



公正取引委員会  
Japan Fair Trade Commission

# The Reduction System for Cooperation in Investigation

The Japan Fair Trade Commission  
(The JFTC)

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# 1. Developments of the Revisions of the Surcharge System



## (1) Past revisions

	Revision in 1977 (Introduction of the surcharge system)  (Promulgated in June 1977 and enforced in December 1977)	Revision in 1991  (Promulgated in April 1991 and enforced in July 1991)	Revision in 2005  (Promulgated in April 2005 and enforced in January 2006)	Revision in 2009  (Promulgated in June 2009 and enforced in January 2010)																																																																		
Subjects	Acts subject to surcharges  Unreasonable restraint of trade <ul style="list-style-type: none"><li>Those related to the price</li><li>Those affecting the price</li></ul>		Expansion of acts subject to surcharges  + Private monopolization by control Purchasing cartel	Expansion of acts subject to surcharges  + Exclusionary private monopolization Concerted refusal to deal Unjust low price sales Discriminatory consideration Resale price restriction Abuse of superior bargaining position																																																																		
Calculation rates	Calculation rates by business type <table><tr><th></th><th>calculation rates</th></tr><tr><td>Manufacturing business</td><td>2%</td></tr><tr><td>Wholesale business</td><td>0.5%</td></tr><tr><td>Retail business</td><td>1%</td></tr><tr><td>Other than the above</td><td>1.5%</td></tr></table> (Note) Calculation rates are set based on the ordinary profit ratios in the Financial Statements Statistics of Corporations by Industry.		calculation rates	Manufacturing business	2%	Wholesale business	0.5%	Retail business	1%	Other than the above	1.5%	Raising of calculation rates  Introduction of reduced calculation rates for SMEs <table><tr><th></th><th>In principle</th><th>SMEs</th></tr><tr><td>Manufacturing business, etc.</td><td>6%</td><td>3%</td></tr><tr><td>Wholesale business</td><td>1%</td><td>1%</td></tr><tr><td>Retail business</td><td>2%</td><td>1%</td></tr></table> (Note) Calculation rates are set based on the ordinary profit ratios in the Financial Statements Statistics of Corporations by Industry.		In principle	SMEs	Manufacturing business, etc.	6%	3%	Wholesale business	1%	1%	Retail business	2%	1%	Raising of calculation rates  <table><tr><th></th><th>In principle</th><th>SMEs (Note 2)</th></tr><tr><td>Manufacturing business, etc.</td><td>10%</td><td>4%</td></tr><tr><td>Wholesale business</td><td>2%</td><td>1%</td></tr><tr><td>Retail business</td><td>3%</td><td>1.2%</td></tr></table> (Note 1) Calculation rates are set based on the estimated amounts of unjust enrichment from past violations. (Note 2) Not applicable to private monopolization by control		In principle	SMEs (Note 2)	Manufacturing business, etc.	10%	4%	Wholesale business	2%	1%	Retail business	3%	1.2%	<table><tr><th colspan="2"></th><th>Manufacturing business, etc.</th><th>Wholesale business</th><th>Retail business</th></tr><tr><td rowspan="2">Unreasonable restraint of trade(Note)</td><td></td><td>10% (4%)</td><td>2% (1%)</td><td>3% (1.2%)</td></tr><tr><td>Private monopolization</td><td></td><td></td><td></td></tr><tr><td rowspan="2">Private monopolization</td><td>By control</td><td>10%</td><td>2%</td><td>3%</td></tr><tr><td>Exclusionary</td><td>6%</td><td>1%</td><td>2%</td></tr><tr><td rowspan="2">Unfair trade practices</td><td>4 categories of Unjust low price sales, etc.</td><td>3%</td><td>1%</td><td>2%</td></tr><tr><td>Abuse of superior bargaining position</td><td></td><td>1%</td><td></td></tr></table> (Note) Figures in the parentheses are for SMEs.			Manufacturing business, etc.	Wholesale business	Retail business	Unreasonable restraint of trade(Note)		10% (4%)	2% (1%)	3% (1.2%)	Private monopolization				Private monopolization	By control	10%	2%	3%	Exclusionary	6%	1%	2%	Unfair trade practices	4 categories of Unjust low price sales, etc.	3%	1%	2%	Abuse of superior bargaining position		1%	
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	Abuse of superior bargaining position		1%																																																																			
Increases and decreases			Repeated violations: Increase by 50%  Early discontinuance: Decrease by 20%  Introduction of the Leniency Program <ul style="list-style-type: none"><li>Reduction of or immunity from surcharges for up to 3 enterprises</li></ul>	Enterprises playing a leading role: Increase by 50%  Expansion of the Leniency Program <ul style="list-style-type: none"><li>Increase of the number of applicable enterprises → Up to 5 enterprises</li><li>Joint application by enterprises in the same group</li></ul>																																																																		
Others	Exclusion amount: Less than 200,000 yen  Period of exclusion: 3 years	Raising of the exclusion amount: Less than 500,000 yen  Limit of the period subject to surcharges: Up to 3 years	Raising of the exclusion amount: Less than 1 million yen	Extension of the period of exclusion: 5 years																																																																		

# (2) Developments leading to the Revision in 2019

### Challenges

Under the former surcharge system, surcharges were calculated and imposed uniformly and impartially. Therefore,

- ❑ The JFTC could not consider the degree of the enterprise's cooperation for the JFTC's investigation, when making decisions on the reduction of the amount of surcharges.
- ❑ The JFTC could not calculate or impose an appropriate amount of surcharges according to the nature and extent of the violation.

### The direction of the revision

- The AMA was amended to introduce the system which increases the enterprises' incentives for cooperating in the investigation by the JFTC, which will promote efficient and effective fact findings and the investigation process by cooperation between the enterprises and the JFTC, and allow the JFTC to calculate and impose an appropriate amount of surcharges according to the complicated economic environments.

### Outcome of the revision

- Enterprises and the JFTC will cooperate each other, not standing in opposition, to eliminate the infringements of the AMA.
- The deterrence against infringements will be strengthened by imposing necessary and sufficient surcharges according to the complicated economic environments.

➡ Promoting fair and free competition will invigorate the economy and enhance consumer interest.

**The Amended AMA was enacted** on June 19, 2019 (Act No. 45 of 2019, promulgated on June 26, 2019).

Enforced in three stages, on July 26, 2019, January 1, 2020, and December 25, 2020

Additionally, Determination Procedures were newly introduced to ensure effective functioning of the New Leniency Program.



### (3) Major Points in the 2019 Revision

#### Major Points

#### ❑ Introduction of the Reduction System for Cooperation in Investigation

- ✓ Adding the reduction rate according to the degree of the enterprise's cooperation for the JFTC's investigation to the rate according to the order of application
- ✓ Abolishing the limitation on the number of applicants( All the enterprises under the JFTC's investigation have the opportunity to voluntarily cooperate in the investigation)
- ✓ Conferring between an enterprise and the JFTC on the content of enterprise's cooperation and the JFTC's addition of the reduction rate

Detailed explanations are available  
on the following pages

#### ❑ Revision of the Calculation Method of Surcharges

- ✓ The calculation period was extended and the estimation provision which allows the JFTC to estimate the basis of calculation when the part of the amounts of sales is unknown due to the dissipation of relevant documents, etc. was introduced.
- ✓ Prices of closely connected trade and collusion benefits, etc. were added to the basis of calculation.
- ✓ Revision of reduced calculation rates and increased calculation rates

#### ❑ Others

- ✓ Extension of the period of exclusion regarding cease and desist orders and surcharge payment orders
- ✓ Lowering the rate of delinquency charges, raising the limit of the amount of fine for juridical person charged with the offence of obstructing the investigation and introducing procedures for gathering electronic record in the investigation of criminal cases, etc.

#### Methods to make the New Leniency Program more effective

#### ❑ Determination Procedures

- ✓ The JFTC has established the procedures to return to the enterprise, without waiting for the closure of the case, the objects recording the contents of the confidential communications between the attorney and the enterprise without the investigators or other staff members engaged in the investigation of the relevant case having access to the contents of the object as long as satisfaction of certain conditions is confirmed (Determination Procedures).

#### ❑ Creation of a memo after the hearing of statements

- ✓ Employees, etc. of the applicant for the leniency program may note down on the spot after the completion interview conducted by investigators.

## The Reduction System for Cooperation in Investigation

- A system to **add reduction rates according to the degree of enterprises' cooperation** to reveal the case to the reduction rates according to the order of the application for the Leniency Program
- The content of an enterprise's cooperation and the corresponding reduction rate are decided through a **conference** and an **agreement** between the enterprise and the JFTC.

(\*) This system is applied to enterprises that filed an application for the Leniency Program on or after December 25, 2020.

### Purpose of the Reduction System for Cooperation in Investigation

Aiming to **reveal the case efficiently and effectively and eliminate and deter violations** by increasing enterprises' incentive to cooperate with investigations by the JFTC

### Related laws and regulations



- The Rules on Reporting of Facts and Submission of Materials Regarding Immunity from or Reduction of Surcharges (the "Rules")
- The Guidelines to Reduction System for Cooperation in Investigation (the "Guidelines")

## Reduction Rates

The reduction rates shall be determined according to (1) & (2).

(1) The order of the application for the Leniency Program

(2) The degree of contribution to revealing the case: the Reduction System for Cooperation in Investigation

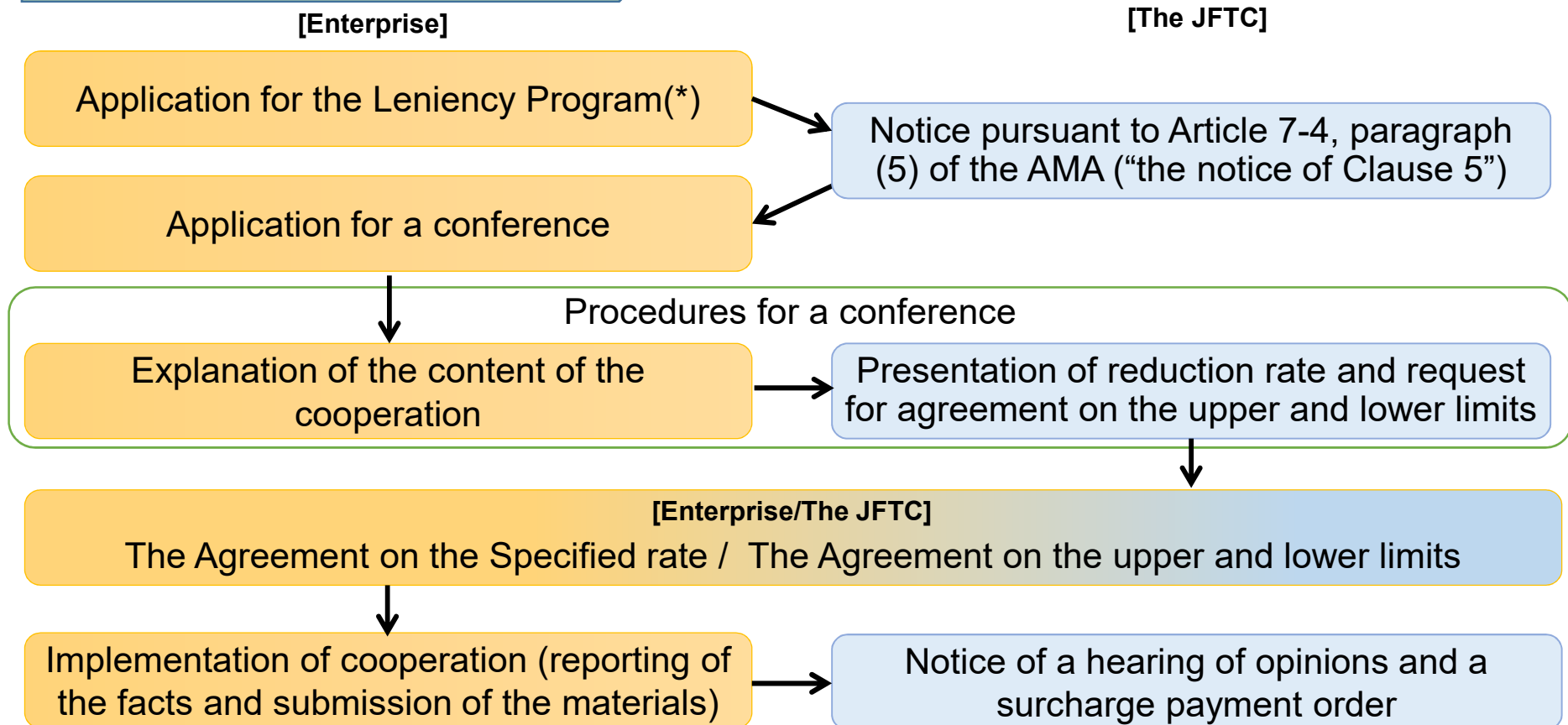
The Investigation Start Date	The Order of the Application for the Leniency Program	(1) The Reduction Rate according to the <u>Order of the Application</u>	(2) The Reduction Rate according to the <u>Degree of Contribution to Revealing the Case</u>	Total Reduction Rate
Before the Date	1 <sup>st</sup>	100%	<div>            *1         </div>	100%
	2 <sup>nd</sup>	20%		Up to 60%
	3 <sup>rd</sup> - 5 <sup>th</sup>	10%		Up to 50%
	After 6 <sup>th</sup>	5% *2		Up to 45%
After the Date	Up to 3 (Up to 5 including applicants which apply before the investigation start date)	10%	<div>            Up to 20%         </div>	Up to 30%
	Other than the above	5% *2		Up to 25%

\*1 The enterprise which first applies for the Leniency Program (before the Investigation Start Date) is not subject to the Reduction System for Cooperation in Investigation.

\*2 The upper limit on the number of enterprises which may apply for the Leniency Program was abolished.



#### (1) Flow of the procedures



(\*) **The application method was changed** and applications are now required to be filed **by email**. Application filed by fax is no longer acceptable. (Sec. 4 and Sec. 7 of the Rules). (For details, see "5. Change of the Application Method.")

**The JFTC closely communicates with enterprises throughout the investigation period.**



(2) Conference (Sec. 14 of the Rules; 3. (1) and (2) (i) of the Guidelines)

- An enterprise explains the content of its reports, etc. under the Reduction System for Cooperation in Investigation.
    - The content of cooperation must include **the enterprise's intent to accept request of the JFTC for additional reports, etc.** (Article 7-5, paragraph (1), item (i), (b) and (c) of the AMA)
  - The JFTC receives the explanation and presents the reduction rate.
- 
- ◆ An application for a conference may be filed only by an enterprise that has received a notice to the effect that the JFTC accepted its application for the Leniency Program (notice of Clause 5).
  - ◆ An application for a conference may be filed by the day on which **10 working days** elapsed from the day of receiving the notice of Clause 5.



(3) Agreement (3. (2) (ii) of the Guidelines)

**(i) The Agreement on the Specified Rate** (Article 7-5, paragraph (1) of the AMA)

Agreement on the application of the specific reduction rate(\*) provided in the agreement by evaluating the facts, etc., including the content of a report, etc. under the Leniency Program, which the relevant enterprise ascertains by the time of the agreement  
(\*Specified Rate: the rate determined through evaluating the facts, etc. which the relevant enterprise ascertains by the time of the agreement)

**(ii) The Agreement on the Upper and Lower Limits** (Article 7-5, paragraph (2) of the AMA)

Agreement on the application of the reduction rate determined by the JFTC in the range of the upper limit and the lower limit (Specified Rate) stipulated in the agreement (the rate determined through evaluating the facts, etc. which the relevant enterprise ascertains by the time of the agreement: specified rate) through evaluating the facts, etc. which the relevant enterprise newly ascertains and reports to the JFTC after the agreement (After Assessment Rate)

Determination of reduction rates based on the content of the cooperation throughout the investigation period will also benefit enterprises. Therefore, the JFTC ordinarily seeks (ii) an Agreement on the Upper and Lower Limits with enterprises.

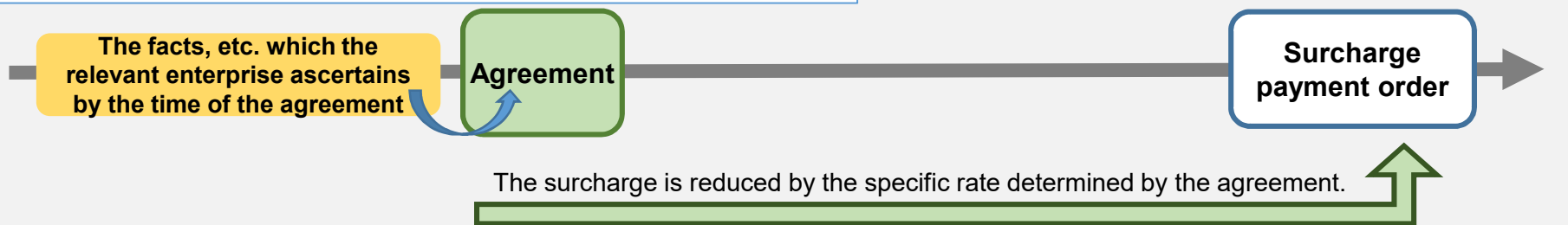
#### (4) Implementation of cooperation and determination of reduction rates

(3. (3) and (4) of the Guidelines)

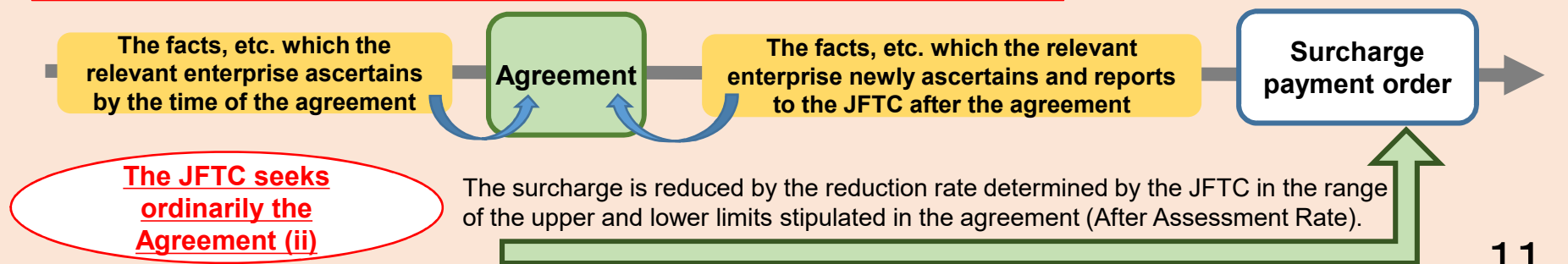
- An enterprise is to implement the agreed content of cooperation by the deadline set in by the agreement.
- The JFTC evaluates the degree of contribution of the content reported by the enterprise to revealing the case, determines the reduction rate and applies the determined rate.

#### Process to determine the reduction rate

##### (i) The Agreement on the Specified Rate



##### (ii) The Agreement on the Upper and Lower Limits





### (5) Factors for consideration in evaluation (4. (1) of the Guidelines)

- (i) **Whether the content of the report, etc. is detailed and concrete (being detailed and concrete)**
- (ii) **Whether the content of the report, etc. includes all the relevant matters contributing to revealing the case (being exhaustive)**
- (iii) **Whether the content of the report, etc. is corroborated by materials submitted by the relevant enterprise (being corroborated)**

- The Specified Rate and the After Assessment Rate are determined according to the degree of contribution of the content reported by the enterprise to revealing the case.
- Upon evaluating the degree of contribution to revealing the case, consideration is to be given to whether the content reported by the enterprise satisfies the factors (i) to (iii) above, while taking the progress status of revealing the case into account.<sup>(\*)</sup>

- When considering each of these factors, the progress status of revealing the case is taken into account, such as **whether or not reports, etc. are provided as far as the enterprise can ascertain according to the degree of involvement of the violation** which shall be evaluated by facts collected by the other enterprises, regarding to the specific “contributing to revealing the case” which is necessary to fact finding of the case.



**(6) Matters contributing to revealing the case** (Sec. 17 of the Rules; 4. (2) and the Attachment of the Guidelines)

<b>Matters Related to the Violation</b>	<b>Goods or Services Subject to the Violation</b>
	<b>Description of the Violation</b>
	<b>Participants in the Violation</b>
	<b>Time of the Violation</b>
	<b>Implementation of the Violation</b>
	<b>Other Matters Related to the Violation</b>
<b>Matters Related to Surcharges</b>	<b>The Basic Amount for Calculating Surcharges</b>
	<b>The Calculation Rate of Surcharges</b>

- Facts ascertained by the JFTC through an investigator's voluntary interview or interrogation are not evaluated as facts contributing to revealing the case even if they are statements of employees of the enterprises reporting to the JFTC under this procedure.
- However, if the enterprises provide the content of said statement as part of their report, etc., such content will be evaluated as a fact contributing to revealing the case.

#### (7) Reduction rate (4.(3) of the Guidelines)

- The JFTC determines reduction rates in three ranks (high, medium, and low) in accordance with the number of the three factors for consideration in evaluation ((i) being detailed and concrete; (ii) being exhaustive; and (iii) being corroborated) that enterprises satisfy.

Before the Investigation Start Date	After the Investigation Start Date	Degree of Contribution to Revealing the Case
40%	20%	High (Satisfying all factors)
20%	10%	Medium (Satisfying two factors)
10%	5%	Low (Satisfying one factor)

- In case of making the agreement on the Upper and Lower Limits, the upper limit of the reduction rates proposed by the JFTC will usually be at **40%** for an enterprise that applied for the Leniency Program before the investigation start date and **20%** for an enterprise that applied after the investigation start date.

## 4. Promotion of Compliance and Points to Note

### Promotion of compliance

- Enterprises' efforts to promote compliance with the AMA will lead to effective cooperation in investigation.
- Cooperation of employees is indispensable for utilizing the Reduction System for Cooperation in Investigation.



### Development of an inhouse leniency system

- An inhouse leniency system refers to a system wherein if an employee who has been involved in an act in violation of the AMA voluntarily makes a required report, etc. regarding the violation, consideration is given in making the final decision on leniency for the content of a disciplinary action therefor.
- It is introduced as a measure to achieve early detection of an act in violation of the AMA in the enterprise and securing of related employees' cooperative attitudes in subsequent inhouse investigations and investigations by the JFTC.
- When developing an inhouse leniency system, it is preferable (i) to include a clear statement in the inhouse rules to the effect that consideration is to be given to leniency for the content of disciplinary actions, and (ii) to clearly disseminate the existence and the details of the inhouse leniency system among employees.

### Development of a whistle-blowing system

- A whistle-blowing system refers to a system wherein an office is established to receive notifications or self-reporting from employees regarding acts in violation of laws and regulations or inhouse rules.
- A whistle-blowing system is a significant tool for obtaining information on problematic acts beneath the surface. It is necessary not only to create a system but also to make the system usable.
- It is important to fully disseminate the existence and significance of the inhouse whistle-blowing system and concrete method of utilizing it among employees.

### Points to note (treatment of employees)

- In order to ensure proper functioning of the Reduction System for Cooperation in Investigation, enterprises are required not to treat employees who offered cooperation in the JFTC's investigation in an unreasonably disadvantageous manner depending on the content of their statements, etc.

## 5. Change of the Application Method (by Email)



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- The method of filing an application for the Leniency Program was changed on December 25, 2020. Applications are now required to be filed by email, not by fax.<sup>(\*)</sup>

\* From December 25, 2020, onward, applications for the Leniency Program filed by fax are not accepted.

Email address: genmen-2020●jftc.go.jp

(For preventing spam, etc., “@” in the address is indicated as “●”. It is necessary to replace “●” with “@” when you actually send an email.)

### < Notes >

There may be cases where a certain amount of time may be required for a sent email to reach the JFTC or where a sent email does not reach the JFTC, depending on the setting of an email system. Additionally, the JFTC cannot receive any email containing a virus.



It is recommended that a person who has sent an email makes a phone call to the Senior Officer for Leniency Program to inquire whether the email was received.