jurisdiction of administrative appeal to process located

shall deduct the traveling period when calculating the period stipulated by this Act unless there is an administrative appeal representative reside in the area where the agency with jurisdiction of administrative appeal to process located and the action might have done during the period.

The rule which regulates the traveling period stipulated in last Paragraph shall be regulated by Executive Yuan.

第 17 條 期間之計算，除法律另有規定外，依民法之規定。

Article 17

The method to calculate the period shall be the same as stipulated in the Civil Act, provided that other Acts stipulated otherwise.

第四節 訴願人

Section 4 Administrative Appellant

第 18 條 自然人、法人、非法人之團體或其他受行政處分之相對人及利害關係人得提起訴願。

Article 18

Any individual, legal entity or organization or anyone whom an administrative action is issued to as well a third party with interest at stake may file an administrative appeal.

第 19 條 能獨立以法律行為負義務者，有訴願能力。

Article 19

Anyone who could have undertaken obligation independently via conducting legal affairs has capacity to file an administrative appeal.

第 20 條 無訴願能力人應由其法定代理人代為訴願行為。

地方自治團體、法人、非法人之團體應由其代表人或管理人為訴願行為。

關於訴願之法定代理，依民法規定。

Article 20

One without capacity to file an administrative appeal shall be represented by her/his legal representative.

While an autonomy, legal entity or organization files an administrative appeal, shall be represented by its representative or administrator.

The legal representative in an administrative appeal case shall be accorded to the Civil Act.

第 21 條 二人以上得對於同一原因事實之行政處分，共同提起訴願。

前項訴願之提起，以同一機關管轄者為限。

Article 21

Two or more individuals might have filed an administrative appeal jointly against an administrative action based on the same causes and facts.

To file an administrative appeal stipulated in last Paragraph is confined to cases under the same jurisdiction of an agency.

第 22 條 共同提起訴願，得選定其中一人至三人為代表人。

選定代表人應於最初為訴願行為時，向受理訴願機關提出文書證明。

Article 22

To file an administrative appeal jointly might have been represented by one to three person (s) elected among all administrative appellants.

The elected representative(s) shall present the document(s) certification to the agency with jurisdiction of administrative appeal at the first place when the administrative appeal is conducted.

第 23 條 共同提起訴願，未選定代表人者，受理訴願機關得限期通知其選定；逾期不選定者，得依職權指定之。

Article 23

When an administrative appeal was filed jointly without electing the representative(s), the agency with jurisdiction of administrative appeal may notify the administrative appellants to elect within a specific period. After the expiration of the specific period and the administrative appellants still not elect, the agency

with jurisdiction of administrative appeal might assign the representative(s) by its ex officio.

第 24 條 代表人經選定或指定後，由其代表全體訴願人為訴願行為。但撤回訴願，非經全體訴願人書面同意，不得為之。

Article 24

As long as the representative(s) was elected or assigned, the representative (s) will conduct an administrative appeal on behalf of all administrative appellants. However, to withdraw the administrative appeal which via a written consent from all appellants is required.

第 25 條 代表人經選定或指定後，仍得更換或增減之。

前項代表人之更換或增減，非以書面通知受理訴願機關，不生效力。

Article 25

The elected or assigned representative(s) might be replaced or varied in numbers.

The replacement or variation of representative(s) stipulated in last Paragraph shall not be effected unless the agency with jurisdiction of administrative appeal was informed via written notice.

第 26 條 代表人有二人以上者，均得單獨代表共同訴願人為訴願行為。

Article 26

While there are more than one representatives, any representative might conduct an administrative appeal on behalf of all administrative appellants independently.

第 27 條 代表人之代表權不因其他共同訴願人死亡、喪失行為能力或法定代理變更而消滅。

Article 27

The right of the representative(s) to represent will not be demolished due to the death, lack of capacity to conduct independently of other administrative appellant(s) who file an administrative appeal jointly or the replacement of other administrative appellant(s)'s legal representative.

第 28 條 與訴願人利害關係相同之人，經受理訴願機關允許，得為訴願人之利益參加訴願。受理訴願機關認有必要時，亦得通知其參加訴願。

訴願決定因撤銷或變更原處分，足以影響第三人權益者，受理訴願機關應於作成訴願決定之前，通知其參加訴願程序，表示意見。

Article 28

One who has same interest at stake as an administrative appellant might participate the administrative appeal after the permission was granted by the agency with jurisdiction of administrative appeal. The agency with jurisdiction of administrative appeal might notify she/he to participate the administrative appeal while necessary as well.

While an administrative appeal decision to revoke or modify the original administrative action which substantially affected the right or interest of the third party, the agency with jurisdiction of administrative appeal shall notify her/him to intervene in the administrative appeal procedure and pose her/his opinion.

第 29 條 申請參加訴願，應以書面向受理訴願機關為之。

參加訴願應以書面記載左列事項：

- 一 本訴願及訴願人。
- 二 參加人與本訴願之利害關係。
- 三 參加訴願之陳述。

Article 29

To file an application of intervention in an administrative appeal shall present a written application to the agency with jurisdiction of administrative appeal.

The application of intervention in an administrative appeal shall declare the following items via a written:

1. The administrative appeal per se and the administrative appellant(s).
2. The interest at stake of the intervenor appellant and the administrative appeal.
3. A statement of intervention for the administrative appeal.

第 30 條 通知參加訴願，應記載訴願意旨、通知參加之理由及不參加之法律效果，送達於參加人，並副知訴願人。

受理訴願機關為前項之通知前，得通知訴願人或得參加訴願之第三人以書面陳述意見。

Article 30

Notification of intervention in an administrative appeal shall serve the intervenor appellant and send a copy to the administrative appellant. The notification shall declare the intention of the administrative appeal, the reason to notify participation and the legal effect of default.

Before the notification stipulated in last Paragraph is served, the agency with jurisdiction of administrative appeal might inform the administrative appellant(s) and the third party who qualified as a participant pose her/his opinion via a written statement.

第 31 條 訴願決定對於參加人亦有效力。經受理訴願機關通知其參加或允許其參加而未參加者，亦同。

Article 31

An administrative appeal decision has also effects upon the intervenor appellant. While nonparticipation after a notification of participation an administrative appeal has been served or a permission to participate was granted by the agency with jurisdiction of administrative appeal as well.

第 32 條 訴願人或參加人得委任代理人進行訴願。每一訴願人或參加人委任之訴願代理人不得超過三人。

Article 32

An administrative appellant or intervenor appellant might have authorized the representative(s) to conduct administrative appeal. There are no more than three administrative appeal representatives for each administrative appellant and intervenor appellant.

第 33 條 左列之人，得為訴願代理人：

- 一、律師。
- 二、依法令取得與訴願事件有關之代理人資格者。
- 三、具有該訴願事件之專業知識者。
- 四、因業務或職務關係為訴願人之代理人者。
- 五、與訴願人有親屬關係者。

前項第三款至第五款之訴願代理人，受理訴願機關認為不適當時，得禁止之，並以書面通知訴願人或參加人。

Article 33

The following individual is qualified to be an administrative appeal representative:

1. An attorney at law.
2. An individual who earned the qualification to represent the administrative appellant in her/his case according to Acts or Regulations.

3. A person with expertise in a specific administrative appeal.
4. An individual who represent the administrative appellant based on the professional or business relationship.
5. An individual who is a relatives of the administrative appellant.

An administrative appeal representative stipulated in last Paragraph, Clause 1~3 might be prohibited while the agency with jurisdiction of administrative appeal deemed improper and it is required to notify the administrative appellant and the intervenor appellant via a written.

第 34 條 訴願代理人應於最初為訴願行為時，向受理訴願機關提出委任書。

Article 34

An administrative appeal representative shall present a written form of authorization to the agency with jurisdiction of administrative appeal at the first place of the administrative appeal conduct.

第 35 條 訴願代理人就其受委任之事件，得為一切訴願行為。但撤回訴願，非受特別委任不得為之。

Article 35

An administrative appeal representative might have undertook all administrative appeal conducts as authorized in a administrative appeal case. However, a special authorization is required to withdraw an administrative appeal case.

第 36 條 訴願代理人有二人以上者，均得單獨代理訴願人。

違反前項規定而為委任者，其訴願代理人仍得單獨代理。

Article 36

While there are more than one administrative appeal representatives, each one might represent the administrative appellant independently.

A representative may still represent the administrative appellant independently in spite of the representative is authorized against the rule stipulated in last Paragraph.

第 37 條 訴願代理人事實上之陳述，經到場之訴願本人即時撤銷或更正者，不生效力。

Article 37

An administrative appeal representative's statement of facts will not take effect while the administrative appellant who appears at the agency revoke or correct immediately by herself/himself.

第 38 條 訴願代理權不因訴願人本人死亡、破產或喪失訴願能力而消滅。法定代理有變更、機關經裁撤、改組或公司、團體經解散、變更組織者，亦同。

Article 38

The authorization of administrative appeal representative will not demolish due to the administrative appellant's death, bankruptcy or lack of the capacity to conduct an administrative appeal. It is the same while the legal representative is changed,

the agency is revoked or reformed, a corporation or organization is dissolved or reformed.

第 39 條 訴願委任之解除，應由訴願人、參加人或訴願代理人以書面通知受理訴願機關。

Article 39

The ceasing of an administrative appeal authorization shall be made by the administrative appellant, intervenor appellant or administrative appeal representative via a written notice sent to the agency with jurisdiction of administrative appeal.

第 40 條 訴願委任之解除，由訴願代理人提出者，自為解除意思表示之日起十五日內，仍應為維護訴願人或參加人權利或利益之必要行為。

Article 40

While the ceasing of an administrative appeal authorization is posed by the administrative appeal representative, she/he shall still undertake necessary conduct to secure the right or interest of the administrative appellant or intervenor appellant within 15 days since the ceasing of authorization is expressed.

第 41 條 訴願人、參加人或訴願代理人經受理訴願機關之許可，得於期日偕同輔佐人到場。

受理訴願機關認為必要時，亦得命訴願人、參加人或訴願代理人偕同輔佐人到場。

前二項之輔佐人，受理訴願機關認為不適當時，得廢止其許可或禁止其續為輔佐。

Article 41

The administrative appellant, intervenor appellant or administrative appeal representative might company with assistant to the place assigned by the agency with jurisdiction of administrative appeal on the specific date, while permission is granted by the agency.

The agency with jurisdiction of administrative appeal might have notified the administrative appellant, thirty party participant or administrative appeal representative company with assistant to the place assigned while the agency deemed necessary.

The agency with jurisdiction of administrative appeal have ceased the permission or prohibited the continuation of assist while the agency deemed the assistant as stipulated in last two Paragraphs is improper.

第 42 條 輔佐人到場所為之陳述，訴願人、參加人或訴願代理人不即時撤銷或更正者，視為其所自為。

Article 42

The statement made by the assistant appeared will be regarded as the same as made by the administrative appellant, intervenor appellant or administrative appeal representative, while the statement was not revoked or corrected by aforesaid parties immediately.

第五節 送達

Section 5 Service

第 43 條 送達除別有規定外，由受理訴願機關依職權為之。

Article 43

A service shall be made by the agency with jurisdiction of administrative appeal by its ex officio, provided that otherwise stipulated.

第 44 條 對於無訴願能力人為送達者，應向其法定代理人為之；未經陳明法定代理人者，得向該無訴願能力人為送達。

對於法人或非法人之團體為送達者，應向其代表人或管理人為之。

法定代理人、代表人或管理人有二人以上者，送達得僅向其中一人為之。

Article 44

To serve the one without capacity to undertake any administrative appeal conduct shall be made to her/his legal representative, while the legal representative is not stated to the agency with jurisdiction of administrative appeal, the service might have made to the one without capacity to undertake any administrative appeal conduct.

To serve a legal entity or organization shall be made to its representative or administrator.

While there are more than one legal representatives, representatives or administrators, the service might have made to one of them.

第 45 條 對於在中華民國有事務所或營業所之外國法人或團體為送達者，應向其中華民國之代表人或管理人為之。

前項代表人或管理人有二人以上者，送達得僅向其中一人為之。

Article 45

To serve a foreign legal entity or organization with office or business center located within territory of Republic of China shall be made to its representative or administrator domiciled in Republic of China.

While there are more than one representatives or administrators, a service might be made to one of them.

第 46 條 訴願代理人除受送達之權限受有限制者外，送達應向該代理人為之。但受理訴願機關認為必要時，得送達於訴願人或參加本人。

Article 46

A service shall be made to the administrative appeal representative unless the authorization to receive an service is limited. However, service might have made to the administrative

appellant or intervenor appellant, while the agency with jurisdiction of administrative appeal deemed necessary.

第 47 條 訴願文書之送達，應註明訴願人、參加人或其代表人、訴願代理人住、居所、事務所或營業所，交付郵政機關以訴願文書郵務送達證書發送。

訴願文書不能為前項送達時，得由受理訴願機關派員或囑託原行政處分機關或該管警察機關送達，並由執行送達人作成送達證書。

訴願文書之送達，除前二項規定外，準用行政訴訟法第六十七條至六十九條、第七十一條至第八十三條之規定。

Article 47

The documents of an administrative appeal shall be served via post deliver with postal service certification in which declares the administrative appellant, intervenor appellant, representative of aforesaid parties, administrative appeal representative's domicile, office or business center address.

While the documents of an administrative appeal are not able to serve stipulated in last Paragraph, the agency with jurisdiction of administrative appeal might send its staff or entrust the agency which the administrative action was made or policy agency in charge to serve and service certification shall be made by one who served.

The service of the administrative appeal documents could be made by applying *mutatis mutandis* for Article 67~69 and Article

71~83 of the Administrative Litigation Procedure Act otherwise stipulated in last two Paragraphs.

第六節 訴願卷宗

Section 6 Administrative Appeal File

第 48 條 關於訴願事件之文書，受理訴願機關應保存者，應由承辦人員編為卷宗。

Article 48

The document concerning an administrative appeal case under custody of the agency with jurisdiction of administrative appeal shall be bound into file by the staff in charge of the case.

第 49 條 訴願人、參加人或訴願代理人得向受理訴願機關請求閱覽、抄錄、影印或攝影卷內文書，或預納費用請求付與繕本、影本或節本。

前項之收費標準，由主管院定之。

Article 49

An administrative appellant, intervenor appellant or administrative appeal representative might file an application to the agency with jurisdiction of administrative appeal to view, cite, copy or photograph documents in the file or file an application to the

agency to provide hand writing, copies, citation of the documents by paying fees in advance.

The standard of the fee stipulated in last Paragraph shall be made by the Yuan in charge.

第 50 條 第三人經訴願人同意或釋明有法律上之利害關係，經受理訴願機關許可者，亦得為前條之請求。

Article 50

A thirty party who obtained the consent of the administrative appellant or provided prima facie evidence of the interest at stake might have also filed an application stipulated in last Article, while the agency with jurisdiction of administrative appeal permitted.

第 51 條 左列文書，受理訴願機關應拒絕前二條之請求：

- 一、訴願決定擬辦之文稿。
- 二、訴願決定之準備或審議文件。
- 三、為第三人正當權益有保密之必要者。
- 四、其他依法律或基於公益，有保密之必要者。

Article 51

To file an application for following documents under last two Articles shall be rejected by the agency with jurisdiction of administrative appeal:

1. The draft of an administrative appeal decision.

2. The documents of an administrative appeal decision for preparing or reviewing purpose.

3. The necessity to keep secret for the third party's right or interest.

4. The necessity to keep secret according to other Acts or based on the public interest.

第二章 訴願審議委員會

Chapter 2 Administrative Appeal Review Committee

第 52 條 各機關辦理訴願事件，應設訴願審議委員會，組成人員以具有法制專長者為原則。

訴願審議委員會委員，由本機關高級職員及遴聘社會公正人士、學者、專家擔任之；其中社會公正人士、學者、專家人數不得少於二分之一。

訴願審議委員會組織規程及審議規則，由主管院定之。

Article 52

Every agency shall organize an administrative appeal review committee to process the administrative appeal cases. The members of the committee shall be equipped with law or legal expertise in principle.

The members of an administrative appeal review committee shall be chosen from the agency's senior staffs, righteous gentlemen in the society, scholars or experts; inter alia, the ratio of the righteous gentlemen, scholars and experts shall not less than one half.

The rule of organizing an administrative appeal review committee and the reviewing procedure regulation shall be regulated by the Yuan in charge.

第 53 條 訴願決定應經訴願審議委員會會議之決議，其決議以委員過半數之出席，出席委員過半數之同意行之。

Article 53

An administrative appeal decision shall be made upon a resolution of the administrative appeal review committee, and the resolution could be reached upon one half committee members' present and one half presented committee members' consent.

第 54 條 訴願審議委員會審議訴願事件，應指定人員製作審議紀錄附卷。委員於審議中所持與決議不同之意見，經其請求者，應列入紀錄。

訴願審議經言詞辯論者，應另行製作筆錄，編為前項紀錄之附件，並準用民事訴訟法第二百十二條至第二百十九條之規定。

Article 54

In reviewing an administrative appeal case, the administrative appeal review committee shall assign staff member to produce a

review record in the file. While dissenting opinion was held by the committee member(s) in reviewing an administrative appeal case, the dissenting opinion shall be declared in the record upon the application of the committee member(s).

While the review of an administrative appeal case is processed via oral argument, it is required to produce another record bound as an attachment of the record stipulated in last Paragraph which shall apply *mutatis mutandis* for Article 212~219 of the Civil Procedure Act.

第 55 條 訴願審議委員會主任委員或委員對於訴願事件有利害關係者，應自行迴避，不得參與審議。

Article 55

The chairman or member(s) of the administrative appeal review committee shall be defaulted by herself/himself and is prohibited from join the reviewing, while there is an interest at stake concerning such administrative appeal case.

第三章 訴願程序

Chapter 3 Administrative Appeal Procedure

第一節 訴願之提起

Section 1 Commencement of Administrative Appeal

第 56 條 訴願應具訴願書，載明左列事項，由訴願人或代理人簽名或蓋章：

一 訴願人之姓名、出生年月日、住、居所、身分證明文件字號。如係法人或其他設有管理人或代表人之團體，其名稱、事務所或營業所及管理人或代表人之姓名、出生年月日、住、居所。

二 有訴願代理人者，其姓名、出生年月日、住、居所、身分證明文件字號。

三 原行政處分機關。

四 訴願請求事項。

五 訴願之事實及理由。

六 收受或知悉行政處分之年、月、日。

七 受理訴願之機關。

八 證據。其為文書者，應添具繕本或影本。

九 年、月、日。

訴願應附原行政處分書影本。

依第二條第一項規定提起訴願者，第一項第三款、第六款所列事項，載明應為行政處分之機關、提出申請之年、月、日，並附原申請書之影本及受理申請機關收受證明。

Article 56

An administrative appeal shall have an administrative appeal pleading which declares the following items and shall be signed or bear the seal of the administrative appellant or her/his representative:

1. The name, date of birth, domicile, or place of residence, identification number. While a legal entity or other organization with its administrator or representative, its name, office or business center address, and the name, date of birth, domicile or place of residence of the administrator or representative.

2. While there is an administrative appeal representative for the administrative appeal, her/his name, date of birth, domicile, or place of residence, and identification number.

3. The agency which the administrative action was made.

4. The claims of administrative appeal.

5. The facts and reasons for an administrative appeal.

6. The date of reception or acknowledge of the administrative action.

7. The agency with jurisdiction of administrative appeal.

8. The evidence. While it is a document form, a hand writing or copy shall be appended.

9. The year, month, and date of filing an administrative appeal.

To file an administrative appeal shall append a copy of the administrative action.

An administrative appeal pursuant to Article 2 Paragraph 1 shall identify the agency with the obligation to made the administrative action, date of filing, a copy for the original application and receipt certification of the agency with application, pursuant to Paragraph 1 Clause 3, 6.

第 57 條 訴願人在第十四條第一項所定期間向訴願管轄機關或原行政處分機關作不服原行政處分之表示者，視為已在法定期間內

提起訴願。但應於三十日內補送訴願書。

Article 57

While the administrative appellant has expressed the objection of an administrative action in the period stipulated in Article 14 Paragraph 1 to the agency with jurisdiction of administrative appeal or the agency which the administrative action was made, it shall be deemed as filed an administrative appeal in the period stipulated by this Act. However, an administrative appeal pleading shall be presented to the agency within 30 days.

第 58 條 訴願人應繕具訴願書經由原行政處分機關向訴願管轄機關提起訴願。

原行政處分機關對於前項訴願應先行重新審查原處分是否合法妥當，其認訴願為有理由者，得自行撤銷或變更原行政處分，並陳報訴願管轄機關。

原行政處分機關不依訴願人之請求撤銷或變更原行政處分者，應儘速附具答辯書，並將必要之關係文件，送於訴願管轄機關。

原行政處分機關檢卷答辯時，應將前項答辯書抄送訴願人。

Article 58

The administrative appellant shall prepare an administrative appeal pleading and file the administrative appeal to the agency which the administrative action was made to transfer to the agency with jurisdiction of administrative appeal.

The agency which the administrative action was made shall review the legality and propriety of the administrative action stipulated in last Paragraph in advance, and while the administrative appeal is sustainable, the agency may revoke or modify the administrative action and report to the agency with jurisdiction of administrative appeal.

When the agency which the administrative action was made refuse to revoke or modify the administrative action according to the administrative appellant's application, the agency shall prepare an written answer promptly, and transfer all necessary related documents to the agency with jurisdiction of administrative appeal.

第 59 條 訴願人向受理訴願機關提起訴願者，受理訴願機關應將訴願書影本或副本送交原行政處分機關依前條第二項至第四項規定辦理。

Article 59

While the administrative appellant filed an administrative appeal to the agency with jurisdiction of administrative appeal directly, the agency shall deliver a copy of the administrative appeal pleading to the agency which the administrative action was made and dispose the administrative appeal according to last Article, Paragraph 2~4.

第 60 條 訴願提起後，於決定書送達前，訴願人得撤回之。訴願經撤回後，不得復提起同一之訴願。

Article 60

The administrative appellant may withdraw the administrative appeal before the administrative appeal decision has been served. While the administrative appeal has been withdrawn, to file a same

administrative appeal by the administrative appellant shall not be allowed.

第 61 條 訴願人誤向訴願管轄機關或原行政處分機關以外之機關作不服原行政處分之表示者，視為自始向訴願管轄機關提起訴願。

前項收受之機關應於十日內將該事件移送於原行政處分機關，並通知訴願人。

Article 61

While the administrative appellant expressed an objection to the administrative action to an agency other than the agency which the administrative action was made or the agency with jurisdiction of administrative appeal, it shall be deemed as filed to the agency with jurisdiction of administrative appeal at the first place.

The agency which receive and process the administrative appeal stipulated in last Paragraph shall transfer the case to the agency which the administrative action was made within 10 days and notify the administrative appellant.

第 62 條 受理訴願機關認為訴願書不合法定程式，而其情形可補正者，應通知訴願人於二十日內補正。

Article 62

While the agency with jurisdiction of administrative appeal concluded that the administrative appeal pleading is not make in proper form or is defective in other respects but is supplementable, the agency shall assign a period of 20 days and notify the administrative appellant to supplement the administrative appeal pleading within such period.

第二節 訴願審議

Section 2 The Review of the Administrative Appeal

第 63 條 訴願就書面審查決定之。

受理訴願機關必要時得通知訴願人、參加人或利害關係人到達指定處所陳述意見。

訴願人或參加人請求陳述意見而有正當理由者，應予到達指定處所陳述意見之機會。

Article 63

An administrative appeal is a proceeding of paper review and without hearing.

When necessary, the agency with jurisdiction of administrative appeal may notify the administrative appellant, intervenor appellant, or third party with interest at stake to the place assigned by the agency to state her/his opinion.

When the administrative appellant or intervenor appellant file an application for stating her/his opinion with reasonable grounds, they shall be given the chance to appear at the place assigned by the agency with jurisdiction of administrative appeal to pose her/his opinion.

第 64 條 訴願審議委員會主任委員得指定委員聽取訴願人、參加人或利害關係人到場之陳述。

Article 64

The chairman of the administrative appeal review committee

may assign the commissioner(s) to hear the opinion of the administrative appellant, intervenor appellant, or third party with interest at stake who appears at the agency.

第 65 條 受理訴願機關應依訴願人、參加人之申請或於必要時，得依職權通知訴願人、參加人或其代表人、訴願代理人、輔佐人及原行政處分機關派員於指定期日到達指定處所言詞辯論。

Article 65

The agency with jurisdiction of administrative appeal may according to an application of the administrative appellant or intervenor appellant or when necessary, the agency may by its ex officio to notify the administrative appellant, intervenor appellant, or aforesaid parties' representative(s), administrative appeal representative, assistant and staff assigned by the agency which the administrative action was made to proceed an oral argument at the assigned date and place.

第 66 條 言詞辯論之程序如左：

- 一、受理訴願機關陳述事件要旨。
 - 二、訴願人、參加人或訴願代理人就事件為事實上及法律上之陳述。
 - 三、原行政處分機關就事實上及法律上之陳述。
 - 四、訴願或原行政處分機關對他方之陳述或答辯，為再答辯。
 - 五、受理訴願機關對訴願人及原行政處分機關提出詢問。
- 前項辯論未完備者，得再為辯論。

Article 66

The procedures of the oral argument are stipulated as follows:

1. The agency with jurisdiction of administrative appeal states the summary of the case.
2. The administrative appellant, intervenor appellant, or administrative appeal representative states the issue of fact and the issue of law.
3. The agency which the administrative action was made states the issue of fact and the issue of law.
4. The agency with jurisdiction of administrative appeal or the agency which the administrative action was made to state the opinion concerning the opposition parties or defense the statement or the defense of the opposition parties.
5. The agency with jurisdiction of administrative appeal to inquire the administrative appellant or the agency which the administrative action was made.

While the oral argument stipulated in last Paragraph is uncompleted, a secondary oral argument may be allowed.

第 67 條 受理訴願機關應依職權或囑託有關機關或人員，實施調查、檢驗或勘驗，不受訴願人主張之拘束。

受理訴願機關應依訴願人或參加人之申請，調查證據。但就其申請調查之證據中認為不必要者，不在此限。

受理訴願機關依職權或依申請調查證據之結果，非經賦予訴願人及參加人表示意見之機會，不得採為對之不利之訴願決定之基礎。

Article 67

The agency with jurisdiction of administrative appeal shall

conduct evidence investigation, test, or inspection by its ex officio or upon a request to the relevant government agency or staff which is not bound by the administrative appellant's allegation.

The agency with jurisdiction of administrative appeal shall investigate evidence based according to the application of an administrative appellant or intervenor appellant. However, the agency with jurisdiction of administrative appeal concluded that the application to investigate a specific evidence is unnecessary.

The result of the evidence investigation by the agency with jurisdiction of administrative appeal by its ex officio or according to one's application shall not be used as the bases of an unfavorable decision against the interest of the administrative appellant, except that the administrative appellant and intervenor appellant had been given the chance to express her/his opinion.

第 68 條 訴願人或參加人得提出證據書類或證物。但受理訴願機關限定於一定期間內提出者，應於該期間內提出。

Article 68

The administrative appellant or intervenor appellant may present the documentary evidence or other evidence during the procedure. However, while the agency with jurisdiction of administrative appeal assigns a peremptory period to present the evidence, the evidence shall be presented in the specific period.

第 69 條 受理訴願機關得依職權或依訴願人、參加人之申請，囑託有關機關、學校、團體或有專門知識經驗者為鑑定。

受理訴願機關認無鑑定之必要，而訴願人或參加人願自行負擔鑑定費用時，得向受理訴願機關請求准予交付鑑定。受理訴願機關非有正當理由不得拒絕。

鑑定人由受理訴願機關指定之。

鑑定人有數人者，得共同陳述意見，但意見不同者，受理訴願機關應使其分別陳述意見。

Article 69

The agency with jurisdiction of administrative appeal may by its ex officio or according to the application of the administrative appellant or intervenor appellant to request the relevant government agency, school, organization or any individual with the expertise to conduct the examination.

While the agency with jurisdiction of administrative appeal concluded the examination is unnecessary and the administrative appellant or intervenor appellant is willing to bear the cost for the examination, the administrative appellant or intervenor appellant may apply for the examination and the agency with jurisdiction of administrative appeal may not reject the application without justification.

The expert witness shall be assigned by the agency with jurisdiction of administrative appeal.

While there are more than one expert witnesses, they may state one common opinion jointly, however that there are different opinions, the agency with jurisdiction of administrative appeal shall make them to state their own opinion independently.

第 70 條 鑑定人應具鑑定書陳述意見。必要時，受理訴願機關得請

鑑定人到達指定處所說明。

Article 70

The expert witness shall present her/his opinion via an examination statement. While the agency with jurisdiction of administrative appeal deems necessary, the agency may invite the expert witness to explain her/his opinion at the assigned place.

第 71 條 鑑定所需資料在原行政處分機關或受理訴願機關者，受理訴願機關應告知鑑定人准其利用。但其利用之範圍及方法得限制之。

鑑定人因行鑑定得請求受理訴願機關調查證據。

Article 71

While the examination required the relevant materials under the possession of the agency which the administrative action was made or the agency with jurisdiction of administrative appeal, the agency with jurisdiction of administrative appeal shall inform and grant an permission to the expert witness to use those materials. However, the agency with jurisdiction of administrative appeal may set limitation in scope and method for such use.

Due to conduct the examination, the expert witness may request the agency with jurisdiction of administrative appeal to investigate the relevant evidence.

第 72 條 鑑定所需費用由受理訴願機關負擔，並得依鑑定人之請求預行酌給之。

依第六十九條第二項規定交付鑑定所得結果，據為有利於訴願人或參加人之決定或裁判時，訴願人或參加人得於訴願或行

政訴訟確定後三十日內，請求受理訴願機關償還必要之鑑定費用。

Article 72

The cost of the examination shall be born by the agency with jurisdiction of administrative appeal, and such cost may be paid in advance upon the request of the expert witness.

While the administrative appellant or intervenor appellant has paid the cost for the examination according to Article 69 Paragraph 2, and the result of the examination has been used to as a base of a favored decision or judgment for the administrative appellant's or intervenor appellant's interest, the administrative appellant or intervenor appellant may file an application to the agency with jurisdiction of administrative appeal for reimbursement within 30 days after the administrative appeal or administrative litigation is conclusive and irrevocable.

第 73 條 受理訴願機關得依職權或依訴願人、參加人之申請，命文書或其他物件之持有人提出該物件，並得留置之。

公務員或機關掌管之文書或其他物件，受理訴願機關得調取之。

前項情形，除有妨害國家機密者外，不得拒絕。

Article 73

The agency with jurisdiction of administrative appeal may by its ex officio or according to the administrative appellant or intervenor appellant's application command a third party to present the document or other items, the agency may take custody of such document or item.

The agency with jurisdiction of administrative appeal may get a document or other items under the custody of an official or a government agency.

Unless the contents commanded by the agency with jurisdiction of administrative appeal as stipulated in last Paragraph is against the national secrecy, the official or government agency shall not refuse to present it.

第 74 條 受理訴願機關得依職權或依訴願人、參加人之申請，就必要之物件或處所實施勘驗。

受理訴願機關依前項規定實施勘驗時，應將日、時、處所通知訴願人、參加人及有關人員到場。

Article 74

The agency with jurisdiction of administrative appeal may by its ex officio or according to the application of the administrative appellant or intervenor appellant to conduct an inspection for the necessary item or place.

The agency with jurisdiction of administrative appeal shall notify the administrative appellant, intervenor appellant or relevant person to appear at the date, time, and place of the inspection according to last Paragraph.

第 75 條 原行政處分機關應將據以處分之證據資料提出於受理訴願機關。

對於前項之證據資料，訴願人、參加人或訴願代理人得請求閱覽、抄錄或影印之。受理訴願機關非有正當理由，不得拒絕。

第一項證據資料之閱覽、抄錄或影印，受理訴願機關應指定日、時、處所。

Article 75

The agency which the administrative action was made shall present all relevant evidences as the bases of the administrative action to the agency with jurisdiction of administrative appeal.

The administrative appellant, intervenor appellant, or administrative appeal representative may file an application for view, cite or copy for such evidence materials stipulated in last Paragraph. The agency with jurisdiction of administrative appeal shall not refuse without justification.

The agency with jurisdiction of administrative appeal shall specify the date, time, and place for the view, cite or copy for the evidence materials stipulated in Paragraph 1.

第 76 條 訴願人或參加人對受理訴願機關於訴願程序進行中所為之程序上處置不服者，應併同訴願決定提起行政訴訟。

Article 76

While the administrative appellant or intervenor appellant has objection(s) to the procedure decision made by the agency with jurisdiction of administrative appeal during the administrative appeal procedure, she/he shall consolidate the procedure decision and the administrative appeal decision to file an administrative litigation.

第三節 訴願決定

Section 3 Administrative Appeal Decision

第 77 條 訴願事件有左列各款情形之一者，應為不受理之決定：

- 一、訴願書不合法定程式不能補正或經通知補正逾期不補正者。
- 二、提起訴願逾法定期間或未於第五十七條但書所定期間內補送訴願書者。
- 三、訴願人不符合第十八條之規定者。
- 四、訴願人無訴願能力而未由法定代理人代為訴願行為，經通知補正逾期不補正者。
- 五、地方自治團體、法人、非法人之團體，未由代表人或管理人為訴願行為，經通知補正逾期不補正者。
- 六、行政處分已不存在者。
- 七、對已決定或已撤回之訴願事件重行提起訴願者。
- 八、對於非行政處分或其他依法不屬訴願救濟範圍內之事項提起訴願者。

Article 77

While one of the following clauses is met in an administrative appeal case, the agency with jurisdiction of administrative appeal shall make a decision of case not entertained:

1. An administrative appeal pleading is not in the legal form and is not amendable, or while it is amendable, but was not amended after the expiration of the specific period.
2. An administrative appeal was filed after the expiration of the period stipulated by this Act, or while the administrative appeal pleading was not supplemented in the period according to Article 57.
3. An administrative appellant is not qualified according to

Article 18.

4. An administrative appellant without capacity to file an administrative appeal and undertake the administrative appeal conduct without her/his legal representative, provided that a notification to supplement has been given but failed to do so after the expiration of the specific period.

5. An autonomy, legal entity, non-legal entity undertook the administrative appeal conduct by person other than its administrator or legal representative, provided that a notification to supplement has been given but failed to do so after the expiration of the specific period.

6. The administrative action is no longer existed.

7. An administrative appeal is filed second time against a conclusive administrative appeal case or it is for which has been withdrawn.

8. An administrative appeal is filed against non-administrative action or other cases which are beyond the scope of administrative appeal remediless according to other Acts.

第 78 條 分別提起之數宗訴願係基於同一或同種類之事實上或法律上之原因者，受理訴願機關得合併審議，並得合併決定。

Article 78

The agency with jurisdiction of administrative appeal may consolidate and review several separate administrative appeals and may make a consolidated decision, while they are filed as a base of the same or like fact or law.

第 79 條 訴願無理由者，受理訴願機關應以決定駁回之。

原行政處分所憑理由雖屬不當，但依其他理由認為正當者，應以訴願為無理由。

訴願事件涉及地方自治團體之地方自治事務者，其受理訴願之上級機關僅就原行政處分之合法性進行審查決定。

Article 79

While the administrative appeal is unsustainable, the agency with jurisdiction of administrative appeal shall dismiss the administrative appeal via an administrative appeal decision.

Even if the bases of the administrative action made by the agency which the administrative action was made is with improper reasoning; however, while there are other reasons to support the administrative action, the administrative appeal shall be dismissed as unsustainable.

While the administrative appeal is related to an autonomy's self-government matters, the supervised agency with jurisdiction of administrative appeal shall only review the legality of the administrative action.

第 80 條 提起訴願因逾法定期間而為不受理決定時，原行政處分顯屬違法或不當者，原行政處分機關或其上級機關得依職權撤銷或變更之。但有左列情形之一者，不得為之：

一 其撤銷或變更對公益有重大危害者。

二 行政處分受益人之信賴利益顯然較行政處分撤銷或變更所欲維護之公益更值得保護者。

行政處分受益人有左列情形之一者，其信賴不值得保護：

一 以詐欺、脅迫或賄賂方法，使原行政處分機關作成行政處分者。

二 對重要事項提供不正確資料或為不完全陳述，致使原行政處分機關依該資料或陳述而作成行政處分者。

三 明知原行政處分違法或因重大過失而不知者。

行政處分之受益人值得保護之信賴利益，因原行政處分機關或其上級機關依第一項規定撤銷或變更原行政處分而受有損失者，應予補償。但其補償額度不得超過受益人因該處分存續可得之利益。

Article 80

While the administrative appeal was rendered as a decision of case not entertained because it was filed after the expiration of the specific period according to this Act, but the administrative action is obviously illegality or impropriety, the agency which the administrative action was made or its supervised agency may by its ex officio to revoke or modify the administrative action. However, one of the following situations is met in which the agency shall not revoke or modify the administrative action:

1. The revocation or modification is against the public interest.

2. The reliance interest of the beneficiary of the administrative action required obviously more protection than the public interest derived from the revocation or modification as planned.

The reliance is not worth of protection while one of the following situations was met to the beneficiary of the administrative action:

1. To make the agency which the administrative action was made to issue an administrative action via using the method of falsity, threat, or bribery.

2. Intentionally present the untruth information for material factor or the statement omission partly to make the agency which the administrative action was made to issue the administrative action based on aforesaid factor or statement.

3. Acknowledge of the illegality of the administrative action or lack of such acknowledge due to gross negligent.

The reliance interest of the beneficiary of the administrative action shall be indemnified, while the administrative action was revoked or modified by the agency which the administrative action was made or it's superior agency according to Paragraph 1. However, the amount of the indemnification shall not exceed the amount of the beneficiary interest while the administrative action was sustained.

第 81 條 訴願有理由者，受理訴願機關應以決定撤銷原行政處分之全部或一部，並得視事件之情節，逕為變更之決定或發回原行政處分機關另為處分。但於訴願人表示不服之範圍內，不得為更不利益之變更或處分。

前項訴願決定撤銷原行政處分，發回原行政處分機關另為處分時，應指定相當期間命其為之。

Article 81

While the administrative appeal is sustainable, the agency with jurisdiction of administrative appeal shall revoke the administrative action as a whole or a part by an administrative

appeal decision, it may also, based on case background, make its own modification decision or remand to the agency which the administrative action was made for another administrative action. . However, in the scope of the objection which the administrative appellant expressed, the agency with jurisdiction of administrative appeal shall not make a modification or decision which is less favorable to the interest of the administrative appellant than the administrative action was sustained.

While the administrative appeal decision revoke the administrative action and remand to the agency which the administrative action was made for another administrative action, the agency with jurisdiction of administrative appeal shall specify a period for making such new administrative action.

第 82 條 對於依第二條第一項提起之訴願，受理訴願機關認為有理由者，應指定相當期間，命應作為之機關速為一定之處分。

受理訴願機關未為前項決定前，應作為之機關已為行政處分者，受理訴願機關應認訴願為無理由，以決定駁回之。

Article 82

While the agency with jurisdiction of administrative appeal concluded an administrative appeal which was filed according to Article 2 Paragraph 1 was sustainable, it shall specify a period and command the agency which the administrative action should be made at the first place to make a certain administrative action.

Before the agency with jurisdiction of administrative appeal has made the decision stipulated in last Paragraph, while the agency which the administrative action should be made has made an administrative action, the agency with jurisdiction of

administrative appeal shall conclude the administrative appeal is unsustainable and dismiss it by a decision.

第 83 條 受理訴願機關發現原行政處分雖屬違法或不當，但其撤銷或變更於公益有重大損害，經斟酌訴願人所受損害、賠償程度、防止方法及其他一切情事，認原行政處分之撤銷或變更顯與公益相違背時，得駁回其訴願。

前項情形，應於決定主文中載明原行政處分違法或不當。

Article 83

Even if the agency with jurisdiction of administrative appeal concluded that the administrative action was improper or unlawful, however, the revocation or modification of the administrative action will cause serious damage against the public interest, after considering the damage suffered by the administrative appellant, the extend of the compensation, and the method of prevention damage and other relevant circumstances, the agency may dismiss the administrative appeal while the agency concluded that the revocation or modification of the administrative action obviously against the public interest.

The agency with jurisdiction of administrative appeal shall declare the administrative action was unlawful or improper in the holding of the administrative appeal decision stipulated in last Paragraph.

第 84 條 受理訴願機關為前條決定時，得斟酌訴願人因違法或不當處分所受損害，於決定理由中載明由原行政處分機關與訴願人進行協議。

前項協議，與國家賠償法之協議有同一效力。

Article 84

While the agency with jurisdiction of administrative appeal make the decision stipulated in last Paragraph, it may consider the damage suffered by the administrative appellant due to the unlawful or improper administrative action and declares in the reasoning of the decision that the agency which the administrative action was made to negotiate agreement for the compensation with the administrative appellant.

The negotiation stipulated in last Paragraph shall have the same effect as the agreement in the Government Tort Claim Act.

第 85 條 訴願之決定，自收受訴願書之次日起，應於三個月內為之；必要時，得予延長，並通知訴願人及參加人。延長以一次為限，最長不得逾二個月。

前項期間，於依第五十七條但書規定補送訴願書者，自補送之次日起算，未為補送者，自補送期間屆滿之次日起算；其依第六十二條規定通知補正者，自補正之次日起算；未為補正者，自補正期間屆滿之次日起算。

Article 85

Since the next day which the receipt of the administrative appeal pleading, the administrative appeal decision shall be made within 3 months which may be extended if necessary, provided that the administrative appellant and intervenor appellant were notified. The period can only be extended one time with two months limits.

The period stipulated in last Paragraph shall calculate from the next day when the administrative appeal pleading presented to the agency with jurisdiction of administrative appeal while according to

Article 57, except the administrative appellant failed to present the administrative appeal pleading, the period shall calculate from the next day of the expiration date of period for presentation of an administrative appeal pleading. While the agency with jurisdiction of administrative appeal made a notification to supplement according to Article 62, the period shall calculate from the next day when the pleading has been supplemented, while failed to so, the period shall calculate from the next of the expiration date of period for submission of an administrative appeal pleading.

第 86 條 訴願之決定以他法律關係是否成立為準據，而該法律關係在訴訟或行政救濟程序進行中者，於該法律關係確定前，受理訴願機關得停止訴願程序之進行，並即通知訴願人及參加人。

受理訴願機關依前項規定停止訴願程序之進行者，前條所定訴願決定期間，自該法律關係確定之日起，重行起算。

Article 86

While the decision of the administrative appeal depends on the existence or non-existence of certain relationship of law, and such relationship of law is pending in an litigation or administrative remedy proceeding, before the legal relation has been affirmed, the agency with jurisdiction of administrative appeal may cease the administrative appeal proceeding and notify the administrative appellant and intervenor appellant immediately.

When the agency with jurisdiction of administrative appeal ceased the administrative appeal proceeding stipulated in last Paragraph, the period to make the administrative appeal decision stipulated in last Paragraph shall be recalculated from the next day after the relationship of law has been confirmed.

第 87 條 訴願人死亡者，由其繼承人或其他依法得繼受原行政處分所涉權利或利益之人，承受其訴願。

法人因合併而消滅者，由因合併而另立或合併後存續之法人，承受其訴願。

依前二項規定承受訴願者，應於事實發生之日起三十日內，向受理訴願機關檢送死亡繼受權利或合併事實之證明文件。

Article 87

While the administrative appellant died during the proceeding, the successor(s) or other person(s) who has the right to succeed the right or interest derived from the administrative action according to Acts may assume the administrative appeal.

While a legal entity dissolved due to merger, the administrative appeal shall be assumed by the newly established or survived legal entity after the merger.

While the successor(s) assume the administrative appeal as stipulated in last two Paragraphs, the successor(s) shall present the certification of right succession upon death or fact of merge to the agency with jurisdiction of administrative appeal within 30 days which begin from the next day of the death or merger.

第 88 條 受讓原行政處分所涉權利或利益之人，得檢具受讓證明文件，向受理訴願機關申請許其承受訴願。

Article 88

The assignee of the right or interest raised from the administrative action may present the assignation certification documents to the agency with jurisdiction of administrative appeal and file an application for the permission of assuming the

administrative appeal.

第 89 條 訴願決定書，應載明左列事項：

一、訴願人姓名、出生年月日、住、居所、身分證明文件字號。如係法人或其他設有管理人或代表人之團體，其名稱、事務所或營業所，管理人或代表人之姓名、出生年月日、住、居所、身分證明文件字號。

二、有法定代理人或訴願代理人者，其姓名、出生年月日、住、居所、身分證明文件字號。

三、主文、事實及理由。其係不受理決定者，得不記載事實。

四、決定機關及其首長。

五、年、月、日。

訴願決定書之正本，應於決定後十五日內送達訴願人、參加人及原行政處分機關。

Article 89

The administrative appeal decision shall include the following items:

1. The name, date of birth, domicile or place of residence, identification number of the administrative appellant. While the administrative appellant is a legal entity or other organization with its administrator or representative, its name, office or business center address, and the name, date of birth, domicile or place of residence of the administrator or representative.

2. The administrative appellant with a legal representative or administrative appeal representative, her/his name, date of birth,

domicile, or place of residence, and identification number.

3. The holding, facts and reasoning. While it is a judgment of case not entertained, the facts may be omitted.

4. The agency with jurisdiction of administrative appeal and its leading officer.

5. Year, month and date.

An official copy of the administrative appeal decision shall be served to the administrative appellant, intervenor appellant, and the agency which the administrative action was made within 15 days after the decision has been made.

第 90 條 訴願決定書應附記，如不服決定，得於決定書送達之次日起二個月內向高等行政法院提起行政訴訟。

Article 90

The administrative appeal decision shall have a statement of notification for the right to file an administrative litigation to the Administrative High Court within two months from the next day which the administrative appeal served.

第 91 條 對於得提起行政訴訟之訴願決定，因訴願決定機關附記錯誤，向非管轄機關提起行政訴訟，該機關應於十日內將行政訴訟書狀連同有關資料移送管轄行政法院，並即通知原提起行政訴訟之人。

有前項規定之情形，行政訴訟書狀提出於非管轄機關者，視為自始向有管轄權之行政法院提起行政訴訟。

Article 91

While an administrative appeal decision is eligible to file an

administrative litigation in which the statement of notification state the agency without jurisdiction of administrative litigation in mistake, and causes the plaintiff file an administrative litigation to the agency without jurisdiction, the agency shall transfer the administrative litigation pleading together with all relevant materials to the administrative court with jurisdiction and notify the plaintiff immediately.

While an administrative litigation pleading was filed to the agency without jurisdiction as stipulated in last Paragraph shall be deemed as filed to the administrative court with jurisdiction at the first place.

第 92 條 訴願決定機關附記提起行政訴訟期間錯誤時，應由訴願決定機關以通知更正之，並自更正通知送達之日起，計算法定期間。

訴願決定機關未依第九十條規定為附記，或附記錯誤而未依前項規定通知更正，致原提起行政訴訟之人遲誤行政訴訟期間者，如自訴願決定書送達之日起一年內提起行政訴訟，視為於法定期間內提起。

Article 92

While the period to bring up an administrative litigation state in the statement of notification in the decision was in mistake, the agency with jurisdiction of administrative appeal shall issue a new notice to correct the mistake, and the period stipulated by this Act shall be recalculate from the date when the new notice was served.

While the agency with jurisdiction of administrative appeal failed to enclose a statement of notification according to Article 90 in the decision, or a period as state in the statement of notification

in mistake was not corrected according to the last Paragraph, which cause the plaintiff failed to file an administrative litigation in the period, while such administrative litigation was filed in 1 year from the date when the administrative appeal decision was served, the administrative litigation shall be deemed as filed in the period stipulated by this Act.

第 93 條 原行政處分之執行，除法律另有規定外，不因提起訴願而停止。

原行政處分之合法性顯有疑義者，或原行政處分之執行將發生難以回復之損害，且有急迫情事，並非為維護重大公共利益所必要者，受理訴願機關或原行政處分機關得依職權或依申請，就原行政處分之全部或一部，停止執行。

前項情形，行政法院亦得依聲請，停止執行。

Article 93

The enforcement of an administrative action shall not be stopped by the commencement of an administrative appeal, provided that other Acts stipulated otherwise.

While the legality of the administrative action is obviously suspicious, or the execution will cause irreparable damage, there is urgent situation, and it is not necessary for protecting the important public interest, the agency with jurisdiction of administrative appeal or the agency which the administrative action was made may by its ex officio or according to one's application to stop an enforcement as a whole or a part.

The administrative court may according to one's application to stop an enforcement as stipulated in last Paragraph via

adjudication as well.

第 94 條 停止執行之原因消滅，或有其他情事變更之情形，訴願機關或原行政處分機關得依職權或依申請撤銷停止執行。

前項情形，原裁定停止執行之行政法院亦得依聲請，撤銷停止執行之裁定。

Article 94

While the reason to stop an enforcement of the administrative action was demolished , or there is a change in circumstance, the agency with jurisdiction of administrative appeal or the agency which the administrative action was made may by its ex officio or according to one's application to revoke the stop enforcement adjudication.

The administrative court may according to one's application to revoke the stop enforcement adjudication stipulated in last Paragraph.

第 95 條 訴願之決定確定後，就其事件，有拘束各關係機關之效力；就其依第十條提起訴願之事件，對於受委託行使公權力之團體或個人，亦有拘束力。

Article 95

When an administrative appeal decision is conclusive and irrevocable, for the subject matter, it shall bind all relevant agencies; and while an administrative appeal was filed according to Article 10, the decision will bind the legal entity or individual who is authorized to exercise power.

第 96 條 原行政處分經撤銷後，原行政處分機關須重為處分者，應依訴願決定意旨為之，並將處理情形以書面告知受理訴願機關。

Article 96

While the administrative action was revoked and remand to the agency which the administrative action was made to make an administrative action de novo, the agency which the administrative action was made shall make a new administrative action based upon the reasoning of the administrative appeal decision, and inform the agency with jurisdiction of administrative appeal with a written.

第四章 再審程序

Chapter 4 Procedure For The Review De Novo of Administrative Appeal

第 97 條 於有左列各款情形之一者，訴願人、參加人或其他利害關係人得對於確定訴願決定，向原訴願決定機關申請再審。但訴願人、參加人或其他利害關係人已依行政訴訟主張其事由或知其事由而不為主張者，不在此限：

- 一、適用法規顯有錯誤者。
- 二、決定理由與主文顯有矛盾者。
- 三、決定機關之組織不合法者。
- 四、依法令應迴避之委員參與決定者。
- 五、參與決定之委員關於該訴願違背職務，犯刑事上之罪者。
- 六、訴願之代理人，關於該訴願有刑事上應罰之行為，影響於決定者。

七、為決定基礎之證物，係偽造或變造者。

八、證人、鑑定人或通譯就為決定基礎之證言、鑑定為虛偽陳述者。

九、為決定基礎之民事、刑事或行政訴訟判決或行政處分已變更者。

一〇、發見未經斟酌之證物或得使用該證物者。

前項聲請再審，應於三十日內提起。

前項期間，自訴願決定確定時起算。但再審之事由發生在後或知悉在後者，自知悉時起算。

Article 97

While one of the following situations is met, the administrative appellant, intervenor appellant or any third party with interest at stake may apply for a review de novo against an irrevocable and conclusive administrative appeal decision to the agency with jurisdiction of administrative appeal, except that she/he has already pleaded the cause(s) in an administrative litigation or failed to plead in spite of her/his learning the cause(s):

1. While it is obvious that Laws and Regulations have been applied in mistake.

2. While it is obvious that the reasons of an administrative appeal decision are inconsistent with the holding thereof.

3. While the agency with jurisdiction of administrative appeal was not constituted as stipulated by law.

4. While the commissioner(s) who participated in the administrative appeal decision shall be defaulted according to Acts

or Regulations .

5. While a commissioner(s) who participated in the administrative appeal decision committed a criminal offense relating to his official duties in connection with the administrative appeal.

6. While an administrative appeal representative committed a crime in connection with the administrative appeal, which is punishable by the Criminal Law and affected the administrative appeal decision.

7. While an evidence has been used as the bases of the administrative appeal decision is found to be forged or fraudulently altered.

8. While a witness, an examiner or an interpreter on whose testimony, examine opinion has be used as the bases of the administrative appeal decision has been proved punishable by perjury;

9. While a civil, criminal or administrative litigation judgment or administrative action on which the administrative appeal decision was based has been altered.

10. While an evidence which was not taken into consideration or was not been used as the basis has been discovered after the decision has been made.

A request for review de novo stipulated in last Paragraph shall be instituted within 30 days.

The period stipulated in last Paragraph calculates from the time when the administrative appeal decision becomes irrevocable and conclusive except the cause of review de novo happened or

was known until after the administrative appeal decision has become irrevocable and conclusive, the period calculates from the time when the cause of review de novo was known.

第五章 附則

Chapter 5 Supplementary Provisions

第 98 條 依本法規定所為之訴願、答辯及應備具之書件，應以中文書寫；其科學名詞之譯名以國立編譯館規定者為原則，並應附註外文原名。

前項書件原係外文者，並應檢附原外文資料。

Article 98

All administrative appeal, answer, and other required documents shall be written in Chinese. A scientific terminology shall be translated consistent with the publication of the National Institute for Compilation and Translation in principle, and the foreign terminology shall be appended.

While the documents stipulated in last paragraph are in foreign language in origin, the original documents shall be appended.

第 99 條 本法修正施行前，尚未終結之訴願事件，其以後之訴願程序，依修正之本法規定終結之。

本法修正施行前，尚未終結之再訴願案件，其以後之再訴願程序，準用修正之本法有關訴願程序規定終結之。

Article 99

While an administrative appeal case was not yet concluded until this Act is amended and effected, the remaining procedure of the administrative appeal shall be processed consist with an administrative appeal procedure of this Act as amended.

While an administrative reappeal was not yet concluded until this Act is amended and effected, the remaining procedure of the reappeal shall be processed by applying *mutatis mutandis* for this Act as amended.

第 100 條 公務人員因違法或不當處分，涉有刑事或行政責任者，由最終決定之機關於決定後責由該管機關依法辦理。

Article 100

While a public servant is liable under the Criminal Law or shall be held responsible for administrative liability due to the illegal or improper administrative action, the agency which made the final administrative appeal decision shall refer the public servant's responsibility to the agency in charge for further procedure.

第 101 條 本法自公布日施行。

本法修正條文之施行日期，由行政院以命令定之。

Article 101

This Act shall be effective from the date of promulgation.

The Amendments of this Act will be effective from the date assigned by Executive Yuan via a command.