Japan Competition Law Newsletter

Amendment to Anti-Monopoly Act in 2009 (Revised as of December 2009) *[1][2]

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I. Overview

The revised Anti-Monopoly Act (the "**New Act**") was passed by the Japanese Diet on June 3, 2009. The Anti-Monopoly Act was drastically amended in 2005 in order to strengthen enforcement power, by increasing the calculation rate for surcharges, introducing a leniency program and amending the hearing procedure, among other things. The supplemental provision for the 2005 amendment mandated that study be conducted on the ideal system for surcharges, necessary procedures to eliminate infringements, hearing procedures and others. A study group was established under the Cabinet Office for this purpose, and these issues were continuously discussed. The New Act is based on such discussions. In addition, regarding merger control, the New Act separately reflects discussions on aligning Japanese merger controls with those of other countries including those set down in EU regulations.

The effective date of most of the New Act will be January 1, 2010 (the "**Effective Date**") and the new regime of the merger control will be applied to transactions which close on or after January 31, 2010.

The major points of the New Act and ancillary changes to the implementation rules and subordinate ordinances of the Anti-Monopoly Act are as follows:

1. Changes to surcharges and cease-and-desist orders ("**CDOs**")

(1) Expansion of types of conduct subject to surcharges.
(2) Increase in the surcharge rate for companies who played a leading role in cartels etc.
(3) Change to the leniency program: an increase in the number of applications and the introduction of joint applications.
(4) Extension of the statue of limitation for CDOs and surcharge payment orders.

[1] This newsletter was originally prepared in August 2009. We updated this newsletter as of December 2009 in order to reflect the developments for the last four months, including the announcements by the Japan Fair Trade Commission regarding the implementation rules and subordinate ordinances.

[2] Please note that the monetary amounts stated in terms of US$ in this memorandum have been included for your convenience based on the currency exchange rate at the end of November 2009, which was US$ 1 = JPY 86.

2. Changes to merger control

(1) Introduction of a prior notification obligation for stock acquisitions.
(2) Amendment to the filing thresholds for business combinations.
(3) Exemption of intra-group business combinations from filings
(4) Stock acquisitions by partnerships newly being made notifiable

3. Others

(1) Exchange of information with foreign competition authorities.
(2) Restriction of access to case records.
(3) Amendment to procedures for document production orders by the courts before which an application for injunction is pending.
(4) Introduction of provisions regarding procedures for the issuance of warnings
(5) Extension of maximum prison term to be imposed for unreasonable restraint of trade or private monopolization

II. Changes to the Surcharges and CDOs

1. Expansion of types of conduct subject to surcharges

The New Act expands the activities that would be subject to surcharges.

(1) Private Monopolization

The Anti-Monopoly Act prohibits two types of private monopolization: (i) the exclusionary type; and (ii) the control type. The 2005 amendments already subject the control type to surcharges. The New Act will subject the exclusionary type of monopolization to surcharges as well.

The surcharge rate will be 6% (2% in cases involving retail business and 1% in cases involving wholesale business), which will be multiplied by the amount of relevant sales of goods or services in the relevant market during the relevant period (three years maximum).

Recently, the Japan Fair Trade Commission ("**JFTC**") has been targeting infringements of the exclusionary type much more strongly than in the past. Under the New Act, surcharges could be very large if the infringing party holds a dominant position in a very large market. As such, the New Act would have a significant impact on private monopolization. An alleged infringer often has good arguments to establish justifiable reason for their exclusionary activities, and this amendment involving surcharges would further strengthen their incentive to argue. In order to increase transparency and predictability with regard to enforcement of the prohibition on private monopolization, the JFTC published the Guidelines on the Exclusionary Type of Private Monopolization on October 28, 2009.

(2) Unfair Trade Practices ("**UTPs**")

Under the Anti-Monopoly Act in effect prior to the 2009 amendment becoming effective (the "**Old Act**"), UTPs are prohibited (Article 19 and Article 2, Paragraph 9 of the Old Act) and 16 categories of activities are specified as UTPs under the Designation of Unfair Trade Practices (JFTC Public Notice No. 15 of June 18 1982, "**Designation**"). Under the Old Act, a UTP can be subject to a CDO, but not to a surcharge.

However, because of the necessity to strengthen enforcement against UTPs, the New Act subjects five categories of UTPs to surcharges: (i) certain types of concerted refusal to trade (limited to refusal of provision, rather than receiving); (ii) certain types of discriminatory pricing (limited to discriminatory selling pricing); (iii) certain types of unjust low price sales; (iv) resale price restriction; and (v) certain types of abuse of dominant bargaining position, the definitions of which are included in the New Act, rather than the Designation. While some of the UTPs will be defined in the New Act and the Designation will be revised as of the Effective Date, the JFTC has repeatedly indicated that the scope of UTPs, against which the JFTC can issue a cease-and-desist order, will remain unchanged under the New Act and the revised Designation.

Regarding (i) to (iv), a surcharge will be imposed if the relevant activity in the same category is repeated within a 10-year period. The surcharge rate is 3% (2% in cases involving retail business and 1% in cases involving wholesale business), which is multiplied by the amount of relevant sales of goods or services during the relevant period (three years maximum).

On the other hand, a surcharge in connection with the abuse of dominant bargaining position will be imposed, even in connection with a first-time infringement, as long as it is considered to be a continuous activity. The surcharge rate will be 1% regardless of the type of business.

In practice, it is important to note that the JFTC does not have discretion regarding whether or not to impose surcharges, but it shall impose surcharges if the requirements are met. This could have a mixed impact on enforcement because, while overall enforcement would be much stronger with surcharges, considering the significance of the result, the JFTC may need to narrowly interpret the scope, or to use "warnings" (see IV., 3. below), rather than taking formal action. This will be especially true in connection with the Abuse of Dominant Bargaining Position. Therefore, while the amendments may strengthen enforcement powers in relation to UTPs, they may actually result in a reduction in the number of infringements to be formally found by the JFTC.

2. Increase in the surcharge rate for companies who played a leading role in cartel etc.

The New Act increases the surcharge rates by 50% if the entrepreneur plays a leading role in the unreasonable restraint of trade (e.g., cartels or bid rigging), among other things. More specifically, the surcharge will be increased if including but not limited to situations where:

(i) an entrepreneur has planned activity constituting an infringement and has requested another entrepreneur to participate in or continue their involvement in such activity and as a result, the other entrepreneur participated, or continued to participate in, the infringement; or

(ii) an entrepreneur, upon the request of another entrepreneur, continuously gave to the other entrepreneur directions concerning the price, amount of supply, amount of purchase, market share or counterparty of the transaction for the goods or services relevant to the infringement.

Under the leniency program under the Anti-Monopoly Act, the entrepreneur who coerced another entrepreneur to commit the violation or who blocked another entrepreneur from discontinuing the violation, which the entrepreneur also committed, is not able to obtain immunity from, or reduction of, surcharges (Article 7-2, Paragraph 17, Item 3 of the New Act). Together with this limitation, the New Act further strengthens the sanction on entrepreneurs who play a leading role in the infringement.

3. Change to the leniency program

Since the introduction of the leniency program in 2005 (effective January 2006) and up to March 2009, 264 applications have been made for leniency. Considering the significant effect of the leniency program, the New Act increases the number of leniency applicants that can obtain immunity or a reduction of surcharges to a maximum of five, an increase from the old limit of three.

As a result, if an application is made before the Investigation Starting Date (the earliest date when on-site investigation or other compulsory investigative measures have been taken), the first applicant will obtain 100% immunity from the surcharges, the second applicant will obtain a 50% reduction and the third to fifth applicants will obtain reductions of 30%. If the application is made after the Investigation Starting Date, the reduction rate will be 30% across the board and only up to three applicants (up to 5 together with the applicant who applied before the Investigation Starting Date taken on any aspect of the alleged collective violation of all the cartelists) may obtain the reduction by filing an application after the Investigation Starting Date.

In addition, the New Act also allows for a joint application to be made for leniency, which is not allowed under the leniency program under the Old Act. Practitioners have strongly objected to the fact that even if two companies in the same corporate group are involved in the same cartel and both make a leniency application they are not counted as having applied at the same time and thus have to prioritize the ranking between them. After the proposed amendment, a joint application by companies belonging to the same corporate group will be permitted, and all the joint applicants will be assigned the same ranking regarding the order of the application. Please note, however, that the ultimate parent is not allowed to file a "blanket" application on behalf of all of its subsidiaries. Rather, the application shall be filed jointly by all the companies belonging to the same corporate group that committed the infringement.

4. Extension of the statute of limitation for the CDO and surcharge payment orders

Under the Old Act, a CDO and surcharge payment orders cannot be issued if three years have passed since the date of the discontinuation of the violation. However, this three-year statute of limitation period is relatively short compared to administrative orders under other Japanese laws (a maximum seven years under the Act on General Rules for National Tax, for example), and there have been cases where CDOs and surcharge payment orders could not be issued because of the statute of limitation. In addition, it is shorter than the statute of limitations set by the foreign authorities (a maximum ten years in the EU, for example). Based on this, the New Act extends the statute of limitation period to five years.

This amendment will be especially important in connection with international cartel cases involving foreign corporations, as the competition authorities of other jurisdictions often spend more than three years reaching a conclusion.

III. Changes to merger control

1. Introduction of a prior notification obligation for stock acquisitions

Under merger controls under the Old Act, a stock acquisition requires, at most, a post-transaction report to be submitted to the JFTC. Stock acquisition is the only scheme of business combination that does not require prior notification.

However, under the New Act, stock acquisitions will be subject to a prior notification obligation if certain applicable threshold conditions are met (Article 10, Paragraphs 2 to 10 of the New Act). Under the New Act, the acquirer may not acquire the stock in question until after the expiration of a 30-day waiting period (or a shorter period if permitted by the JFTC), which commences from the date of acceptance of the prior notification by the JFTC, provided that the prior notification will not be required in cases that are designated in the JFTC's rules as those for which a prior notification is considered to be difficult (Article 10, Paragraph 2 of the New Act). According to the amended JFTC's Rules on Applications for Approval, Reporting, Notification, etc. Pursuant to Articles 9 through 16 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade published by the JFTC on October 23, 2009 and to be effective as of the Effective Date ("**Merger Rules**"), such exemption is limited to cases where shareholders are to acquire shares absent their proactive investment decisions. According to a reply of the JFTC to public comments announced on October 23, 2009, even if an acquirer needs to obtain shares of a target by exercising collaterals, it should not be treated as "difficult to be notified" and therefore be subject to a prior notification requirement and a waiting period.

Please note that Article 2-6, Paragraph 1 of the Merger Rules clarifies that if a company acquires shares of another company as a result of a merger procedure or corporate split procedure (e.g., an acquirer holding 15% shares of an issuing company merges with an entity which holds 10% shares of the issuing company) and the company files in connection with such merger or corporate split, it is not necessary to separately file in connection with the stock acquisition. However, according to a reply of the JFTC to public comments announced on October 23, 2009, such exemption only applies to merger procedures and corporate split procedures and will not apply to business transfer procedures. Therefore, if an acquirer obtains stocks of an issuing company as a result of a business transfer procedure, it is necessary to file both for the stock acquisition and business transfer. When reviewing whether a transaction is required to be filed, this point should be kept in mind.

A stock acquisition will require prior notification if the stockholding ratio after the transaction rises above 20% or 50%, which is a simplification of the three-tier thresholds of 10%, 25% and 50% under the Old Act. Other filing thresholds for stock acquisitions will be amended together with other business combinations (see 2. below).

Under the Old Act, a pre-transaction notification could be avoided by using a stock acquisition scheme. However, after the amendments, such a method would not be possible.

2. Amendment to the filing thresholds for business combinations

Under the Old Act, foreign companies are faced with filing thresholds different from those applicable to Japanese companies. Under the New Act, the filing thresholds for business combinations including stock acquisitions, mergers, corporate splits and business transfers are substantially amended, and the filing thresholds applicable to foreign companies and those applicable to Japanese companies are the same. Here we explain the filing thresholds for two types of business combinations which foreign companies should be aware of; stock acquisitions and business transfers.

(1) Stock acquisitions

The filing thresholds for stock acquisitions under the Old Act and the New Act are as follows.

	Old Threshold	New Threshold
Acquiring Corporation	(i) The "**Total Assets**"* of the acquiring corporation exceed JPY2 billion (US$23.3 million), and (ii) the aggregate amount of Total Assets of the acquiring corporation, its parent corporation in Japan and its subsidiaries in Japan ("Sum of the Total Assets") exceeds JPY10 billion (US$116 million).	The aggregate "**Domestic Sales**"** of all corporations within the same "Combined Business Group" as the acquiring corporation, exceed JPY20 billion (US$233 million).

Target Corporation	The Total Assets of the target corporation exceed JPY1 billion (In a case where the target corporation is a foreign corporation, the "**Domestic Sales**"** of the target corporation exceed JPY1 billion (US$11.6 million))	The aggregate "**Domestic Sales**"** of the target corporation and its subsidiaries exceed JPY5 billion (US$58.1 million)

* Total Assets is defined under the Old Act as total assets appearing in the latest balance sheet (of a relevant corporation) (Article 10, Paragraph 2 of the Old Act).

** As for the difference between the definition of "Domestic Sales" under the Old Act and that under the New Act, please refer to (i) immediately below.

(i) Domestic Sales

As can be seen from the table, "Domestic Sales" will be used as a decisive factor in the new threshold. The same threshold will be used, regardless of the jurisdiction in which an acquiring corporation or a target corporation was established.

It should be noted that the concept of "Domestic Sales" under the New Act is quite different from that of "Domestic Sales" under the Old Act. Under the Old Act, "Domestic Sales" are calculated based on the sales amount booked in the profit-and-loss statement of the target corporation's Japanese branch offices and its direct Japanese subsidiaries' main and branch offices in Japan. Therefore, under the Old Act, the transaction does not require filing as long as the foreign target company does not have a direct subsidiary or a branch office in Japan. However, under the New Act, "Domestic Sales" is defined as a total amount of prices of goods or services supplied in Japan during the latest fiscal year (Article 10, Paragraph 2 of the New Act).

According to the Merger Rules, "Domestic Sales" of company X include the sales amount accrued through direct importing to Japan even without any presence in Japan, and more precisely will be the total amount of the following three categories of sales (Article 2, Paragraph 1 of the Merger Rules);

(a) sales amount of goods of which domestic consumers (individuals excluding those who are transacting for business) are the purchasers;
(b) sales amount of goods to be supplied in Japan of which corporations or other business entities or individuals who are transacting for business ("Business Entities") are the purchasers; provided however, the sales amount of the goods which company X knows, at the time of entering into contract, will be further shipped outside Japan without any changes in its nature and figure should be excluded; and,
(c) sales amount of goods to be supplied outside Japan of which Business Entities are the purchasers and which company X knows, at the time of entering into contract, will be

further shipped to Japan without any changes in its nature and figure.

It should also be noted that the Merger Rules have a provision to allow flexibility where calculation of "Domestic Sales" strictly in accordance therewith is not possible in which case it is permitted to use a different method to calculate the amount of Domestic Sales so long as it is in line with the purpose of the above method and in accordance with the generally accepted accounting principles (Article 2, Paragraph 2 of the Merger Rules). It should be further noted that, according to a reply of the JFTC to public comments announced on October 23, 2009, with regard to the knowledge of the corporation as to the destination of the goods as described in the above definition, the corporation does not owe an obligation to investigate whether the goods will be shipped outside of Japan or to Japan in connection with (b) and (c) above.

(ii) Combined Business Group

In addition, the Domestic Sales of the "Combined Business Group" will be used under the New Act. The Combined Business Group consists of all of the subsidiaries of the ultimate parent company. It should be noted that a corporation will be considered to be a subsidiary not only when more than 50% of the voting rights of the corporation are held by another corporation, but also if its management is "controlled" by the other corporation (Article 10, Paragraph 6 of the New Act). The Merger Rules specify a detailed threshold for the "control", which might be found to be met even if the ratio of beneficially-owned voting rights is below 40%. The concept of "control" to decide the scope of subsidiaries is in line with the concept of "control" to define group companies under the Ordinance for the Enforcement of Companies Act and therefore it is not a totally new concept. However, it should be noted that it is a concept slightly different from the concept of "control" under the regulations for financial statement. Moreover, according to a reply of the JFTC public comments announced on October 23, 2009, the scope of the "Combined Business Companies" should be decided immediately before the closing of the transaction. Therefore, it may not be possible to use the list of group companies as written in the financial statements and a company should at least check whether the list of group companies are exactly the same as requested by the Merger Rules, which could take time depending on the complexity of the corporate structure of the company.

This concept of group companies is used in the threshold for merger control in various jurisdictions, and the introduction of the Combined Business Group in the New Act aligns Japanese merger control with the regulations of other countries, especially those contained in the EU regulations.

Under the Old Act, only a direct parent company and direct subsidiaries (both in Japan) are jointly considered in determining whether or not a filing is required. Moreover, whether a corporation is a subsidiary or not is only determined by the ratio of voting rights. Therefore, under such a scheme, filing can be avoided by using a pre-existing grand child entity to avoid the existence of a direct relationship. The New Act deals with this problem.

In addition, under the Old Act, only the stock ownership ratio of an acquiring entity was counted in determining whether the threshold regarding stock ownership ratio is met. Therefore, an acquiring corporation could avoid filing, at least arguably, by having its group corporations acquire a target corporation's stock bit by bit. Under the New Act, stock ownership of all corporations within the same Combined Business Group is counted in determining whether the stock ownership ratio threshold is met.

(2) Business Transfer

The filing thresholds for business transfers (including asset transfers) under the Old Act and the New Act are as follows. As can be seen, (A) the transfer of the whole of the business and (B) the transfer of a substantial part of the business or the whole or a substantial part of fixed assets used for the business are subject to different sets of filing thresholds. As for the definition of "Domestic Sales" and "Combined Business Group", please see (1) (Stock Acquisition) above.

(A) Transfer of whole business

	Old Threshold	New Threshold
Acquiring Corporation	The Sum of the Total Assets exceed JPY10 billion (US$116 million).	The aggregate Domestic Sales of all corporations within the same Combined Business Group as an acquiring corporation, exceed JPY20 billion (US$233 million).
Transferring Corporation	The Total Assets exceed JPY1 billion (US$11.6 million). (In a case where a transferring corporation is a foreign corporation, the Domestic Sales exceeds JPY1 billion (US$11.6 million).)	The Domestic Sales exceed JPY3 billion (US$34.9 million).

(B) Transfer of (i) a substantial part of business or (ii) the whole or a substantial part of fixed assets used for the business

	Old Threshold	New Threshold
Acquiring Corporation	The Sum of the Total Assets exceed JPY10 billion (US$116 million) (same as that for transfer of entire business).	The aggregate Domestic Sales of all corporations within the same Combined Business Group as an acquiring corporation, exceed JPY20 billion (US$233 million) (same as that for transfer of entire business.)
Transferring Corporation	Turnover attributable to the transferring business exceeds JPY1 billion (US$11.6 million). (In a case where a transferring corporation is a foreign corporation, the Domestic Sales attributable to the transferring business exceeds JPY1 billion (US$11.6 million).)	The Domestic Sales attributable to the transferring business exceed JPY3 billion (US$34.9 million).

3. Exemption of intra-group business combinations from filings

Under the Old Act, only limited cases of intra-group business combinations are exempted from filing. While mergers between a parent company and its subsidiaries or mergers between sister companies (that is, companies whose majority voting rights are owned by the same company) are not reportable (Article 15, Paragraph 2 of the Old Act), mergers between a grandparent company and its grandchild company or mergers between an uncle company and its nephew company are reportable.

The New Act expands the exemption from filing of intra-group business combinations further. For example, under the New Act, any merger between companies within the same Combined Business Group is not reportable (Article 15, Paragraph 2 of the New Act). Since a Combined Business Group consists of an ultimate parent company and all of the subsidiaries of the ultimate parent company, mergers between an uncle company and a nephew company, which are reportable under the Old Act, will not be reportable under the New Act.

4. Stock acquisitions by partnerships newly being made notifiable

Under the Old Act, only stock acquisitions by corporations are subject to a merger filing, and stock acquisitions by individuals or partnerships are not subject to a merger filing. The New Act will partially close this loophole.

That is, under the New Act, when a partnership (including limited liability partnerships), formed either under Japanese law or under foreign law, that is "controlled" by a corporation acquire stock of another corporation, such a controlling corporation should file a prior notification if the filing thresholds are otherwise met (Article 10, Paragraph 5 of the New Act).

In determining whether the thresholds are met, such a controlling corporation is deemed to acquire the stock. Therefore, when the aggregate Domestic Sales of all corporations within the same Combined Business Group as such a controlling corporation exceed JPY20 billion, the filing threshold regarding an acquiring corporation is deemed to be met, and then whether the other thresholds (i.e., those regarding a target corporation and those regarding stockholding ratios) are met needs to be determined.

5. Impact on practice of amendments to merger control thresholds

The amendments to the thresholds for merger control will have a significant impact on practice. First, it is certain that a substantially larger number of foreign-to-foreign stock acquisitions would need to be notified to the JFTC than the number under the current threshold. Second, in order to determine whether or not the transaction satisfies the threshold, especially in determining the scope of subsidiaries and the amount of Domestic Sales, it will be necessary to check in substance (whether a corporation is "controlled" by the other corporation, for example), in addition to the formal check (whether more than 50% voting rights are held, for example).

Although these amendments do not change the substantial thresholds of merger review, it is undoubted that foreign companies will have to pay much closer attention to merger control under the New Act than under the Old Act.

IV. Others

1. Exchange of information with foreign competition authorities

The New Act includes provisions regarding information exchange with foreign competition authorities (Article 43-2 of the New Act). Information would be provided by the JFTC to a foreign competition authority if a provision is beneficial to the performance of the duties of the foreign competition authority, if it is considered that the provision of information would not have an adverse impact on appropriate enforcement of the Anti-Monopoly Act or otherwise infringe the interests of Japan and if the JFTC can confirm the following points:

Reciprocity: The foreign competition authority (counterpart) will be able to provide similar information to the JFTC;

Confidentiality: In the foreign country, the information that will be provided by the JFTC as confidential information will be kept in confidence at the same level as in Japan; and,

Purpose of Use: The information provided by the JFTC will be used only for the purpose of the foreign competition authority performing its duties.

In addition, appropriate measures shall be taken so that the information provided by the JFTC will not be used in any criminal procedures in foreign countries.

2. Restriction on access to case records

Under the Old Act, persons who have an interest in the official hearing proceedings of the JFTC, in which the addressees of a JFTC's CDO challenge such an order, are entitled to access the case records and may request copies of such records. The New Act (Article 70-15) places a limit on access to case records so that access and requests for copies may be rejected by the JFTC if the JFTC considers that it would be detrimental to the interests of third parties or if there are other reasons for rejection. In addition, the JFTC may limit the purpose of using copies of the case records and may place other appropriate conditions on such use.

3. Amendment to procedures for document production orders by the courts before which an application for injunction is pending

The New Act states that courts may issue a document production order in litigation seeking the suspension or prevention of infringements of UTPs, unless there is a justifiable reason against such an order (Article 83-4 of the New Act). In order to determine whether there is a justifiable reason, such as protection of business secrets, the court may request disclosure only to the court (in-camera procedure).

4. Introduction of provisions regarding procedures for the issuance of warnings

The Rules on Administrative Investigations by the JFTC will also be amended as of the Effective Date. One of the notable changes is the introduction of procedures for the issuance of warning for the first time. Although this is not based upon a change in the Anti-Monopoly Act itself, we believe this should be of some interest to foreign companies.

The JFTC sometimes issues "warning" to alleged violators of the Anti-Monopoly Act, even if the JFTC has given up issuing a cease-and-desist order to such alleged violators. As "warning" is a form of administrative guidance which in theory does not come with any legal disadvantages, the recipient has few causes of action to challenge "warning" once issued. As this practice of the JFTC has been harshly criticized, the JFTC introduced provisions regarding procedures for the issuance of warning in the Rules on Administrative Investigations by the JFTC for the first time. The potential recipient will have an opportunity to be notified of the contents of the warning to be issued and to state its opinion and submit evidence.

5. Extension of maximum prison term to be imposed for unreasonable restraint of trade or private monopolization

The New Act will extend the maximum prison term to be imposed on unreasonable restraint of trade (see II., 2. above) or private monopolization from three (3) years to five (5) years. We can safely say that the criminal enforcement of the Anti-Monopoly Act has not been vigorous, as the average number of criminal charges is around once per year for unreasonable restraint of trade, the criminal prison term sentences against individual wrongdoers have always been suspended, and we have never seen criminal charges against private monopolization. However, the change could result in significant change in enforcement policy, because under the Penal Code of Japan, prison term sentences cannot be suspended for prison term sentences of longer than three (3) years.

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Please note that this newsletter is intended to be a general guidance, and that there may be special regulations that could be applicable to specific industry only, or special circumstances where the general statement in the newsletter may not be applicable.

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