

## Rules on Investigations by the Fair Trade Commission (Draft)

Fair Trade Commission Rule No. 5 of October 19, 2005

(Revised: Fair Trade Commission Rule No. [number] of 2020)

[omitted]

### Section 1-2. Treatment of Objects recording Contents of Specified Communications, etc.

(Treatment of Objects recording Contents of Specified Communications)

#### Article 23-2

(1) When ordering submission of accounting books and documents or other objects pursuant to the provision of Article 47(1)(iii) of the Act based on the provision of Article 47(2) of the Act (limited to the cases where such order is issued with respect to a case concerning an act alleged to be a violation under Article 7-2(1) of the Act (including the case is applied *mutatis mutandis* pursuant to Article 8-3 of the Act following the deemed replacement of terms) to which the immunity from or reduction of the surcharge set forth in Article 7-4 or Article 7-5 of the Act may apply (such a violation referred to as a “Violation to Which the Leniency Program may Apply” in the Article 23-3(1)(iii)) (such an act alleged to be a violation referred to as “Alleged Act in Violation to Which the Leniency Program may Apply” hereinafter)), when the holder of the object (limited to the entrepreneur who committed the Alleged Act in Violation to Which the Leniency Program may Apply (when the Alleged Act in Violation to Which the Leniency Program may Apply relates to a violation stipulated in Article 7-2(1) of the Act that is applied *mutatis mutandis* pursuant to Article 8-3 of the Act following the deemed replacement of terms, the constituent entrepreneur of the trade association that committed such Act; hereinafter the same) or an officer or employee thereof) notifies in writing that the objects record contents of confidential communications between such entrepreneur and an attorney (including a law firm, and limited to the cases where the attorney engages in legal practices independently from the relevant entrepreneur) regarding legal advice on the Alleged Act in Violation to Which the Leniency Program may Apply (such communication referred to as the “Specified Communications” hereinafter) and requests in writing application of the treatment set forth in the next Article, the investigator shall order submission of such objects after placing them in a container and sealing it, and retain them, when it is visually evident that an indication is affixed thereto to the effect that the objects record the contents of the Specified Communications and that they are stored at a specific place of storage (limited to the place managed by the division or an officer or employee of the entrepreneur that handles the affairs for

consulting with the attorneys; hereinafter the same in the Article23-3(1)(v) ) and in a manner to ensure they are classified and separated from other objects.

(2) The entrepreneur who made the request under the preceding Paragraph (hereinafter referred to as the “Specified Party”) shall submit to the Commission a document that states, for each of the Specified Communications, the title, date of preparation or obtainment, the person who conducted the Specified Communication, the person who has the knowledge of the contents of the Specified Communication, the place of storage, the outline and other necessary matters regarding the object retained pursuant to the provision of the preceding Paragraph (hereinafter referred to as the “Specified Object”) (such a document referred to as the “Log” in the Article23-3(1)(vi)) within two weeks from the day on which the submission order under the preceding Paragraph was issued, unless there are extraordinary circumstances.

(Treatment of Specified Object)

#### Article 23-3

(1) When it is confirmed that all of the requirement stipulated in the following Items are satisfied with respect to a Specified Object, such Object shall be returned without waiting for the closure of the case, deeming that it no longer needs to be in held custody.

(i) It records the contents of Specified Communications;

(ii) Nothing is included that serves as the basis of the contents of the Specified Communications or otherwise is not considered as contents of the Specified Communications or, when any statement is included that is not considered as contents of the Specified Communications, the Specified Party has submitted or reported to the Commission objects whose contents are identical to such contents;

(iii) It does not record any contents that relate to commitment, or facilitation of commitment of a Violation to Which the Leniency Program may Apply, or obstruction of inspection or any other illegal conducts;

(iv) The Specified Object has on its surface or on other easily visible place an indication to show that it is an object recording the contents of Specified Communications;

(v) In addition to having the indication stipulated under the foregoing Item, the Specified Objects are in appropriate custody by being stored at a specific place of storage and, in a manner to visually classify and separate them from the objects that are not Specified Objects and by implementing measures with respect to the scope of persons who know the contents of the Specified Communication with the aim to maintain their confidentiality; and

(vi) The Logs contain no misrepresentations.

(2) The staff members engaged in the investigation of a case concerning an Alleged Act in Violation to Which the Leniency Program may Apply under Paragraph(1) of the preceding Article shall not

inspect or copy the Specified Objects (excluding, however, an Object that is submitted or reported pursuant to Item (ii) of the preceding Paragraph) relevant to the same case while the confirmation procedures under the preceding Paragraph are underway, and when the confirmation is made that all of matters stipulated in the Items of the preceding Paragraph are satisfied with respect thereto.

(Procedures of Confirmation of Specified Object)

Article 23-4

(1) The confirmation under Paragraph (1) of the preceding Article shall be performed by a staff member designated by the Commission, for each case concerning the Alleged Act in Violation to Which the Leniency Program may Apply, from the staff of the Secretariat of the General Secretariat (hereinafter referred to in this Article and the next Article as the “Determination Officer”).

(2) The Commission shall not designate with respect to a case of an Alleged Act in Violation to Which the Leniency Program may Apply under Article 23-3(1), any staff member who has worked for the investigation of the same case to be a Determination Officer for such case, nor shall it cause any staff member who has been appointed as a Determination Officer for a case concerning an Alleged Act in Violation to Which the Leniency Program may Apply to be involved in the investigation of the same case.

(3) The Determination Officer shall request the Specified Party to submit materials or otherwise extend cooperation as necessary when he/she finds it necessary for the purpose of performance of the confirmation under Paragraph (1) of the preceding Article.

(4) When it is confirmed that all of the items stipulated in Paragraph (1) of the preceding Article are satisfied with respect to the Specified Object, the Determination Officer shall notify the Specified Party to such effect.

(5) When it is confirmed that any of the items stipulated in Paragraph (1) of the preceding Article is not satisfied with respect to the Specified Object, the Determination Officer shall notify the Specified Party to such effect along with the reason therefor.

(Inspection and copying of Specified Object)

Article 23-5 The provisions of Article 18 shall apply *mutatis mutandis* when the Specified Objects are inspected or copied. In this case, “investigation of a case” as it reads in Article 18(1) shall be replaced to read “investigation of a case or confirmation by a Determination Officer”.

(Submission of Documents by Facsimile)

Article 30

(1) [omitted]

(i) [omitted]

- (ii) Documents stating the notification and request under Article 23-2 (1)
- (iii) [omitted]
- (iv) [omitted]
- (v) [omitted]
- (2) [omitted]
- (3) [omitted]

### **Supplementary Provisions**

(Effective Date)

- 1 These Rules shall come into effect as of the date of 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) (\_\_\_\_\_, 2020).

(Transitional Measure concerning treatment of objects recording the contents of Specified Communications, etc.)

- 2 The provisions of Section 1-2 of the Rules on Investigations by the Fair Trade Commission, as revised by these Rules, shall not apply to the cases to which disposition stipulated in Article 47(1) (iv) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade was implemented before the effective date of these Rules.