



## JAPAN LEGAL UPDATE

### Antitrust

#### Japanese Cabinet Submits Bill to Amend Antimonopoly Act to Diet

On March 12, 2019, the Japanese Cabinet approved and submitted to the Diet a bill ("Bill") to amend the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade ("Antimonopoly Act"). The main purpose of the Bill is to deter antitrust law violations by promoting the cooperation of companies themselves in investigating antitrust law violations and providing for appropriate administrative fines when violations are found.

The significant terms of the Bill are as follows:

**Revised Administrative Fines.** The Bill modifies the way administrative fines are calculated and changes the amounts of such fines. For example, the fine imposed for bid rigging would account for the economic benefit received from the illegal action under the new proposal. Moreover, fines could be levied for behavior occurring up to 10 years prior to the commencement of the investigation into the violation (from three years under the current rule), and the statute of limitations would be increased to seven years (from five years under the current rule).

**Revision of the Leniency System.** The Bill allows for immunity or the reduction of administrative fines in exchange for a business's cooperation with the investigation and abolishes a cap on the number of the leniency applications that can be approved. At the same time, the Bill establishes a framework for assessing the degree of cooperation provided by a participant and adds a corresponding discount to the fines that may be levied by the Japan Fair Trade Commission ("JFTC").

**Other Terms.** The Bill also reduces the default interest rate applicable to administrative fines, increases the maximum amount of fines imposed on enterprises that obstruct an investigation, and creates evidence collection procedures for electromagnetic records in criminal investigation procedures.

The JFTC announced that it would also establish new procedures for administrative investigations in order to address concerns regarding attorney-client privilege. Attorney-client privilege will be protected in administrative investigations into unreasonable restraint of trade, whereby confidential communications between a company and its attorney that address legal issues and satisfy certain conditions may not be accessed by the investigator and must be returned to the company.

If enacted, the Bill would materially change the legal practice relating to antitrust law violations and warrants continued monitoring.

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# Intellectual Property

## Bill to Amend Patent Act Submitted to Diet

On March 1, 2019, the Japanese Cabinet approved and submitted to the Diet a bill to amend the Patent Act, Etc. ("Patent Bill").

In light of the digital revolution, reliance on intellectual property rights has become increasingly important in recent years. Thus, the Patent Bill primarily aims to: (i) reform the litigation system for industrial property rights, including patent rights, in order to facilitate their enforcement; and (ii) enhance the design system to protect digital designs and promote brand identities.

With respect to (i) above, the Patent Bill would create a new system for investigating alleged patent infringement, whereby an impartial technical expert inspects the facilities of an accused infringer in order to gather evidence that would be relevant to the patent infringement claim and then files a report with the court. The Patent Bill also changes the method for calculating damages in industrial property infringement cases so that damages are easier to establish in litigation (a change that would apply with respect to infringement of patents, utility models, designs, and trademarks).

With respect to (ii) above, the Patent Bill would cover images that are not physically recorded or displayed, as well as exterior and interior designs with respect to buildings, protecting both under the Design Act. In addition, the Bill would increase the duration of design rights to 25 years from the filing date (from 20 years) and also facilitate registration of the rights to designs.

If enacted, most provisions of the Patent Bill will come into force within one year from its promulgation. The enactment of the Patent Bill is expected to have a significant impact on the practice of industrial property rights enforcement and design management, and the development and outcome of this legislation should be followed closely.

## General

### Bill to Amend Road Transport Vehicle Act Submitted to Diet

On March 8, 2019, the Japanese Cabinet approved and submitted to the Diet a bill to amend the Road Transport Vehicle Act ("Transport Bill"). The current law does not include rules for fully autonomous vehicles, although "Level 3 automated systems" are expected to be put into use soon (a Level 3 automated system is an automated system that can both monitor the driving environment and, in some instances, actually conduct driving tasks, but where the human driver is required to be able and ready to take control of the vehicle). The Transport Bill would establish rules for ensuring the safety of autonomous vehicles by adding "automated devices" to the items subjected to the law's safety regulations and by requiring the Minister of Land, Infrastructure, and Transportation to establish requirements for operating these devices.

Since the Transport Bill will affect the development of autonomous vehicles and similar technologies in the future, deliberations in the Diet should be monitored.

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