

International Comparative Legal Guides



Practical cross-border insights into sanctions

Sanctions 2022

Third Edition

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1 Overview

1.1 Describe your jurisdiction's sanctions regime.

Japan does not have a comprehensive law authorising sanctions, and instead imposes economic sanctions through various laws and regulations. The primary ground for imposing sanctions is the Foreign Exchange and Foreign Trade Act (“FEFTA”), which mainly regulates cross-border transactions involving goods, services and finances.

The FEFTA authorises the relevant administrative authorities to impose sanctions in any of the following cases:

- (a) the competent minister finds it necessary to fulfil Japan's international obligations under treaties and other international agreements;
- (b) the competent minister finds it necessary as part of Japan's contribution to international efforts to achieve international peace; or
- (c) the Cabinet decides to take countermeasures necessary to maintain peace and security in Japan.

While the majority of Japan's economic sanctions are derived from UN Security Council (“UNSC”) resolutions which fall under the first two categories ((a) or (b) above), Japan also implements sanctions measures based on international cooperation with other countries, such as the U.S. and the EU (category (b) above), as well as unilateral sanctions that are not derived from UNSC resolutions or international cooperation (category (c) above).

The types of transactions that may become subject to sanctions under the FEFTA are (i) import and export of goods (“trade in goods”), (ii) service transactions (such as intermediaries of trade between foreign countries, and transfer of technology and software) (“service transactions”), (iii) payments from Japan to a foreign state and payments between residents and non-residents (“international payments”) (for the definitions of residents and non-residents, please see question 3.1), and (iv) capital transactions (such as contracts for money deposits, trust, money lending, and trading securities) (“capital transaction”). In the following section, the types of transactions falling under (i) and (ii) above are collectively referred to as “international trade” and the types of transactions falling under (iii) and (iv) above are collectively referred to as “financial transactions”.

While the FEFTA is the primary grounds for imposing sanctions, Japan relies on other laws and regulations to impose sanctions when

the FEFTA does not provide the grounds to do so. For example, since the FEFTA does not fully control domestic transactions, the Financial Action Task Force (“FATF”) called upon Japan to enact legislation in 2014 in that regard. Japan responded to the FATF recommendations with the following legislation:

- (i) Amendment to the Act on Punishment of Financing for Offences of Public Intimidation (the “Criminal Financing Punishment Law”) to expand the scope of objects contributing to or used for terrorism that a person may not intentionally provide, from “funds” to “funds and other benefits”, which is interpreted to include goods, houses, information, etc.
- (ii) Enactment of the Act on Special Measures Concerning Asset Freezing, etc., of International Terrorists Conducted by Japan Taking into Consideration United Nations Security Council Resolution 1267, etc. (“Act on International Terrorist Assets-Freezing”), which restricts almost all transactions (including domestic ones) with terrorists listed by the UNSC or the Japanese government.

As Japan's sanctions are primarily governed by the FEFTA, unless specifically mentioned otherwise, the following section will generally cover sanctions on international trade and financial transactions regulated by the FEFTA.

1.2 What are the relevant government agencies that administer or enforce the sanctions regime?

Under the FEFTA, the competent government agency differs depending on the types of transaction subject to sanctions:

- (a) trade in goods: the Minister of Economy, Trade, and Industry (“METI”);
- (b) service transactions: the Minister of Finance (“MOF”) or METI, depending on the type of service transaction;
- (c) international payments: the MOF or METI, depending on the type of transaction; and
- (d) capital transactions: the MOF or METI, depending on the type of capital transaction.

As a general rule, the METI administers transactions related to the import and export of goods, while the MOF administers transactions related to finance.

The implementation of the Act on International Terrorist Assets-Freezing is implemented by the local Public Safety Commissions. The competent authority for the Criminal Financing Punishment Law is the Ministry of Justice.

1.3 Have there been any significant changes or developments impacting your jurisdiction's sanctions regime over the past 12 months?

No. The periodical updates on the list of sanctioned individuals and entities and the list of international terrorists were made as explained under question 2.6, but there have been no significant changes or developments impacting the Japanese jurisdiction's sanctions regime over the past 12 months.

2 Legal Basis/Sanctions Authorities

2.1 What are the legal or administrative authorities for imposing sanctions?

The FEFTA authorises the two competent ministers, the MOF and the METI, to impose sanctions if:

- (a) he or she finds it necessary to fulfil Japan's international obligations under treaties and other international agreements; or
- (b) he/she finds it necessary as part of Japan's contribution to international efforts to achieve international peace.

As a general rule, the METI administers transactions related to the import and export of goods while the MOF administers transactions related to finance.

The FEFTA also authorises the Cabinet to impose sanctions if it decides to take countermeasures necessary in order to maintain peace and security in Japan. Such Cabinet decisions must be approved by the Diet. The details of sanctions are determined by the competent ministers mentioned above.

With regard to service transactions, international payments, and capital transactions subject to sanctions, the competent ministers mentioned above authorise the Minister of Foreign Affairs ("MOFA") to designate the individuals and entities with which a person is prohibited from engaging in transactions.

In addition, the Act on International Terrorist Assets-Freezing: (i) requires the National Public Safety Commission to designate individuals and entities that are listed as international terrorists in UNSC resolutions; and (ii) authorises the National Public Safety Commission to designate individuals and entities that it considers as international terrorists, pursuant to UNSC resolution 1373.

2.2 Does your jurisdiction implement United Nations sanctions? Describe that process. Are there any significant ways in which your jurisdiction fails to implement United Nations sanctions?

Yes, Japan implements economic sanctions pursuant to UNSC resolutions, as described in question 1.1 above. UNSC resolutions are implemented primarily through the FEFTA and the Act on International Terrorist Assets-Freezing.

2.3 Is your jurisdiction a member of a regional body that issues sanctions? If so: (a) does your jurisdiction implement those sanctions? Describe that process; and (b) are there any significant ways in which your jurisdiction fails to implement these regional sanctions?

No. However, as described in question 1.1 above, Japan implements sanctions when it finds that their imposition is necessary to contribute to international efforts toward achieving international peace. This type of sanction would be implemented based on international cooperation with other countries, such as the U.S. and the EU. For example, Japan is currently implementing this type of sanction in relation to North Korea's nuclear tests and ballistic missile launch.

2.4 Does your jurisdiction maintain any lists of sanctioned individuals and entities? How are individuals and entities: a) added to those sanctions lists; and b) removed from those sanctions lists?

Japan maintains lists of individuals and entities subject to sanctions measures for both international and unilateral sanctions.

As explained in question 2.1 above, whether Japan implements sanctions under the FEFTA is decided by the MOF, METI, or the Cabinet. Pursuant to such decisions, the MOF or METI decides upon the specific sanctions measures to be implemented. Finally, the MOFA, authorised either by the MOF or METI, designates individuals and entities with whom a person is prohibited from engaging in service transactions, international payments, and capital transactions, whose names are placed on the sanctions list and who are subject to the sanctions.

Therefore, in order for individuals and entities to be removed from those sanctions lists, the MOF, METI or the Cabinet must decide that such sanctions are no longer necessary. Pursuant to such decisions, the MOF or METI will decide to lift the sanctions on the listed individuals or entities. The MOFA will then amend the sanctions list to remove the designated individuals and entities.

Also, under the Act on International Terrorist Assets-Freezing, the National Public Safety Commission designates international terrorists. The list provided by the National Public Safety Commission must be amended by the Commission as and when necessary.

2.5 Is there a mechanism for an individual or entity to challenge its addition to a sanctions list?

(i) Challenge prior to designation

The FEFTA does not provide a specific mechanism by which individuals or entities can challenge their designation prior to their placement on the sanctions list.

Listed individuals or entities may be able to challenge their addition to the sanctions lists under the Administrative Procedure Act; however, there are no publicly available cases or established interpretations regarding the application of the Act to the designation of individuals or entities on the sanctions lists.

The Administrative Procedure Act provides that prior to "adverse dispositions", an administrative agency shall, in principle, grant individuals or entities: (i) an opportunity for a hearing where the individuals or entities may state their opinions and produce evidentiary documents; or (ii) an opportunity for explanation where the individuals or entities in question may submit an explanation of their views on the subject in writing. "Adverse dispositions" means a disposition whereby administrative agencies directly impose duties upon specified persons or limit their rights. Prior to the designation, an individual or entity may be entitled to the procedures described above.

On the other hand, the Act on International Terrorist Assets-Freezing clearly requires the National Public Safety Commission to hold a hearing prior to the designation unless the Commission believes the hearing will make it extremely difficult to enforce sanctions.

(ii) Challenge after designation

Neither the FEFTA nor the Act on International Terrorist Assets-Freezing provides a specific mechanism by which individuals or entities can challenge their designation after their designation on the sanctions list.

However, an individual or entity may be able to either: (i) request an administrative review by the original or higher

administrative agencies regarding the dispositions, under the Administrative Complaint Review Act; or (ii) bring an action in court for revocation of the original administrative disposition, under the Administrative Case Litigation Act. It should be noted that there are no publicly available cases or established interpretations regarding the application of these Acts to the designation of individuals or entities on the sanctions lists.

2.6 How does the public access those lists?

The consolidated list of sanctioned individuals and entities designated pursuant to the FEFTA can be found on the website of the MOF and is available at the following URL (in Japanese only) (last accessed 3 June 2021): http://www.mof.go.jp/international_policy/gaitame_kawase/gaitame/economic_sanctions/list.html.

The consolidated list of international terrorists designated by the National Public Safety Commission pursuant to the Act on International Terrorist Assets-Freezing can be found on the website of the National Public Safety Commission and is available at the following URL (in Japanese only) (last accessed 3 June 2021): <https://www.npa.go.jp/bureau/security/terrorism/zaisantouketu.html>.

2.7 Does your jurisdiction maintain any comprehensive sanctions or embargoes against countries or regions?

Japan has unilaterally implemented a general ban on exports to and imports from North Korea, and a ban on embankment of North Korean vessels. In addition, Japan has implemented a general ban on imports from Crimea and Sevastopol.

2.8 Does your jurisdiction maintain any other sanctions?

In addition to the sanctions imposed pursuant to UNSC resolutions or taken in cooperation with other countries, Japan imposes unilateral sanctions when a Cabinet decision is made to take countermeasures that are particularly necessary in order to maintain peace and security in Japan.

Japan has implemented unilateral sanctions measures against North Korea due to rising concerns about its nuclear and missile activities, and also about its involvement in abductions of Japanese citizens. Unilateral sanctions measures against North Korea include a ban on entry into Japan by North Korean nationals and vessels, a ban on all export to and import from North Korea, a ban on payments to individuals and entities with North Korean residency, etc.

2.9 What is the process for lifting sanctions?

As explained in question 2.1 above, whether Japan implements sanctions under the FEFTA is decided by the MOF, METI, or the Cabinet. Pursuant to such decisions, the MOF or METI decides the specific sanctions measures to be implemented, by way of regulations or public notices.

Therefore, in order for a sanction to be lifted (other than the deletion of individuals and entities from the sanctions list, which is determined by the MOFA), the MOF, METI or the Cabinet must decide that sanctions are no longer necessary. Pursuant to such decisions, the MOF or METI must amend the regulations or public notices which determined the specific sanctions measures to be implemented.

2.10 Does your jurisdiction have an export control regime that is distinct from sanctions?

Yes. The Japanese export control regime is also implemented primarily through the FEFTA, which enforces two types of control: list control; and catch-all control. List control requires exporters to apply for a licence when exporting or transferring sensitive military and dual-use items (goods, technology, or software), as designated in accordance with international export control regimes, to a foreign country. Catch-all control requires the same when less sensitive items being exported will be used for certain applications related to weapons of mass destruction (“WMD”) or conventional arms.

2.11 Does your jurisdiction have blocking statutes or other restrictions that prohibit adherence to other jurisdictions’ sanctions or embargoes?

No, it does not.

2.12 Does your jurisdiction impose any prohibitions or threaten any sanctions consequences for transactions that do not have a connection to that jurisdiction (sometimes referred to as “secondary sanctions”)?

No. However, please see question 3.1 below regarding extraterritorial application of the FEFTA and the Act on International Terrorist Assets-Freezing.

3 Implementation of Sanctions Laws and Regulations

3.1 What parties and transactions are subject to your jurisdiction’s sanctions laws and regulations? For example, do sanctions restrictions apply based on the nationality of the parties involved? Or the location where the transactions take place?

With regard to international payments subject to sanctions, (i) “residents” or “non-residents” who intend to make payments from Japan to a foreign state must obtain permission from competent authorities, and (ii) “residents” who intend to make payments to or receive payments from “non-residents” must also obtain permission, under the FEFTA. “Resident” is defined as: (i) a natural person with a domicile or residence in Japan; or (ii) a corporation with a principal office in Japan, and “non-residents” are defined as a natural person or corporation other than a resident.

Residents or non-residents who intend to conduct capital transactions are required to obtain permission.

However, with regard to service transactions subject to sanctions, only residents are required to obtain approval when the relevant resident intends to conduct service transactions with non-residents.

With regard to trade in goods subject to sanctions, the FEFTA requires exporters from Japan or importers to Japan to apply for approval of the sanctioned trade.

In addition, the FEFTA is applied to actions in a foreign country by the representative, agent, employee, or other worker of (i) a corporation with a principal office in Japan, or (ii) a person with a domicile in Japan if such transactions are undertaken in connection with that corporation’s/person’s assets or business.

The Act on International Terrorist Assets-Freezing restricts almost all transactions in Japan with designated terrorists, regardless of the counterparts’ nationality or residency. In addition, it

is also applied to transactions in foreign countries made by (i) a corporation with a principal office in Japan, or (ii) a natural person with a domicile or address in Japan.

The Criminal Financing Punishment Law criminalises any persons in Japan who provide terrorists and their supporters with funds, services, real estate, goods, information and other benefits. This law is also applied to persons in a foreign country, regardless of nationality, when such acts are also governed by the International Convention for the Suppression of the Financing of Terrorism, even if they are committed outside of Japan.

3.2 Are parties required to block or freeze funds or other property that violate sanctions prohibitions?

No. However, the Act on Prevention of Transfer of Criminal Proceeds (“Criminal Proceeds Act”) requires banks and other financial institutions to confirm the identities of their customers, and to notify the government authorities of “suspicious transactions”. “Suspicious transactions” are transactions of property which is suspected to be criminal proceeds or transactions by a customer, etc. who is suspected to have been conducting acts that constitute specific crimes, including acts of terrorism, as stipulated in the Criminal Financing Punishment Law, and exports/imports that violate economic sanctions under the FEFTA.

3.3 Are there licences available that would authorise activities otherwise prohibited by sanctions?

The FEFTA and the Act on International Terrorist Assets-Freezing requires a person to obtain permission or approval for financial transactions and international trade that are subject to economic sanctions. A person may apply for permission or approval to undertake such transactions, but generally speaking such permission will not be granted.

The Act on International Terrorist Assets-Freezing clearly stipulates a list of conditions under which transactions are permitted. For example, payments are permitted when they are used for “expenses usually required for normal living” of the terrorists and their families.

3.4 Are there any sanctions-related reporting requirements? When must reports be filed and what information must be reported?

As explained in question 3.2 above, the Criminal Proceeds Act requires banks and other financial institutions to notify the government authorities of “suspicious transactions”, including transactions suspected to be related to specific crimes, acts of terrorism stipulated in the Criminal Financing Punishment Law, and exports/imports that violate economic sanctions.

3.5 How does the government convey its compliance expectations? Are certain entities required to maintain compliance programmes? What are the elements of a compliance programme required (or recommended) by the competent regulator(s)?

Although the MOF has established compliance guidelines in order for banks and other financial institutions to effectively comply with their obligations under the FEFTA, as stated in question 3.2 above, the FEFTA does not create legally binding compliance standards or programmes with regard to financial transactions.

The Financial Services Agency has also established the “Guidelines for Anti-Money Laundering and Combating the Financing of Terrorism”, which clarify the required actions and expected actions to be implemented by each financial institution in order to comply with the identification and verification obligations, etc., required in the Criminal Proceeds Act.

With regard to export control, although not specific to sanctions, the FEFTA requires all persons engaged in exports of goods or transfers of technology to establish certain kinds of internal control systems in order to comply with the export control regulations.

4 Enforcement

4.1 Are there criminal penalties for violating economic sanctions laws and/or regulations?

The FEFTA provides for criminal penalties for violating such laws and regulations.

As noted above, in terms of financial transactions and service transactions, the FEFTA requires a person to obtain permission from the competent authorities for transactions that are subject to sanctions. If a person engages in such transactions without such permission, that person will be subject to: (i) imprisonment for not more than three years; or (ii) a fine of not more than one million yen (provided that if three times the value of the subject matter of the violation exceeds one million yen, the fine is not more than three times that value).

Next, in terms of trade in goods, the FEFTA requires a person to obtain approval for certain transactions that are subject to economic sanctions. If a person engages in such transactions without such approval, the person will be subject to: (i) imprisonment for not more than five years; or (ii) a fine of not more than 10 million yen (provided that if five times the value of the subject matter of the violation exceeds 10 million yen, the fine is not more than five times that value).

These penalties are imposed on an individual who violates economic sanctions laws and/or regulations. For the penalties imposed on a corporation, please see question 4.3 below.

4.2 Which government authorities are responsible for investigating and prosecuting criminal economic sanctions offences?

The police and public prosecutors investigate and prosecute those offences as criminal cases.

4.3 Is there both corporate and personal criminal liability?

The FEFTA provides for both corporate and personal criminal liability.

With regard to financial transactions and service transactions, if a violation is committed in connection with the business or assets of a corporation, the corporation (in addition to the offender, as explained in question 4.1 above) will be subject to a fine of not more than one million yen (provided that if three times the value of the subject matter of the violation exceeds one million yen, the fine is not more than three times that value).

With regard to trade in goods, if a violation is committed in connection with the business or assets of a corporation, the corporation (in addition to the offender, as explained in question 4.1 above) will be subject to a fine of not more than 500 million yen (or, if five times the value of the subject matter of the violation exceeds 500 million yen, a fine of not more than five times that value).

4.4 What are the maximum financial penalties applicable to individuals and legal entities convicted of criminal sanctions violations?

Please see questions 4.1 and 4.3 above.

4.5 Are there other potential consequences from a criminal law perspective?

No. However, the FEFTA endeavours to ensure the effectiveness of economic sanctions by establishing provisions regarding administrative sanctions in addition to criminal penalties.

To be more specific, in terms of financial transactions and service transactions, the FEFTA states that the Minister in charge may prohibit financial transactions and service transactions by the relevant person for a period not exceeding one year (Article 16-2, Article 22, paragraph (1) and Article 25-2, paragraph (4) of the FEFTA).

In addition, in terms of foreign trade, if a transaction for which approval must be obtained is conducted without such approval, the FEFTA states that the METI may prohibit importation or exportation by the relevant person for a period not exceeding one year (or three years in the case of a sanction independently imposed by Japan) (Article 53, paragraph (2) of the FEFTA).

4.6 Are there civil penalties for violating economic sanctions laws and/or regulations?

The FEFTA does not provide for civil penalties.

4.7 Which government authorities are responsible for investigating and enforcing civil economic sanctions violations?

This is not applicable in Japan.

4.8 Is there both corporate and personal civil liability?

This is not applicable in Japan.

4.9 What are the maximum financial penalties applicable to individuals and legal entities found to have violated economic sanctions?

This is not applicable in Japan.

4.10 Are there other potential consequences from a civil law perspective?

This is not applicable in Japan.

4.11 Describe the civil enforcement process, including the assessment of penalties. Are all resolutions by the competent authorities public?

This is not applicable in Japan.

4.12 Describe the appeal process. Have companies challenged penalty assessments in judicial proceedings?

This is not applicable in Japan.

4.13 Are criminal and civil enforcement only at the national level? Is there parallel state or local enforcement?

Criminal enforcement only exists at the national level.

4.14 What is the statute of limitations for economic sanctions violations?

With respect to the criminal penalties provided in the FEFTA for individuals who violated sanctions on financial transactions and service transactions, the statute of limitations is three years. With respect to the criminal penalties for those who violated sanctions on trade in goods, the statute of limitations is five years.

The statute of limitations for corporate criminal liability provided in the FEFTA is three years, regardless of the type of relevant transaction.

5 General

5.1 If not outlined above, what additional economic sanctions-related measures are proposed or under consideration?

Reflecting the lack of a human rights sanctions regime, there have been calls to introduce such a sanctions regime in Japan. In particular, in April 2021, a parliamentary group called the “Nonpartisan Parliamentary Association for Reconsidering Human Rights Diplomacy” was established to promote the adoption of a sanctions regime focused on human rights violations. As of May 2021, the association has published on its website a brief summary of a draft bill to introduce a new act and amend existing laws, including the FEFTA, that would authorise imposing sanctions in response to grave human rights violations.

5.2 Please provide information for how to obtain relevant economic sanctions laws, regulations, administrative actions, and guidance from the Internet. Are the materials publicly available in English?

Information about the relevant laws, regulations, administrative actions, and guidance relating to economic sanctions, can be obtained from the following websites (in Japanese) (last accessed 3 June 2021):

- Website of the MOF: https://www.mof.go.jp/international_policy/gaitame_kawase/gaitame/economic_sanctions/index.htm.
- Website of the METI: https://www.meti.go.jp/policy/external_economy/trade_control/01_seido/04_seisai/seisai_top.html.
- Website of the Center for Information on Security Trade Control (“CISTEC”): <http://www.cistec.or.jp/export/keizaiseisai/index.html>.

English translations of some of the relevant laws and regulations can be found at the following websites (last accessed 3 June 2021):

- FEFTA: <http://www.japaneselawtranslation.go.jp/law/detail/?id=3267&vm=04&re=01>.
- Criminal Financing Punishment Law: <http://www.japaneselawtranslation.go.jp/law/detail/?printID=&id=2977&re=01&vm=02>.



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