

# **Rules on Administrative Investigations by the Fair Trade Commission**

**Fair Trade Commission Rule No.5 of 2005**

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## **Chapter I General Rules**

### **Section 1 [Purpose and Definition]**

(1) The investigation procedures of the Fair Trade Commission (hereinafter referred to as “ the Commission ” ) shall follow these Rules and the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No.54 of 1947). ( Including where the Act is applied in Section 95-4 of the Fishery Industry Cooperative Association Law (Act No.242 of 1948), and Section 108 of the Law on Cooperative Association of Small and Medium Enterprises (Act No.181 of 1949). Hereinafter referred to as “the Act. ” ) , the Act against Unjustifiable Premium and Misleading Representation (Act No.34 of 1962) as well as the Cabinet Ordinance concerning Designation of Investigator as stipulated in Section 47 (2) of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (Cabinet Ordinance No.264 of 1953. Hereinafter referred to as “the Cabinet Ordinance Concerning Designation of Investigator”); provided, however, that the procedures on reporting and submission of materials regarding immunity from or reduction of surcharges shall be carried out as otherwise stipulated.

(2) The terms used in these Rules that are the same as those used in the Act shall have

the same meaning as the terms used in the Act.

**Section 2 [Computation of Period]**

(1) The computation of period shall be made according to the provisions concerning period of the Civil Code (Act No.89 of 1896).

(2) If the last day of a period falls on any of the days indicated in the items of 1 (1) of the Law for Closed Days of the National Administrative Organs (Act No.91 of 1988), the period shall expire at the next day of the said last day.

**Section 3 [Language]**

(1) The Japanese language shall be used in the investigation procedures.

(2) When a person not versed in the Japanese language is required to make a statement, an interpreter shall be used to interpret.

**Section 4 [Method for Service by Public Notification]**

The Commission may insert service by public notification into an official gazette or newspaper. With respect to the public notification to be served in a foreign country, the Commission may notify that the public notification was served instead of inserting it into the official gazette or newspapers.

**Section 5 [Preparation of Document]**

(1) Unless otherwise specially stipulated, any document to be prepared for the investigation procedures shall be dated, signed and sealed.

(2) When the document stipulated in the preceding Subsection is a duplicate to be made by the Commission, the official who made the duplicate shall note that the duplicate does not differ from its original in a place contiguous to the concerned statement, shall sign and seal the duplicate, and shall impress a seal across it and the contiguous leaf or take similar action.

**Section 6 [Correction of Document]**

No character shall be altered in preparing documents for the investigation procedures. If any character is added, deleted or, entered in the margin of a page, a seal shall be impressed on it for confirmation. In this case, any deleted character shall remain

legible.

## **Chapter II Investigation Procedures**

### **Division I General Process**

#### **Section 7 [Initiation of Investigation Procedure]**

(1) The Director General of the Investigation Bureau of the General Secretariat shall, upon coming into contact with the incipient facts of a case, report to the Commission with any connection concerning whether it is necessary to proceed with an investigation.

(2) In making the report stipulated in the preceding Subsection, the following matters shall be clarified as possible:

- (i) Incipency
- (ii) Synopsis of the facts of the case
- (iii) Applicable provisions of the Act

(3) In the case of Subsection 1, the Commission shall, with respect to a case that the Commission acknowledges as requiring the action stipulated in Section 47 (1) of the Act, designate an investigator and assign him to investigate the said case pursuant to Section 47 (2) of the Act and the Cabinet Ordinance concerning Designation of Investigator.

#### **Section 8 [Identification Card]**

The form of the identification card stipulated in Section 47 (3) of the Act shall be as shown in the separated form [only Japanese text].

#### **Section 9 [Measures Taken by Investigator]**

(1) The investigator shall, when taking the measures as provided for in Section 47 (1) of the Act pursuant to the provision of Section 47 (2) of the Act, take measures by serving the document indicated in each of following paragraphs, according to the classification indicated in each of the paragraphs.

- (i) In the case of ordering persons concerned with a case or witnesses to appear for interrogating them; a writ of appearance
- (ii) In the case of hearing to present their opinions or collecting reports from the

*(Tentative translation: only Japanese version is authentic)*

persons indicated in the preceding Paragraph; a writ of report

(iii) In the case of ordering experts to appear for giving expert testimony; a writ of expert testimony

(iv) In the case of ordering persons holding accounting books, documents, and other materials to submit the said materials; a writ of submission

(2) The documents described in the preceding Subsection shall include the following matters, and each leaf of the documents shall bear a seal stamped across both it and the contiguous leaf.

(i) Title of the case

(ii) Name of the party to be served

(iii) Requested matters

(iv) In the case of a writ of appearance or a writ of submission, date and place of appearance and submission

(v) Penal provisions of the Act in the event of default

(3) A writ of submission shall include the materials to be ordered to submit or shall attach the list of the articles of them.

#### **Section 10 [Preparation of Record]**

(1) The staff members of the Commission shall, when preparing the record as provided for in this Division for the case pursuant to the provisions of Section 48 of the Act, enter the date of preparation and the name of the bureau, put signs and seals in the record.

(2) In the case of preparing the record stipulated in the preceding Subsection, when any character is added, deleted, or shown on the margin of a page, the number of characters shall be entered in the record.

(3) Where documents, photographs, and such other materials to be deemed appropriate may be cited and attached to the record stipulated in Subsection 1 for regarding as parts of the record.

(4) Each leaf of the record stipulated in Subsection 1 shall bear a seal stamped across it and the contiguous leaf.

#### **Section 11 [Record of Interrogation]**

*(Tentative translation: only Japanese version is authentic)*

(1) The investigator shall, when having interrogated persons concerned with a case or witnesses in accordance with the provision of Section 47 (1) (i) of the Act pursuant to the provision of Section 47 (2) of the Act, prepare the record of interrogation, read it to the deponent or have the deponent peruse it, and ask the deponent if there is no mistake in the record. If the deponent makes a motion for any addition or deletion, the deponent's statement shall be entered in the record.

(2) When the deponent makes a motion that there is no mistake in the record stipulated in the preceding Subsection, the investigator may ask to sign and seal the record.

(3) In the case of the preceding Subsection, when the deponent is unable to sign, another person shall sign on behalf of the deponent. When the deponent is unable to seal, the deponent shall be fingerprinted. However, where another person signs on behalf of the deponent, the said person shall state the reason in the record and sign and seal it.

(4) In the case of Subsection 2, where the deponent refuses to sign and seal the record, that effect shall be entered in the record.

#### **Section 12 [Special Rules when Interrogating Via an Interpreter]**

(1) The investigator shall, when interrogating a person concerned with a case or witness via an interpreter, enter the fact and effect that the investigator read the record to the person via the interpreter in the record of interrogation.

(2) The investigator may ask the interpreter to sign and seal the record stipulated in the preceding Subsection.

#### **Section 13 [Record of Statement]**

(1) In the case where a person concerned with a case or a witness makes a voluntary statement, when the staff member of the Commission deems it necessary, a record of statement that shall record the statement shall be prepared.

(2) The provisions of the preceding two Sections shall be applied to the record stipulated in the preceding Subsection.

**Section 14 [Expert Testimony]**

The investigator shall, when he has ordered an expert to give expert testimony in accordance with the provision of Section 47 (1) (ii) of the Act pursuant to the provision of Section 47 (2) of the Act, have the expert report the process and result thereof with a written statement.

**Section 15 [Record of Retention]**

(1) The investigator shall, when he has retained any submissions in accordance with the provision of Section 47 (1) (iii) of the Act pursuant to the provision of Section 47 (2) of the Act, prepare a record of retention.

(2) The record stipulated in the preceding Subsection shall incorporate the title of the case, the name, occupation and address or workplace of the owner and the person who provided the retained materials, and the date and place of retention.

(3) The record stipulated in Subsection 1 shall attach a list of the articles of the retained materials.

**Section 16 [Notice on Retained Materials, and Others]**

(1) The investigator shall, when he has retained any submissions in accordance with the provision of Section 47 (1) (iii) of the Act pursuant to the provision of Section 47 (2) of the Act, notify in writing that he retained the said materials to the person who provide the materials.

(2) The documents stipulated in the preceding Subsection shall attach a copy of the list stipulated in Subsection 3 of the preceding Section.

(3) A copy of the list stipulated in Subsection 3 of the preceding Section shall, when the owner of the retained materials request, be issued.

**Section 17 [Return or Temporary Return of Retained Materials]**

(1) Any retained material that no longer needs to be held in custody shall be returned without waiting for the closure of the case.

(2) Any retained material may be temporarily returned upon the request of its owner or the person who provided it.

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**Section 18 [Peruse and Copy of the Materials to be Ordered to Submit]**

(1) A person, who was ordered to submit accounting books, documents, and other materials in accordance with the provision of Section 47 (1) (iii) of the Act, may peruse or copy the said materials. However, where perusing and copying the materials may be to provide a particular trouble in the investigation of a case, the foregoing shall not apply.

(2) In the case of perusing or copying pursuant to the provision of the preceding Subsection, the investigator shall designate the date and time, place, and method with taking into consideration the opinion of person who was ordered to submit the said materials.

**Section 19 [Documents Submitted Voluntarily]**

In the case of receiving books, documents, and other materials that are provided voluntarily by parties concerned or witnesses, when the staff members of the Commission shall, when he deems it necessary, request the persons concerned with a case or the witnesses for submitting a document stating a list of the submissions, the date of providing the materials, and the name, occupation, and address of the owner and person who provided them,.

**Section 20 [Notice of Alleged Fact and Others]**

The investigator shall, when carrying out an inspection in accordance with the provision of Section 47 (1) (iv) of the Act pursuant to the provision of Section 47 (2) of the Act, make available the document stating the following matters for concerned persons.

- (i) Title of a case
- (ii) Main point of the alleged fact violating the provision of the Act
- (iii) Applicable provisions of the Act

**Section 21 [Record of Inspection]**

(1) The investigator shall, when having carried out an inspection in accordance with the provision of Section 47 (1) (iv) of the Act pursuant to the provision of Section 47 (2) of the Act, prepare a record of inspection.

(2) The record stipulated in the preceding Subsection shall include the title of a case, the purpose, date and time, and place of an inspection, the name and occupation of

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persons who were presented at the inspection, and the results of the inspection.

**Section 22 [Motion for Objection Against Measures Taken by Investigator]**

(1) Any person, who was subject to the measures as provided for in any paragraphs of Section 47 (1) of the Act, which was taken by the investigator pursuant to the provision of Section 47 (2) of the Act, may make a motion for objection to the Commission within one week from the day subject to the measure by a document stating the grounds, when being dissatisfied with the said measure.

(2) The Commission shall, when recognizing that there are grounds for the motion for objection, order the investigator to withdraw, cancel, or change the measure against which the motion for objection was made, and notify thereof to the petitioner.

(3) The Commission shall, when having rejected the motion for objection, notify thereof to the petitioner. In this case, the reasons for the rejection shall be given.

**Section 23 [Report of Investigation Result]**

(1) The Director General of the Investigation Bureau of the General Secretariat shall, when closing the investigation of a case, promptly make a report on the results to the Commission.

(2) In the case of the preceding Subsection, a report on a case where the investigator took the measures as provided for in Section 47 (1) of the Act pursuant to the provision of Section 47 (2) of the Act shall be made with clarifying the following matters:

- (i) Incipency
- (ii) Investigational process
- (iii) Synopsis of the facts of the case
- (iv) Applicable provisions of the Act
- (v) Opinion of the investigator

**Division II The Cease and Desist Order**

**Section 24 [Notice Before the Cease and Desist Order]**

(1) When notifying pursuant to the provision of Section 49 (5) of the Act, a document stating the matters indicated in the following paragraphs shall be served to the person who is to be the addressee for the cease and desist order.



*(Tentative translation: only Japanese version is authentic)*

- (i) Tentative content of the cease and desist order
- (ii) The facts found by the Commission and the application of law thereto
- (iii) The opportunity to present his or her opinions in writing and to submit evidence in support thereof to the Commission and the deadline therefore regarding the matters indicated in the two preceding Paragraphs

(2) The Commission may, when recognizing that there is justifiable reason, extend the deadline stipulated in Paragraph 3 of the preceding Subsection upon its own motion or upon application.

#### **Section 25 [Explanation Before the Cease and Desist Order]**

When a person, who received the service of the document stipulated in Subsection 1 of the preceding Section, or a representative appointed in accordance with the provision of Section 49 (4) of the Act, makes a motion, and when there are other necessities, the investigator shall explain the matter indicated in Subsection 1 (1) and (2) of the preceding Section to the person who received the service of the said document and his representative. In this case, the investigator shall explain the evidence necessary for establishing the foundation for the facts findings of the Commission regarding the person to be explained.

#### **Section 26 [Formality of Statement of Opinion and Others]**

(1) A person served with a document stipulated in Section 24 (1) may state opinions in writing and provide evidence with respect to the matters indicated in 24 (1) (i) and (ii) to the Commission by the designated deadline. In this case, when a deposition is provided as evidence, it shall be done with a document signed and sealed by a deponent.

(2) When providing the evidence pursuant to the provision of the preceding Subsection, the matter to be proved shall be clarified.

(3) Without prejudice to the provision of Subsection 1, the Commission may, when recognizing that there is the particular necessity, have the person state his or her opinion orally. In this case, the Commission shall designate a staff member who hears the opinion, and notify of the date and time, and place of stating to the person who is about to state the opinion.

(4) The Commission shall, when notifying in accordance with the provision of

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preceding Subsection, in advance, hear the opinion on the date and time, and place from the person who is about to the state opinion.

**Section 27 [Statement of Opinion by Representative, and Others]**

(1) In the case where the person served with a document stipulated in Section 24 (1) appoint an representative at the time of presenting his opinions or submitting evidence in accordance with Section 49 (3) of the Act, when the representative is a attorney at law or a law firm, the representative shall verify the authority in writing.

(2) The document stipulated in the preceding Subsection shall clearly indicate the title of a bar association and an office to which the representative belongs, and the scope and extent of authority of representative.

(3) Where an representative is a law firm, the name of a attorney at law who is in charge of the case in question as a member of the said corporation, the title of a bar association to which the attorney at law belongs, and the scope and extent of tasks (work) that each attorney at law can perform shall be stated clearly in the document stipulated in Subsection 1.

(4) The person served with a document stipulated in Section 24 (1) shall, when intending to obtain approval for the appointment of a person other than a attorney at law or a law firm as an representative at the time of presenting his or her opinion or submitting evidence in accordance with Section 49 (3) of the Act, submit to the Commission a document stating the name, address, and occupation of the person, and the relationship with the person served with a document stipulated in Section 24 (1) and others which are sufficient for determining whether or not the said person is eligible to act as an representative.

(5) The document stipulated in the preceding Subsection, requesting approval for the appointment of a person other than a attorney at law or a law firm as the representative, shall attach a letter that clearly indicates the authority of the representative and the scope and extent of it shall be attached.

(6) In the case of receiving the submission of the document stipulated in Subsection 4, requesting approval for the appointment of a person other than a attorney at law or a law firm as the representative, the Commission shall, when deciding to give or not to

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give the approval, file a notice the person who requested the approval stipulated in Subsection 4 thereof.

(7) The person who served with a document stipulated in Section 24 (1) shall, where the authority of an representative lapsed, file a notice with the Commission thereof in writing without delay.

### **Section 28 [Service of the Written Cease and Desist Order]**

(1) The certified copy of the written cease and desist order shall be served to the addressee or representative.

(2) When serving the certified copy of the written cease and desist order, a written notification stating that the hearing procedure on the said cease and desist order may be requested shall be attached to it.

## **Division III Payment Order of Surcharge**

### **Section 29 [Notice Before Payment Order, and Others]**

The provisions of Sections 24 to 28 shall apply mutatis mutandis to the payment order of surcharge. In this case, the term “Section 49 (5) of the Act” in Section 24 (1) shall be read as “Section 49 (5) applicable mutatis mutandis under Section 50 (6)”, and “the addressee for the cease and desist order” shall be read as “the addressee for the payment order” and “Tentative content of the cease and desist order” in Section 24 (1) (i) shall be read as “Amount of surcharge intended to order to pay”, and “The facts found by the Commission and the application of law thereto” in Section 24 (1) (ii) shall be read as “The basis of calculation of such amount and the violative act related to surcharge”, and “Subsection 1 of the preceding Section” in Section 25 and “Section 24 (1)” in Section 26 (1) and Section 27 (1), (4) and (7) shall be read as “Section 24 (1) applicable mutatis mutandis under Section 29”, and “Section 49 (4) of the Act” in Section 25 shall be read as “Section 49 (4) of the Act applicable mutatis mutandis under Section 50 (6)”, and “the facts finding of the Commission” in Section 25 shall be read as “the basis of calculation of such amount or the violative act related to such surcharge”, and “Section 49 (3) of the Act” in Section 27 (1) and (4) shall be read as “Section 49 (3) of the Act applicable mutatis mutandis under Section 50 (6)”, and “the certified copy of the written cease and desist order” in Subsection 1 of the preceding Section shall be read as “the certified copy of the written surcharge payment order”, and “When serving the certified copy of the

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written cease and desist order, a written notification stating that the hearing procedure on the said cease and desist order” in Subsection 2 of the same Section shall be read as “When serving the certified copy of the written surcharge payment order, a written notification stating that the hearing procedure on the said payment order”.

**Section 30 [Notice to Entrepreneurs Who aren't Ordered Pay Surcharge ]**

(1) When notifying pursuant to the provisions of Section 7-2 (18) of the Act (including cases applicable mutatis mutandis under Section 8-3 of the Act. The same shall apply in the following paragraph) and Section 7-2 (21) of the Act, a document stating the matters shall be served.

(2) The time stipulated in the Rules of the Commission as provided for in Section 7-2 (18) and Section 7-2 (21) of the Act is the time when notifying entrepreneur other than the said entrepreneur of not giving the order pursuant to Section 7-2 (1) (including cases applicable mutatis mutandis under Section 7-2 (2) or Section 8-3) and Section 7-2(4).

**Division      Warning**

**Section 31 [Warning]**

(1) The warning (refers to providing instructions and necessary matters to an entrepreneur or trade associations whose activities are found by the Commission to be likely to violate the provisions of Section 3, Section 6, Section 8 or Section 19 of the Act to cease the activities or not to undertake the activities again.; the same shall apply in the following paragraph, the next Section and Section 34.) shall be rendered in writing, and the written warning shall indicate the purpose and contents of the warning and the Director General of the Investigation Bureau of the General Secretariat shall affix its name and seal thereto.

(2) The written warning shall be sent to the addressee.

(3) The Commission shall, where it intends to issue a warning, give in advance to a person who is to be the addressee of the said warning an opportunity to express his or her opinions and to submit evidences.

(4) The person who is to be the addressee of the warning may,when expressing his or her opinions or submitting evidences pursuant to the provisions of the preceding paragraph, appoint an agent (limited to attorneys at law, legal professional corporations or appropriate persons approved by the Fair Trade Commission).

(5) The Commission shall, when giving an opportunity to express opinions and to submit evidence pursuant to the provisions of paragraph 3, notify the person who is to be the addressee of the warning of the matters indicated in the following matters in writing a sufficient period of time prior

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to the time limit for expressing his or her opinions and submitting evidences:

(i) **Tentative** purpose and content of the warning

(ii) The opportunity to present his or her opinions in writing and to submit evidence in support thereof to the Commission and the deadline therefore regarding the matters indicated in the preceding Paragraph.

**Section 32 [Methods for expressing his or her opinions about the warning]**

The provisions of Section 24 (2), Section 26, Section 27 and Section 28 (1) shall apply *mutatis mutandis* to the warning. In this case, "Paragraph 3 of the preceding Subsection" in Section 24 (2) shall be replaced and read as "Paragraph 2 in Section 31 (5)," "a person served with a document stipulated in Section 24 (1)" in Section 26 (1) and Section 27 (1), (4) and (7) shall be replaced and read as "a person served with a notice stipulated in Section 31 (5)," "24 (1) (i) and (ii)" in Section 26 (1) shall be replaced and read as "24 (1) (i)," "Section 49 (3) of the Act" in Section 27 (1) and (4) shall be replaced and read as "Section 31 (3)," "the certified copy of the written cease and desist order" in Section 28 (1) shall be replaced and read as "the written warning" and "served" shall be replaced and read as "sent."

**Chapter [ ] Supplementary Rules**

**Section 33 [Notice to Reporting Person]**

(1) The notice pursuant to the provisions of Section 45 (3) of the Act shall be given, where the report pursuant to Section 45 (1) was made by a document stating the matters indicated in each of the following paragraphs:

- (i) Name or title and address of a reporting person
- (ii) Name or title of a person who commits or has committed an act considered a violation of the provisions of the Act
- (iii) Details of the activity, time, place and other facts of an act considered a violation of the provisions of the Act

(2) The notification stipulated in the preceding Subsection shall be filed, where a report including the matters indicated in each paragraph of the preceding Subsection, which is transmitted using an electronic information processing organization, is indicated clearly in documents by using computers including their peripheral devices and other equipment used by the Commission.

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(3) The notification stipulated in Subsection 1 shall, in cases indicated in each of the following paragraphs, be filed by a document stating thereof. However, where the notification stipulated in any of the following paragraphs is filed for cases regarding a similar report, no subsequent notice shall be served.

- (i) When the cease and desist order was issued for the said case
- (ii) When the order for payment was issued for the said case
- (iii) When measures for elimination were taken for the said case in accordance with the provision of Section 6 (1) of the Act against Unjustifiable Premiums and Misleading Representations
- (iv) When any of the measures indicated in the preceding paragraphs were not taken for the said case

(4) In the documents stipulated in the preceding Subsection, any matters deemed appropriate may be stated in addition to the matters to be stated pursuant to the provisions of the preceding Subsection.

#### **Section 34 [Submission of Documents by Facsimile]**

(1) The documents to be submitted in the investigation procedures may be submitted by transmitting in facsimile, excluding the following documents:

- (i) Documents to be submitted pursuant to the measures indicated in each paragraph of Section 47 (1) of the Act
- (ii) Written opinion and evidence on the notice before the cease and desist order
- (iii) Written opinion and evidence on the notice before the order for payment
- (iv) Written opinion and evidence on the notice before the warning
- (v) Documents proving authorization or the authority of the representative necessary for stating opinion before the cease and desist order, the order for payment, or the warning
- ( ) Written motion for objection against measures taken by the investigator

(2) When a document is submitted by using facsimile, the document shall be deemed to have been submitted to the Commission at the time when the Commission receives it.

(3) The chairman or the investigator may, when recognizing there is necessary in the case as provided for in the preceding Subsection, have the submitting person submit the original document used for transmission.

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**Section 35 [Decision for Corrections]**

(1) When there is a clear error, including a transcript error, in the written cease and desist order or the written surcharge payment order, the Commission may make a decision to correct the error upon its own motion or upon application.

(2) A motion for an objection against the decision for correction may be made in writing to the Commission within two weeks of the date when the certified copy of the written decision was received.

(3) The Commission shall, when having turned down a motion for objection stipulated in the preceding Subsection, notify the petitioner thereof.

**Section 36 [Suspend the Execution of Cease and Desist Order, and Others]**

(1) The Commission shall, when having suspended the execution of all or parts of the cease and desist order pursuant to the provision of Section 54 (1) of the Act, notify the person who requested the hearing procedure thereof.

(2) The Commission shall, when revoking the suspension of the execution pursuant to the provision of Section 54 (2), notify the person who requested the hearing procedure thereof with reason.