

# **Rules on Reporting the Facts and the Submitting the Materials Regarding Immunity from or Reduction of Surcharges (Tentative translation)**

(Fair Trade Commission Rule No. 3 of September 2, 2020)

Pursuant to the provisions of Article 7-4 paragraph (1) through (4), Article 5 paragraph (1), (2) and (8), Article 70-6, Article 76 paragraph (1) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947); and to the provisions of Article 11 paragraph (3) of the Order for Enforcement of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Cabinet Order No. 317 of 1977); rules that fully revise the Rules on Reporting and the Submitting the Materials Regarding Immunity from or Reduction of Surcharges (Fair Trade Commission Rule No. 7 of 2005) are stipulated as follows.

## **(Definitions)**

Article 1 The terms used in these Rules that are the same as those used in the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947, hereinafter referred to as "the Act") shall have the same meanings as those in the Act.

## **(Calculation of Period of Time)**

- Article 2 (1) The calculation of any period of time shall be governed by the provisions related to periods of time in the Civil Code (Act No. 89 of 1896).
- (2) Notwithstanding the provisions of the preceding paragraph, regarding the calculation of period of time, Holidays of Administrative Organs (meaning the days listed in any item of Article 1 (1) of the Act on Holidays of Administrative Organs (Act No. 91 of 1988); the same applies in the following paragraph) shall not be included in that period of time.
- (3) Notwithstanding the provisions of paragraph 1, if the last day of a period of time falls on Holidays of Administrative Organs, Article 2 of the Act on Holidays of Administrative Organs shall apply.

## **(Terminology)**

Article 3 (1) Regarding the procedures for reporting the facts and submitting the materials regarding reduction of or immunity from surcharges (meaning the procedures stipulated in Article 7-4 and Article 7-5 of the Act (including when these articles are applied mutatis mutandis pursuant to Article 8-3 of the Act following the deemed replacement of terms); the same shall apply to the

following paragraph), the Japanese language shall be used.

- (2) Notwithstanding the provisions of the preceding paragraph, regarding the procedures for reporting the facts and submitting the materials regarding reduction of or immunity from surcharges, if supporting materials to be submitted to the Fair Trade Commission (hereinafter referred to as "the Commission") have not been prepared in Japanese, a Japanese translation shall be attached thereto.

(Reporting a Summary of a Violation Prior to the Investigation Start Date)

Article 4 (1) A person who intends to report the facts and submit the materials stipulated in Article 7-4 (1) (i) or (2) (i) through (iv) (including cases where these articles shall apply mutatis mutandis pursuant to Article 8-3 of the Act following the deemed replacement of terms; hereinafter the same) (including a person who intends to jointly report the facts and submit the materials pursuant to the provisions of Article 7-4 (4) of the Act (including when this article is applied mutatis mutandis pursuant to Article 8-3 of the Act following the deemed replacement of terms; hereinafter the same) prior to the investigation start date (meaning the investigation start date as stipulated in Article 7-4 (1) (i) of the Act) in relation to the case pertaining to the said violation; the same applies in Article 6 (1)) shall submit a written report in accordance with Form No.1 to the Commission by sending an email to the email address designated in advance by the Commission (meaning character, number, mark and other symbols to identify users of email; the same applies in Article 7 (2) and 9 (1) (iv))

- (2) If a written report provided for in the preceding paragraph is submitted by email, it shall be deemed to be submitted to the Commission at the time that the receipt of the report is recorded in the file on a computer used by the Commission (including an input-output device)

(Notification of the Order Relative to Other Submissions and the Deadline for Submission)

Article 5 Whenever the commission receives a written report provided for in paragraph 1 of the preceding Article, it shall notify the person who submits said written report of the order of submission of written reports and the deadline by which the reporting the facts and submitting the materials in relation to the relevant violation must be completed via the submission of a written report in accordance with Form No. 2 (in paragraphs (1) and (2) of following article and article 12(1), referred to as "the submission deadline").

(Reporting the facts and Submitting the Materials Prior to the Investigation Start Date)

Article 6 (1) A person who intends to report the facts and submit the materials pursuant to the provisions of Article 7-4 (1) (i) or (2) (i) through (iv) of the Act shall submit a written report and supporting materials in accordance with Form No. 2 to the Commission by the submission deadline.

(2) In the case set forth in the preceding paragraph, where the Commission finds that, from among the matters entered in Form No. 2, there are exceptional circumstances which necessitate the substitution of an oral report with regard to supporting matters set forth under "Notes" in that Form, or that, from among the supporting materials stipulated in the same paragraph, there are exceptional circumstances that necessitate the substitution of an oral statement with regard to the submission of supporting materials for which such a substitution is possible, an oral report or oral statement may be submitted as a substitute for the entries on such matters or the submission of such supporting materials; provided, however, that this is limited to where the person who wishes to make the oral report or oral statement appears before the Senior Officer for Immunity from or Reduction of Surcharges (hereinafter referred to as "the Senior Officer for Leniency Program") at the Management and Planning Division of the Investigation Bureau at the Commission's General Secretariat and makes the oral report or oral statement by the submission deadline.

(3) In the case set forth in the preceding paragraph, the Senior Officer for Leniency Program shall record the details of the oral report or oral statement.

(4) If two or more business operators intend to jointly report the facts and submit the materials pursuant to the Article 7-4 (4) of the Act, the oral report pursuant to the preceding two paragraphs shall be made by an agent who has been jointly appointed by said two or more business operators or by a business operator from among said two or more business operators who will be the contract person pursuant to the provisions of the last paragraph of Article 10.

(Report the Facts and Submitting the Materials on or after the Investigation Start Date)

Article 7 (1) A person who intends to report the facts and submit the materials pursuant to the provisions of Article 7-4 (3) (i) or (ii) (including where these apply mutatis mutandis pursuant to Article 8-3 of the Act following the deemed replacement of terms ; hereinafter the same) (including a person who intends to jointly report the facts and submit the materials pursuant to the Article 7-4 (4) of the Act prior to the investigation start date (meaning the investigation start date as stipulated in Article 7-4 (3) of the Act; the same applies in the following Article) in regard to the case related to the violation) shall submit a written report and supporting materials in accordance with Form No. 3 to the Commission by the deadline stipulated in the following Article.

- (2) The written report provided for in the preceding paragraph shall be submitted by e-mail to the email address designated in advance by the Commission.
- (3) The provisions of paragraph (2) through (4) in the preceding Article shall apply to cases set forth in paragraph (1), and the provisions of Article 4 (2) shall apply to cases wherein a written report has been submitted by the method stipulated in the preceding paragraph. In this case, the term "by the submission deadline" in the paragraph (2) of the preceding Article shall be read as "by the deadline provided for in Article 8".

(Deadline for Reporting the Facts and for Submitting the Materials on or after the Investigation Start Date)

Article 8 The deadline to be stipulated in the Rules of the Fair Trade

Commission, as provided for in Article 7-4 (3) (i) or (ii) of the Act, shall be the day on which twenty days have elapsed counting from the Investigation start date in regard to the case related to the violation.

(Submission Methods for Written Reports and Supporting Materials)

Article 9 (1) Written reports and supporting materials provided for in Article 6 (1) and supporting materials provided for in Article 7 (1) shall be submitted using by any of the methods described as follows :

- (i) By bringing them directly to the Senior Officer for Leniency Program;
  - (ii) By a delivery to the Senior Officer for Leniency Program through registered mail, correspondence which includes correspondence delivery service provided in Article 2 (2) of the Act on Correspondence Delivery by Private Sector Operators (Act No. 99 of 2002) by a general correspondence delivery person as provided in Article 2 (6) of that Act or by a special correspondence delivery person as provided in Article 2 (9) of that Act whose acceptance and delivery are recorded, or other methods similar thereto;
  - (iii) By transmission using a facsimile to the number designated in advance by the Commission; or
  - (iv) By sending an email to the email address designated in advance by the Commission.
- (2) Where a written report and supporting materials is submitted by the method as provided for in the preceding item (iii), it shall be deemed to be submitted to the Commission at the time that the Commission receives them.
- (3) The provisions of Article 4 (2) shall apply to cases where a written report and supporting materials is submitted by the method stipulated in paragraph 1 (iv).

(Joint Reporting the Facts and Submitting the Materials)

Article 10 Two or more business operators who intend to report the facts and submit the materials jointly pursuant to the Article 7-4 (4) of the Act shall

submit a written report in accordance with Form No. 1, Form No. 2, or Form No. 3 in both of their names. In this case, said two or more business operators shall designate one of themselves to be the contact person, except where an agent is appointed jointly by said two or more business operators for reporting the facts and submitting the materials.

(Service of Documents Requesting Additional Reporting the Facts or Submitting the Materials)

Article 11 If the Commission requests the additional reporting the facts or submitting the materials in relation to the relevant violation, pursuant to the Article 7-4 (6) of the Act, it shall serve the person who submits the written report and supporting materials provided for in Article 6 or the person who submits the written report and supporting materials provided for in Article 8 with a document stating said request.

(Order of Written Reports and Supporting Materials, etc. in Relation to Other Submissions)

Article 12 (1) Whenever two or more persons submit written reports and supporting materials as provided for in Article 6 by the submission deadline, whether the written reports and the reports submitted by these persons fall under the category of reporting the facts and submitting the materials set forth in Article 7-4 (1) (i) or (2) (i) through (iii) of the Act shall be determined based on the order in which the written reports provided for in Article 4 (1) are submitted.

(2) Whenever two or more persons submit written reports and supporting materials as provided for in Article 7 by the deadline provided for in Article 8, the order in which the Article 7-4 (3) (i) of the Act apply to such persons is determined based on the order in which the written reports are provided for in Article 7 (1).

(Order of Written Reports and Supporting Materials, etc. in Relation to Other Submissions)

Article 13 Whenever the Commission makes a notification in accordance with the Article 7-4 (5) (including cases when these articles are applied mutatis mutandis pursuant to Article 8-3 of the Act following the deemed replacement of terms; hereinafter the same), it shall do so by serving a document.

(Application for Consultation)

Article 14 (1) When Reporting (etc.) Enterprise intends to apply for a consultation pursuant to Article 7-5 (1) of the Act (including when these articles are applied mutatis mutandis pursuant to Article 8-3 of the Act

following the deemed replacement of terms; hereinafter the same), the Reporting (etc.) Enterprise shall submit a written application in accordance with Form No. 4 within ten days from the day when the Reporting (etc.) Enterprise receives a notice pursuant to Article 7-4 (5) (if the enterprise who receives that notice is a legal person and it ceases to exist for reasons provided in for Article 7-8 (3) or (4) of the Act, within ten days from the day when the enterprise receives that notice) by using any of the methods described as follows:

- (i) By bringing them directly;
  - (ii) By a delivery through registered mail, correspondence which includes correspondence delivery service provided in Article 2 (2) of the Act on Correspondence Delivery by Private Sector Operators by a general correspondence delivery person as provided in Article 2 (6) of that Act or by a special correspondence delivery person as provided in Article 2 (9) of that Act whose acceptance and delivery are recorded, or other methods similar thereto;
  - (iii) By transmission using a facsimile; or
  - (iv) By sending an email.
- (2) The provisions of Article 9 (2) shall apply to cases where a written application is submitted by the method stipulated in the preceding paragraph (iii).
- (3) The provisions of Article 4 (2) shall apply to cases where a written application is submitted by the method stipulated in paragraph 1 (iv).

(Proof of Specified Agent's Status and others)

Article 15 (1) The status of Specified Agent shall be proved by a written document.

- (2) If a Specified Agent loses the status, the Reporting (etc.) Enterprise who appoints that Specified Agent shall promptly notify the Commission thereof in writing.

(Recording of Contents of Explanation by Reporting (etc.) Enterprise during Consultation)

Article 16 When the Commission records the contents of explanation by a Reporting (etc.) Enterprise during consultation, it shall obtain consent from the Reporting (etc.) Enterprise.

(Recording of Contents of Explanation by Reporting (etc.) Enterprise during Consultation)

Article 17 The matters to be stipulated in the Rules of the Fair Trade Commission that contribute to revealing the truth of a case, as stipulated in Article 7-5 (1) of the Act shall be the following matters:

- (i) Goods or services subject to violation;
- (ii) Nature of violation;
- (iii) Participants in violation;
- (iv) The time of violation;
- (v) How the violation was implemented;
- (vi) In addition to what is set forth in the preceding items, anything related to the violation;
- (vii) The basic amount that can be used for calculating surcharges; and
- (viii) The calculation rate of surcharges.

(Agreement stipulated in Article 7-5 (1) and others)

Article 18 (1) An agreement stipulated in Article 7-5 (1) (including the agreement which contains the engagement in the acts listed in each of the items in Article 7-5 (2); referred to as "agreement " in the following Article) shall be made with the original and a duplicated copy prepared by the Commission, which the Commission and a Reporting (etc.) Enterprise (if a Specified Agent is appointed, then, the Commission, a Reporting (etc.) Enterprise and a Specified Agent) and shall be affixed with a signature or a name and seal on the original and duplicated copy.

(2) The Commission shall retain the original affixed with the signature or the name and seal in the preceding paragraph and a Reporting (etc.) Enterprise shall retain the duplicated copy affixed with the signature or the name and seal in the same paragraph.

(Method for Stipulating the Rate of Upper Limitation of After Assessment Rate)

Article 19 When stipulating the rate of the upper limit of After Assessment Rate in an agreement, the Commission shall present to a Reporting (etc.) Enterprise the rate obtained by adding it to the Specified Rate that shall be lower than the Upper Limit with five hundredth as unit.

(Joint Action by Two or More Subsidiaries)

Article 20 (1) Two or more subsidiaries who intend to jointly conduct the acts set forth in Article 10 (1) (i) and (iv) through (vii) of the Order for Enforcement of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Cabinet Order No. 317 of 1977, hereinafter referred to as "the Order") pursuant to the Article 11 (3) of the Order shall do so by the methods prescribed in the following items in accordance with the category of cases listed in each of those items:

- (i) By a document: By a document written in both of their names.
- (ii) By oral communication: By indicating a document certifying that one of

- said subsidiaries do by representing said subsidiaries.
- (2) In the case set forth in item (i) of the preceding paragraph, one of subsidiaries shall be designated to be the contact person, except where an agent (including Specified Agents) has been appointed jointly.

### **Supplementary Provisions**

These Rules shall come into effect as of the day when the enforcement of the Act for the Partial Revision of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 45 of 2019) comes into effect (December 25, 2020).

### **Supplementary Provisions [Fair Trade Commission Rule No. 7 of December 25, 2020]**

These Rules shall come into effect as of December 25, 2020.