

Rules on Reporting Facts and Submitting Materials on Surcharge Reduction or Immunity

Fair Trade Commission Rule No.3 of 2020

(Revised: Fair Trade Commission Rule No.7 of 2020)

Sec. 1 [Definitions]

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; referred to as “the Act” below) have the same meanings as those used in the Act.

Sec. 2 [Calculation of Periods]

- (1) The calculation of periods is governed by the provisions on the period of the Civil Code (Act No. 89 of 1896).
- (2) Notwithstanding the provisions of the preceding paragraph, in calculating a period, the days falling under the holidays of administrative organs (meaning the days stated in any of the items of Article 1, paragraph (1) of the Act on Holidays of Administrative Organs (Act No. 91 of 1988); the same applies in the following paragraph) are not included in the calculation.
- (3) Notwithstanding the provisions of paragraph (1), if the last day of a period falls on the holiday of administrative organs, the provisions of Article 2 of the Act on Holidays of Administrative Organs apply.

Sec. 3 [Language Used]

- (1) Japanese is to be used for the procedures for reporting facts and submitting materials on surcharge reduction or immunity (meaning the procedures referred to in Article 7-4 and Article 7-5 of the Act (including as applied mutatis mutandis pursuant to Article 8-3 of the Act following the deemed replacement of terms); the same applies in the following paragraph).

(2) Notwithstanding the provisions of the preceding paragraph, if the materials to be submitted to the Japan Fair Trade Commission (referred to as "the Commission" below) have not been prepared in Japanese in the procedures for reporting facts and submitting materials on surcharge reduction or immunity, a Japanese translation must be attached to those materials.

(3) 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.

Sec. 4 [Report on Summary of Violation Committed Before the Investigation Start Date]

(1) A person who intends to report the facts and submit the materials provided for in Article 7-4, paragraph (1), item (i) or paragraph (2), items (i) through (iv) of the Act (including as applied mutatis mutandis pursuant to Article 8-3 of the Act following the deemed replacement of terms; the same applies below) (including persons who intend to jointly report the facts and submit the materials pursuant to the provisions of Article 7-4, paragraph (4) of the Act (including as applied mutatis mutandis pursuant to Article 8-3 of the Act following the deemed replacement of terms; the same applies below) before the investigation start date (meaning the investigation start date provided for in Article 7-4, paragraph (1), item (i) of the Act) for the case related to the violation; the same applies in Article 6, paragraph (1)), must submit a written report using Form No.1 to the Commission by sending it using email to the email address (meaning the letters, numbers, symbols, and other codes for identifying the user of email; the same applies in Article 7, paragraph (2) and Article 9, paragraph (1), item (iv)) designated by the Commission in advance.

(2) If a written report provided for in the preceding paragraph is submitted by email, the written report is deemed to have been submitted to the Commission at the time that the report is recorded in the file stored on a computer used by the Commission (including an input-output device).

Sec. 5 [Notice of Order of Submission and Submission Deadline]

When the Commission receives a written report provided for in paragraph (1) of the preceding Article, it is to notify the person who has submitted the written report of the order their report was submitted, and the deadline for submitting a written report using Form No. 2 to report the facts and submit the materials related to the violation (referred to as “submission deadline” in paragraphs (1) and (2) of following Article and Article 12, paragraph (1)).

Sec. 6 [Reporting Facts and Submitting Materials Before Investigation Start Date]

(1) A person who intends to report the facts and submit the materials provided for in Article 7-4, paragraph (1), item (i) or paragraph (2), items (i) through (iv) of the Act must submit a written report using Form No. 2 and the materials to the Commission by the submission deadline.

(2) In the case referred to in the preceding paragraph, for an act of giving an oral report in lieu of entering the matters stated in the “remarks” column of Form No. 2 among the matters to be stated in that Form, or, an act of substituting the submission of the materials with oral statements among the materials referred to in that paragraph which may be substituted with oral statements, if the Commission finds that there are special circumstances that necessitate the acts to be performed, entry of the matters or submission of the materials may be substituted with the oral report or oral statement; provided, however, that this is limited to cases in which the person who intends to make an oral report or an oral statement appears before the Senior Officer for Leniency Program of the Management and Planning Division, Investigation Bureau, General Secretariat (referred to as "Senior Officer for Leniency Program" below) and makes the oral report or the oral statement by the submission deadline.

(3) In the case referred to in the preceding paragraph, the Senior Officer for Leniency Program is to record the content of the oral report or the oral statement.

(4) If two or more enterprises intend to jointly report facts and submit materials pursuant to the provisions of Article 7-4, paragraph (4) of the Act, the oral report pursuant to the provisions of the preceding two paragraphs is to be made by an agent who has been jointly appointed by those two or more enterprises or by the enterprises from among those

two or more enterprises who is to be the contact person pursuant to the provisions of the second sentence of Article 10.

Sec. 7 [Reporting Facts and Submitting Materials on or After the Investigation Start Date]

(1) A person who intends to report facts and submit materials which are provided for in Article 7-4, paragraph (3), item (i) or (ii) of the Act (including as applied mutatis mutandis pursuant to Article 8-3 of the Act following the deemed replacement of terms; the same applies below) (including a person who intends to jointly report facts and submit materials pursuant to the provisions of Article 7-4, paragraph (4) of the Act on or after the investigation start date (meaning the investigation start date referred to in Article 7-4, paragraph (3) of the Act; the same applies in the following Article) of the case related to the violation) must submit a written report using Form No. 3 and the materials to the Commission by the deadline provided for in the following Article.

(2) The written report provided for in the preceding paragraph must be submitted by sending it using email to the email address designated by the Commission in advance.

(3) The provisions of paragraphs (2) through (4) of the preceding Article apply mutatis mutandis to cases referred to in paragraph (1), and the provisions of Article 4, paragraph (2) apply mutatis mutandis to cases in which a written report is submitted by the method referred to in the preceding paragraph. In such a case, the term “by the submission deadline” in paragraph (2) of the preceding Article is deemed to be replaced with “by the deadline provided for in Article 8”.

Sec. 8 [Deadline for Reporting Facts and Submitting Materials on or After the Investigation Start Date]

The deadline specified by the Fair Trade Commission Rule which is provided for in Article 7-4, paragraph (3), item (i) or (ii) of the Act, is the day on which twenty days have passed counting from the investigation start date for the case related to the violation.

Sec. 9 [Submission Method for Written Reports and Materials]

(1) The written reports and the materials provided for in Article 6, paragraph (1), and the materials provided for in Article 7, paragraph (1) must be submitted using any of the methods stated in the following items, or by combining those methods:

- (i) the method of bringing them directly to the Senior Officer for Leniency Program;
- (ii) the method of sending them to the Senior Officer for Leniency Program through registered mail, a correspondence delivery service as defined in Article 2, paragraph (2) of the Act on Correspondence Delivery by Private Business Operators (Act No. 99 of 2002) provided by a general correspondence delivery operator as defined in paragraph (6) of that Article or a specified correspondence delivery operator as defined in paragraph (9) of that Article, the acceptance and delivery of which are recorded by them, or other equivalent methods;
- (iii) the method of transmitting them using a facsimile to the facsimile number designated by the Commission in advance; or
- (iv) the method of sending them to the email address designated by the Commission in advance.

(2) If a written report and the materials are submitted by the methods referred to in item (iii) of the preceding paragraph, they are deemed to have been submitted to the Commission at the time that the Commission received the written report and the materials..

(3) The provisions of Article 4, paragraph (2) apply mutatis mutandis to cases in which a written report and the materials are submitted by the method referred to in paragraph (1), item (iv).

Sec. 10 [Jointly Reporting Facts and Submitting Materials]

Two or more enterprises who intend to report facts and submit materials jointly pursuant to the provisions of Article 7-4, paragraph (4) of the Act must submit a written report using Form No. 1, Form No. 2, or Form No. 3 in their joint names. In such a case, those two or more enterprises must designate one enterprise as the contact, unless an agent is appointed jointly by those two or more enterprises for reporting facts and submitting materials.

Sec. 11 [Delivery of Documents Requesting Additional Facts to Be Reported or Materials to Be Submitted]

If the Commission requests additional facts to be reported or materials to be submitted related to the violation pursuant to the provisions of Article 7-4, paragraph (6) of the Act, the Commission must deliver a document stating that fact to the person who has submitted the written report and the materials provided for in Article 6 or the person who has submitted the written report and the materials provided for in Article 7.

Sec. 12 [Order of Submitting Written Reports and Materials]

(1) When two or more persons submit written reports and materials which are provided for in Article 6 by the submission deadline, whether the written reports and the materials submitted by those persons fall under reporting of facts and submitting of materials provided for in Article 7-4, paragraph (1), item (i) or paragraph (2), items (i) through (iii) of the Act is to be determined based on the order the written reports provided for in Article 4, paragraph (1) are submitted.

(2) When two or more persons submit written reports and materials which are provided for in Article 7 by the deadline specified in Article 8, the order of applying the provisions of Article 7-4, paragraph (3), item (i) of the Act to those persons is determined based on the order the written reports provided for in Article 7, paragraph (1) are submitted.

Sec. 13 [Delivery of Notice Referred to in Article 7-4, Paragraph (5) of the Act]

When the Commission gives a notice based on the provisions of Article 7-4, paragraph (5) of the Act (including as applied mutatis mutandis pursuant to Article 8-3 of the Act following the deemed replacement of terms; the same applies below), the Commission must give the notice through delivering a document.

Sec. 14 [Request for Deliberation]

(1) An enterprise that made a report and submission which intends to request a deliberation referred to in Article 7-5, paragraph (1) of the Act (including as applied mutatis mutandis pursuant to Article 8-3 of the Act following the deemed replacement of terms; the same applies below) must submit a written request using Form No. 4 to the Commission by any of the methods stated in the following items within ten days from the day when the enterprise has received a notice under the provisions of Article 7-4, paragraph (5) (if the enterprise that has received the notice is a corporation and the corporation ceases to exist due to the grounds provided for in Article 7-8, paragraph (3) or (4) of the Act, the day when the enterprise has received that notice):

- (i) the method of directly bringing them;
- (ii) the method of sending them through registered mail, a correspondence delivery service as defined in Article 2, paragraph (2) of the Act on Correspondence Delivery by Private Business Operators provided by a general correspondence delivery operator as defined in paragraph (6) of that Article or a specified correspondence delivery operator as defined in paragraph (9) of that Article, the acceptance and delivery of which are recorded by them, or other equivalent methods;
- (iii) the method of transmitting them using facsimile; or
- (iv) the method of sending them using email.

(2) The provisions of Article 9, paragraph (2) apply mutatis mutandis to cases in which a written request is submitted by the method referred to in item (iii) of the preceding paragraph.

(3) The provisions of Article 4, paragraph (2) apply mutatis mutandis to cases in which a written request is submitted by the method referred to in paragraph (1), item (iv).

Sec. 15 [Proving Qualification of Specified Agents]

(1) The qualification of a specified agent must be proved in writing.

(2) I If a specified agent loses their qualification, an enterprise that made a report and submission which has appointed the specified agent must promptly notify the Commission of that fact in writing.

Sec. 16 [Record of the Explanation Given by an Enterprise That Made a Report and Submission at Deliberation]

Article 16 When the Commission records the explanation given by an enterprise that made a report and submission at deliberations, it is to seek a confirmation on the content of the explanation from the enterprise.

Sec. 17 [Matters that Contribute to Uncovering the Facts of a Case]

The matters to be provided for in the Fair Trade Commission Rules that contribute to uncovering the facts of a case provided for in Article 7-5, paragraph (1) of the Act are the following matters:

- (i) the goods or services subject to violation;
- (ii) the manner of violation;
- (iii) the persons who participated in a violation;
- (iv) the time of violation;
- (v) the implementation status of violation;
- (vi) beyond what is stated in the preceding items, matters related to violation;
- (vii) the amount that serves as the basis for calculating surcharges; and
- (viii) the calculation rate of surcharges.

Sec. 18 [Agreement Referred to in Article 7-5, Paragraph (1)]

(1) The agreement referred to in Article 7-5, paragraph (1) of the Act (including the agreement that provides for performance of the acts stated in each of the items of paragraph (2) of that Article; referred to as "agreement " in the following Article) is to be made using the original and a duplicated copy of the written agreement prepared by the Commission, on which the Commission and an enterprise that made a report and submission (if a specified agent has been appointed, the Commission, the enterprise that made a report and submission, and the specified agent) are to affix their signature or their name and seal,

(2) The Commission is to retain the original copy affixed with the signature or the name and seal pursuant to the provisions of the preceding paragraph and an enterprise that made a report and submission is to retain the duplicated copy affixed with the signature or the name and seal pursuant to the provisions of that paragraph.

Sec. 19 [Method for Determining the Upper Limit Rate of the After Assessment Rate]

When determining the upper limit rate of the after assessment rate by an agreement, the Commission is to indicate to the enterprise that made a report and submission a rate that, when added to the specified rate, results in a rate not exceeding the upper limit rate, using five hundredths as the unit.

Sec. 20 [Joint Action by Two or More Subsidiaries]

(1) Two or more subsidiaries that intend to jointly conduct the acts stated in Article 10, paragraph (1), item (i), and items (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) pursuant to the provisions of Article 11, paragraph (3) of that Order must jointly conduct the acts by the methods specified in the following items in accordance with the category of cases stated in each of those items:

(i) when conducting the acts in writing: by a method of using a document prepared in their joint names; and.

(ii) when orally conducting the acts: by a method of presenting a document certifying that one of the subsidiaries will represent those subsidiaries to conduct the acts.

(2) In the case stated in item (i) of the preceding paragraph, the subsidiaries must designate one subsidiary to be the point of contact, except if an agent (including a specified agent) has been appointed jointly by the subsidiaries.

Supplementary Provisions

These Rules come into effect on the day on which the Act for the Partial Amendment 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 come into effect on December 25, 2020.