Japan

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1 General Criminal Law Enforcement

1.1 What authorities can prosecute business crimes, and are there different enforcement authorities at the national and regional levels?

(1) Power to initiate prosecution

Japan has a centralised system of government. Public prosecutors and public prosecutors' assistants belong to the Public Prosecutor's Office and they are national public officers. Public prosecutors have the sole power to initiate prosecution of crimes. Public prosecutors have discretion over whether to initiate prosecution, and may choose not to do so if they consider it unnecessary due to matters such as the gravity and circumstances of the offence, or situation after the offence.

One exception is a decision to institute prosecution, which is made by the Committee for Inquest of Prosecution, when it determines that an institution shall be appropriate in response to a petition by a person who filed a complaint or accusation, despite the prosecutor's disposition not to institute prosecution. If the prosecutor does not institute prosecution despite such a decision by the Committee and the Committee reaffirms the decision again, a court-appointed lawyer shall institute the prosecution.

(2) Investigative authorities and related bodies

(a) Investigative authorities under the Code of Criminal Procedure ("CCP").

Under the CCP, public prosecutors, public prosecutors' assistant officers and judicial police officials are the authorities responsible for investigation. Public prosecutors have the power to investigate in addition to instituting prosecution.

Judicial police officials consist of general judicial police officials who have the power to investigate any criminal matters and special judicial police officials whose power to investigate is limited to special criminal matters.

Public prosecutors and public prosecutors' assistant officers belong to the Public Prosecutor's Office and they are national public officers. Many special judicial police officials are also national public officers who belong to national organisations such as the Japan Coast Guard. In contrast, police officials who are general judicial police officials belong to the National Police Agency or prefectural police headquarters. Although some police officials are national public officers, most are local public officers.

The investigative authorities described above may, with a warrant issued by a judge, also engage in compulsory investigation activities (e.g., search, seizure, inspection, arrest and detention).

(b) Administrative organs responsible for investigation of business crime cases.

Specific administrative organs have powers to investigate certain business crimes ("*hansoku-chosa*") and file an accusation with public prosecutors seeking prosecution of such business crimes. Those organs may also engage in compulsory investigations (e.g., visit, search, or seizure) with a warrant issued by a judge. Specific examples of such organs are:

(i) tax collectors with the power to investigate criminal cases regarding national tax (excluding customs and tonnage taxes);

(ii) customs officials with the power to investigate criminal cases regarding customs;

(iii) personnel of the Special Investigation Section of the Securities and Exchange Surveillance Commission ("SESC") with the power to investigate criminal cases regarding specific violations of the Financial Instruments and Exchange Act ("FIEA"); and

(iv) staff members of the Criminal Investigation Department, Investigation Bureau of the Japan Fair Trade Commission ("JFTC") with the power to investigate criminal cases regarding specific violations of the Antimonopoly Act ("AMA").

1.2 If there are more than one set of enforcement agencies, please describe how decisions on which body will investigate and prosecute a matter are made.

As stated above, only public prosecutors are authorised to prosecute crimes in Japan.

1.3 Is there any civil or administrative enforcement against business crimes? If so, what agencies enforce the laws civilly and which crimes do they combat?

(1) Civil claim

A criminally liable act may also be subject to a victim's claim for compensation of damages based on tort, because such an act will also constitute an infringement of another's right or legally-protected interests under the Civil Code. However, there is no system available that enables an administrative organ to claim for compensation of damages for the victim.

(2) Administrative sanctions

Penalties for business crimes include the imposition of administrative sanctions, in addition to criminal punishment.

(i) Non-penal fine ("*karyo*")

A non-penal fine is an imposition of a sanction of pecuniary

obligation on a violator, in order to maintain administrative public order.

(ii) Incidental tax

An incidental tax is imposed on a failure to collect or violation of collection of a national or local tax. In the procedures for incidental tax, directors of the Regional Taxation Bureaus, the chiefs of tax offices, or the superintendants of custom houses make orders to impose incidental tax; and if dissatisfied, a party may file an objection. Incidental taxes and criminal penalties may be imposed cumulatively.

(iii) Surcharge ("*kachokin*")

Laws such as the AMA and the FIEA prescribe a surcharge as a sanction to ensure the effectiveness of administrative regulations. This differs as follows:

(a) Surcharge under the AMA

Under the AMA, surcharges shall be imposed on cartel and bid-rigging, private monopolisation and other unfair trade practices, such as abuse of a superior bargaining position. In cases of such offences, the JFTC will provide the relevant business entities in advance with an opportunity to express their opinions and to submit evidence before it issues any order to pay surcharges. A party that is dissatisfied with such payment order may request that the JFTC conduct a hearing. The decision that the JFTC reaches at the hearing is subject to appeal to the Tokyo High Court.

(b) Surcharge under the FIEA

Under the FIEA, surcharges shall be imposed by the Commissioner of the Financial Services Agency on offences such as disclosure of false information on important matters in primary markets or secondary markets by listed companies or insider trading. If the SESC conducts an examination and discovers facts satisfying the requirements for making a payment order, the SESC will recommend that the Commissioner of the Financial Services Agency proceed with making the payment order. The Commissioner will then issue a decision on the commencement of trial procedures pursuant to the recommendation.

For more details, please refer to question 3.1. With respect to the surcharge reduction system, please refer to question 13.2.

2 Organisation of the Courts

2.1 How are the criminal courts in Japan structured? Are there specialised criminal courts for particular crimes?

The criminal court system in Japan adopts a three-tiered judicial system, and either a District Court or Summary Court has first instance jurisdiction depending on the substance of the criminal penalty. In most cases of business crimes, District Courts have first instance jurisdiction. High Courts are the appellate courts, and the Supreme Court is the court of final appeal.

A Summary Court conducts proceedings through a single judge. Depending on the case, a District Court conducts proceedings through a single judge or a panel of judges comprising three judges. An appellate court conducts proceedings through a panel of judges comprising three judges, and the court of final appeal conducts proceedings through a panel of judges comprising five judges (petty bench) or 15 judges (full bench).

No criminal court specialises in specific types of crimes. However, trials of juvenile criminal cases are handled by Family Courts. Summary Courts, District Courts, High Courts and the Supreme Court all handle both civil and criminal cases.

2.2 Is there a right to a jury in business-crime trials?

In Japan, a jury system does not exist, but there is a "saiban-in system" (lay judge system). Under the *saiban-in* system, a saiban-in (lay judge) who is appointed for each case from among the persons eligible for election, together with judges, finds criminal facts and determines the sentence. The following types of cases are subject to the saiban-in system:

(i) Litigation that relates to crimes punishable by the death penalty or life imprisonment, with or without a labour requirement (e.g., homicide, arson of inhabited building, and robbery causing death).

(ii) Litigation of cases that are statutorily subject to trial by a panel of judges and which relate to crimes in which the accused killed the victim by a wilful criminal act (e.g., injury causing death and dangerous driving causing death).

It is unlikely that ordinary business crime would fit into the above categories.

3 Particular Statutes and Crimes

3.1 Please describe any statutes that are commonly used in Japan to prosecute business crimes, including the elements of the crimes and the requisite mental state of the accused:

o Fraud and misrepresentation in connection with sales of securities

(1) Crime in connection with sales of securities in general, not limited to listed securities

(i) Fraud (Penal Code).

(ii) Use of false documents (Companies Act).

(2) Crime in connection with sales of the listed securities (FIEA)

(i) Violation of the disclosure regulation in the primary market.

(a) False information in securities registration statements.

(b) False information in prospectus.

(ii) Prohibition of a wrongful act in connection with securities.

(a) Market manipulation.

(b) Spreading rumours and use of illegal means.

Please note that with respect to the foregoing offences, surcharges calculated according to the formula provided in the FIEA may also be imposed. Criminal punishments are only imposed in cases of serious violations of the law.

In addition to the above, certain types of wrongful, misleading or fraudulent acts in connection with dealings of securities are generally prohibited.

o Accounting fraud

The following accounting related actions are considered criminal offences:

(1) Violation of the disclosure regulation in the secondary market (FIEA)

This relates to the submission of annual securities reports, quarterly securities reports, semi-annual securities reports, or extraordinary reports containing false information on important matters.

(2) Payment of illegal dividends (Companies Act)

(3) Aggravated breach of trust (Companies Act)

This relates to situations in which directors or other officers commit acts in breach of that person's duties and cause financial damages to the company for the purpose of promoting that person's own interests or the interests of a third party or inflicting damage on the stock company.

o Insider trading

(1) Insider trading by corporate insider (FIEA)

Any person listed below who knows a material fact pertaining to the business or other matters of a listed company ("Material Fact") and makes a sale, purchase or other transfer for value or acceptance of such transfer for value of shares of the listed company before the Material Fact is publicised, has violated the insider trading laws, as set out in the FIEA:

(i) an officer, agent, employee or other worker ("Officer") of the listed company (including its parent company and subsidiaries) who has come to know a Material Fact in the course of his/her duty;

(ii) a shareholder entitled to the right to inspect account books of the listed company who has come to know a Material Fact in the course of such an inspection;

(iii) a person having statutory authority over the listed company who has come to know a Material Fact in the course of exercise of its authority (e.g., a public officer having the statutory authority of permission, investigation, or inspection);

(iv) a person having concluded or been in negotiation to conclude a contract with the listed company who has come to know a Material Fact in the course of the conclusion of, negotiation for, or performance of the contract;

(v) an Officer of a juridical person listed in item (ii) or (iv) who has come to know a Material Fact in the course of his/her duty;

(vi) a person within one year since he/she ceased to be a person listed in item (i) through to (v);

(vii) a person who has received from a person listed in item (i) through to (vi) information on a Material Fact; or

(viii) an Officer of a juridical person who has received from a person listed in item (vii) belonging to the same juridical person information on a Material Fact in the course of his/her duty.

The Material Facts include, among others: (a) a decision by the organ of the listed company which is responsible for making decisions on the execution of the operations of the listed company to carry out certain important matters; (b) an occurrence of certain important facts in the listed company; (c) the existence of a significant difference compared to the latest publicised forecasts of sales, current profits, net income, or other account title of the listed company; and (d) any other important matters which would have a significant influence on investors' decisions. The decisions, occurrences, and difference in settlement of account information which are similar to the foregoing with respect to the subsidiaries of the listed company are also included in the Material Facts.

(2) Insider trading by a person in connection with a tender offer (FIEA)

The same punishment as item (1) shall be imposed against a person who has come to know a fact concerning the launch or suspension of (a) a tender offer, or (b) a purchase of more than 5% of the shares of a listed company (collectively, a "Tender Offer"), who has the same relationship with the tender offeror or the purchaser as prescribed in (i) through (viii) of (1) above. However, in the case of a launch of a Tender Offer, only purchasers of shares will be considered to be in violation of the law, and in the case of a suspension of a Tender Offer, only sellers of shares shall be punished.

Please note that with respect to the offence (1) and (2) above, surcharges calculated according to the formula provided in the FIEA may also be imposed. Criminal punishments are only imposed in cases of serious violations of the law.

o Bribery of government officials

The Japanese Penal Code prohibits anyone from providing any wrongful gain (any gains which satisfy a person's demands or desires) as consideration for a certain duty of the public officer.

o Criminal anti-competition

(1) Criminal offences and surcharges under the AMA

Please note that criminal charges are rarely sought and most enforcement is made through Surcharges. Criminal charges are reserved for very serious offences.

(i) Criminal offences:

(a) Private monopolisation and cartel and bid-rigging.

(b) International agreement which provides for a cartel and bid-rigging.

(c) Restraint of acquiring or holding another corporation's voting rights by bank (no more than 5%) or insurance corporation (no more than 10%).

(ii) Surcharges:

The AMA also imposes surcharges as follows:

	Manufacturer, etc.	Retailer	Wholesaler
(a) Cartel, bid-rigging or other anti-competitive activities	10% (4%)	3% (1.2%)	2% (1%)
(b) Monopoly by Control	10%	3%	2%
(c) Monopoly by Exclusion	6%	2%	1%
(d) Concerted refusal to trade, discriminatory pricing, unjustly low price sales, and resale price restrictions	3%	2%	1%
(e) Abuse of a superior bargaining position	1%		

*Percentages in parentheses are applicable to small and medium enterprises.

*Surcharge with respect to (a) through to (d), shall be calculated by multiplying the sales amount of goods or services concerned by indicated surcharge rate as indicated.

The surcharge with respect to (e) shall be calculated by multiplying the amounts of transactions with trade partner(s) that suffered the abuse by the indicated surcharge rate (1%).

The JFTC announces that it will proactively file an accusation with the Prosecutor General seeking criminal punishment against the cases which fall under either of the following items:

(a) a case with a vicious and serious offence which has a vast influence on people's life; or

(b) a case where it is deemed to be impossible to achieve the goal of the AMA only by administrative sanctions as surcharges, such as repeated offences or violations of a cease and desist order.

(2) Obstruction of auctions and collusion (Penal Code)

If an agreement on bidding price constitutes the crime of collusion,

this may constitute the crime of a cartel under the AMA. In this case, this constitutes both the crimes of collusion and cartel.

o Tax crimes

(1) Evading taxes

(i) Income tax evasion

A person who continues to reside in Japan for one year or more shall be liable to pay tax for all income, provided that a non-Japanese national who resides in Japan for no more than five years on aggregate in the last 10 years shall be liable to pay tax for domestic source income and income paid within or remitted to Japan. A non-resident shall be liable to pay tax only for domestic source income.

(ii) Corporate tax evasion

A domestic corporation (with the head office or principal office in Japan) shall be liable to pay tax for all incomes; and a foreign corporation shall be liable to pay tax only for the domestic source income.

(2) Failure to pay the withholding income tax

(3) Failure to submit the tax return form

(4) Obstruction of an inspection

A person may not fail to answer or make a false answer to the questions given by tax collectors, or refuse, obstruct or avoid an inspection by tax collectors.

o Government-contracting fraud

If a public officer has executed a government contract to promote his own or another party's interest and caused financial loss to the government, such act is a crime of breach of trust under the Penal Code. Anyone who has conspired with or assisted the public officer to commit such a crime may also be liable. Please refer to question 10.1.

If a person has defrauded a property of the government, such act may be a crime of fraud under the Penal Code.

o Campaign-Finance/Election Law

The Public Offices Election Act provides for, among others, the following crimes in connection with elections:

(1) Crime of Bribery

No person may provide money or other property or benefits, entertainment, or perks to electors or electioneers for the purpose of causing such person to be elected, causing others to be elected, or preventing others from being elected.

(2) Crime of Unlawful Donations by a Candidate

No candidate, or person who intends to become a candidate, running for public election ("Candidate") may donate money or other property to any person residing in the relevant electoral district except for: (a) donations to a political organisation or to the Candidate's relatives; (b) reimbursements of necessary and unavoidable expenses for political meetings held by the Candidate within the relevant electoral district; and (c) monetary gifts for weddings and condolence payments for funerals at which the Candidate personally appears.

(3) Furthermore, the following acts are other types of election/campaign-related crimes:

(i) campaigning outside the period from the date on which a person is validly registered as a candidate through the date preceding the date of the relevant election;

(ii) house-to-house campaigning;

(iii) providing food or drinks (excluding drinking water and tea, and confectioneries usually served therewith);

(iv) the spending of funds by the registered treasurer of the campaign ("Treasurer") in excess of the relevant cap established for election campaign expenditures; and

(v) any election campaign expenditure by any person other than the Treasurer without the prior written consent of the Treasurer.

If any person that is elected is subsequently found guilty of having committed any of the crimes described above, the election of such person shall automatically become void; provided, however, that in the case of crime (2) above, if the donation was unrelated to the election and corresponds to social norms, then such crime shall not void the election (although a fine may be imposed).

Elections are also voidable in the case of crimes committed by campaign personnel. For example, if the chief campaign manager commits the crime of bribery for a candidate, or if the Treasurer commits the crime described in (3) (iv) above, then the election of the relevant elected person shall automatically become void.

In addition, all persons found to have committed any of the crimes described above are subject to having their voting rights and eligibility to run for public election suspended for a period of time.

o Market manipulation in connection with the sale of securities or derivatives

As explained above, it is a crime under FIEA to engage in market manipulation or to spread rumours or to use illegal means in connection with the sale of securities. In particular, it is a crime to do any of the following:

(1) circulate unfounded rumours or use fraudulent means, violence or threats in connection with the dealing of securities or derivatives or for the purpose of causing fluctuations in the market;

(2) in connection with listed securities or derivatives based upon listed financial products or index: (a) conduct fake dealing or conspired dealing of securities or derivatives for the purpose of misleading others regarding the market including, without limitation, causing them to believe that active trading is taking place; (b) do any of the following for the purpose of inducing others to participate in dealing by misleading them to believe that trading is taking place without artificial manipulation (i) conduct actual dealing of securities or derivatives, (ii) circulate a rumour that the market will fluctuate due to manipulation, or (iii) make a representation which is false or misleading in any material aspect; and (c) make the market fixed or stable (except for certain legitimate case permitted by the law).

o Any other crime of particular interest in Japan

(1) Labour regulations:

(i) Employment Security Act and Worker Dispatch Act

A person may not carry out employment placement business or general worker dispatching undertaking without obtaining a licence from the Minister of Health, Labour and Welfare.

(ii) Employment Insurance Act

A business operator is obligated to notify the Minister of Health, Labour and Welfare when it has hired a new employee under the Employment Insurance Act.

(iii) Industrial Safety and Health Act

A person may not manufacture, import, transfer, provide, or use substances which seriously impair workers' health (e.g., yellow phosphorus matches and benzidine), except where he/she manufactures, imports or uses such substances for the sake of research or examination and complies with the requirement prescribed by cabinet order. In addition, manufacturing of certain hazardous materials requires permission from the Minister of Health, Labour and Welfare.

(2) Trade regulations

A person who intends to export specific kinds of goods to specific regions, which are specified by cabinet order as being considered to obstruct the maintenance of international peace and security, or intends to conduct a transaction designed to provide technology

pertaining to the design, manufacture or use of specific kinds of goods in specified regions, shall obtain permission from the Minister of Economy, Trade and Industry.

(3) Finance regulations

(a) Exchange transactions

In Japan, no person may conduct exchange transactions on a regular basis without a licence (e.g., banking business or credit association). However, a person who obtains the registration of a money transfer business may conduct exchange transactions in which the handling of money does not amount to more than the amount of money equivalent to 1 million yen.

(b) Money lending business

In Japan, no person may conduct money lending or be an intermediary of money lending on a regular basis without a licence for a money lending business.

A person may not lend money on a regular basis to receive annual interest exceeding 20%.

(c) Money laundering

(4) Fraudulent bankruptcy

A person may not conceal or conduct a fraudulent transfer of the debtor's property for the purpose of harming its creditors.

(5) Unfair Competition Prevention Act ("UCPA")

(i) Trade secret infringement

A person may not acquire trade secrets illegally or use such trade secrets in certain manners as specified in the UCPA.

(ii) Other crimes regarding unfair competition:

(a) A person may not commit acts of unfair competition (as specified in the UCPA) such as creating, for a wrongful purpose, confusion with another person's goods or business by using an indication of goods or business that is identical or similar to the person's indication of goods or business that is well-known among consumers.

(b) A person may not give, or offer or promise to give, any money or other benefits to a foreign public officer for the purpose of having the foreign public officer act or refrain from acting in a particular way in relation to his/her duty, or having the foreign public officer use his/her position to influence another foreign public officer to act or refrain from acting in a particular way in relation to that officer's duties in order to obtain illicit gains in business with regard to international commercial transactions.

(6) Consumer protection

(i) Non-store retailing

A person may not misrepresent information (e.g., the type and performance or quality of the goods, or the type and details of the rights or services, and the selling price of the goods or rights) in soliciting a sales contract or a service contract pertaining to non-store retailing (e.g., door-to-door sales or telemarketing sales) or preventing withdrawal of an offer or rescission of such contract.

(ii) Misleading representation

A person may not use false or exaggerated labelling or advertising, which may cause harm to public health regarding food, additives, apparatus or containers and packaging.

(7) Environment protection

(i) Waste management

A person may not dispose of wastes or incinerated wastes without compliance with laws and regulations.

(ii) Pollution

A prefectural governor may issue an order to change or abolish the plan concerning smoke exhaustion of facilities if it does not match the criteria set forth by law and regulation. The same shall apply to water pollution.

When a prefectural governor finds the existence of land falling under the criteria set forth by the cabinet order for the categories of land that involve a threat of harmful effects on human health due to soil contamination by a hazardous substance, the governor may order the owner, manager or occupier of the site to conduct an investigation of the site according to the cabinet order and to make a report on its results.

(8) Building Lots and Buildings Transaction Business Act

No person may sell, purchase or exchange real estate or broker or mediate a sale, purchase, exchange or lease of real estate on a regular basis without a licence.

3.2 Is there liability for inchoate crimes in Japan? Can a person be liable for attempting to commit a crime, whether or not the attempted crime is completed?

A person who commences but does not complete a crime may receive a reduction in the punishment which he or she would have faced had the crime actually been committed.

The offender may further be exculpated of all criminal liability if he or she voluntarily abandons the commission of the crime.

Certain serious crimes, such as attempted murder and attempted counterfeiting of currency have provisions allowing for punishment of preparatory acts without commencing the offence itself.

4 Corporate Criminal Liability

4.1 Is there entity liability for criminal offences? If so, under what circumstances will an employee's conduct be imputed to the entity?

Under Japanese law, only natural persons are subject to criminal punishment. However, juridical persons may also be criminally punished if a dual punishment provision ("*ryobatsu-kitei*") exists which provides that juridical persons will also be punished, together with the offender who actually committed the violation regarding the business of the juridical persons. In addition to such dual punishment provision, the AMA and the Labor Standards Act provide triple punishment provision ("*sanbatsu-kitei*") which also imposes a fine on the representative of the corporation which the offender belongs to or the employer of the offender, who failed to take necessary measures to prevent the offence.

As administrative sanctions are not considered to be criminal punishment, their application is not limited to natural persons.

4.2 Is there personal liability for managers, officers, and directors if the entity becomes liable for a crime?

Even if the corporation is liable for a criminal offence as explained in question 4.1, an officer and/or employee who has not committed the crime will not be considered to be in breach of a criminal statute. However, the representative of such corporation or the employer of the offender may also be punished by fine under the triple punishment provision as explained in question 4.1.

4.3 Where there is entity liability and personal liability, do the authorities have a policy or preference as to when to pursue an entity, when to pursue an individual, or both?

As explained in question 4.1, natural persons are subject to criminal

punishment and entities may only be criminally punished if there is a dual punishment provision ("*ryobatsu-kitei*") that provides that entities will also be punished together with the offender who committed the violation while acting on behalf of the entity. If such a dual punishment provision applies, the authorities do not have discretion as to whether to enforce it.

5 Statutes of Limitations

5.1 How are enforcement-limitations periods calculated, and when does a limitations period begin running?

The enforcement-limitations period begins at the time when the criminal act has ceased. Regarding a case of complicity, the limitations period with respect to all accomplices begins at the time when the final act has ceased. The limitations period depends on the statutory penalty. The limitations period is 7 years for a crime in which the statutory penalty is punishment by long-term imprisonment with work for more than 10 years but less than 15 years.

5.2 Can crimes occurring outside the limitations period be prosecuted if they are part of a pattern or practice, or ongoing conspiracy?

Where two or more separate crimes are deemed a single criminal act from a social point of view, the limitations period with respect to all crimes begins at the time of the cause of the final outcome. Accordingly, until this limitations period has ended, all crimes resulting from the single act can be prosecuted.

Where an act performed as the means of a crime (e.g., fraud) constitutes another crime (e.g., counterfeiting of official documents), the former crime can be prosecuted until the end of the limitations period of the latter crime, provided that the latter crime was committed before the end of the limitations period of the former crime. However, if the latter crime was committed after the end of the limitations period of the former crime, the former crime cannot be prosecuted.

5.3 Can the limitations period be tolled? If so, how?

The limitations period is tolled if:

(i) prosecution is instituted in the case concerned;

(ii) prosecution is instituted against one of the accomplices;

(iii) the offender is outside Japan; or

(iv) the offender conceals him/herself so that it is impossible to serve on him/her a transcript of the charging sheet or notification of the summary order.

6 Initiation of Investigations

6.1 How are investigations initiated? Are there any rules or guidelines governing the government's initiation of any investigation? If so, please describe them.

In many cases, the investigative authority or the administrative organs discussed in question 1.1(2)(ii) initiates investigations when it deems that an offence has been committed. Additionally, investigations are initiated in any of the following cases:

(i) A complaint

A complaint is where a victim of a crime reports the crime which injured him/her to an investigative authority and demands that the investigative authority punish the person who committed the crime. For some crimes (e.g., a trade secret infringement under the UCPA), the offender shall not be punished without a complaint.

(ii) An accusation

An accusation is where any person reports a crime to an investigative authority and demands that the investigative authority punish the offender. In order to urge the prosecutors to institute prosecution, a person who is a victim of crime can file a complaint, and a person who is not a victim can file an accusation. Any person can file an accusation of any crime.

(iii) A surrender

A surrender is where a person who committed a crime confesses their crime to an investigative authority before the offence is made known to investigative authorities and the offender is identified as a suspect.

A complaint, an accusation, or a surrender shall be filed with a public prosecutor or a judicial police official in writing or orally.

6.2 Do the criminal authorities have formal and/or informal mechanisms for cooperating with foreign prosecutors? Do they cooperate with foreign prosecutors?

The procedures that Japanese authorities follow when responding to requests for cooperation from foreign authorities are provided in the Act on International Assistance in Investigation and Other Related Matters (the "Act"). The Act provides that cooperation is only permitted if the criminal offence for which the cooperation is sought (the "Offence") is not a political crime (the condition of non-political-crime), the Offence also constitutes a crime under the laws of Japan (the condition of reciprocity), and the requesting foreign authority submits a document stating that the cooperation by the authorities of Japan is indispensable. Cooperation under the Act shall be conducted through diplomatic channels. For example, after the Minister of Foreign Affairs of Japan receives the relevant documents from its counterpart of requesting country, he sends them to the Minister of Justice who reviews the documents and determines whether they meet the requirements mentioned above. If such requirements are satisfied and the Minister of Justice judges that it is appropriate to comply with the request, he then sends such documents to the Chief Prosecutor of the relevant district prosecutor's office or to the relevant prefectural police headquarters via National Public Safety Commission (NPSC). The relevant prosecutors or police officers conduct the requested investigation and the evidence collected by them is then provided to the requesting authority through diplomatic channels. The procedures for foreign authorities to respond to requests for cooperation by the authorities of Japan shall be decided by the laws of the requesting country.

In addition to cooperation through diplomatic channels as mentioned above, the Japanese National Police Agency (NPA) also cooperates with other police authorities as a member of the International Criminal Police Organization (ICPO). When a foreign authority requests cooperation through ICPO, if the above-mentioned two conditions (non-political-crime and reciprocity) are met, police officers of the relevant prefectural police headquarters will conduct an investigation under the instruction by the NPA, and provide the evidence collected to the requesting authority through ICPO. On the other hand, the NPA is able to request cooperation from foreign authorities through ICPO.

7 Procedures for Gathering Information from a Company

7.1 What powers does the government have generally to gather information when investigating business crimes?

There are two types of investigations which are conducted by investigative authorities (public prosecutors, public prosecutor's assistant officers and judicial police officials): non-compulsory investigations; and compulsory investigations. The method of the non-compulsory investigations is not limited. However, compulsory investigations shall not be conducted unless special provisions have been established in the CCP or other relevant law. In concrete terms, compulsory investigations include search, seizure, inspection, arrest and detention upon a warrant issued by a judge. A suspect under arrest or detention is obliged to submit to questioning, but he/she has the right to remain silent and to appoint his/her counsel. In addition, if he/she refused to submit to questioning, no sanction shall be imposed on him/her for such refusal.

Document Gathering:

7.2 Under what circumstances can the government demand that a company under investigation produce documents to the government, and under what circumstances can the government raid a company under investigation and seize documents?

A company may cooperate voluntarily with the investigation. The authority may request the company to submit documents and/or to make a report on necessary matters relating to the investigation. However, if a company declines to cooperate with the investigation, the authority cannot compel the company to cooperate.

However, the investigative authority may conduct search, seizure, or inspection with a warrant issued by a judge. The judge will issue a warrant if he/she judges that there is a probable cause that the suspect committed the crime and the articles of evidence exist in the company and that search, seizure, or inspection is necessary.

The administrative organs may, if necessary to investigate a criminal case, and with a warrant issued by a judge, visit, search, or seize.

7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does Japan recognise any privileges protecting documents prepared by attorneys or communications with attorneys? Do Japanese labour laws protect personal documents of employees, even if located in company files?

Japanese law does not recognise privileges protecting documents prepared by attorneys or communications with attorneys. However, under the CCP, an attorney, patent attorney, physician, dentist, nurse, notary public or any other person who was formerly engaged in any of these professions, may refuse the seizure of items containing the confidential information of others that they have had entrusted to them. Please note that this right does not extend to the owners of such confidential information.

7.4 Under what circumstances can the government demand that a company employee produce documents to the government, or raid the home or office of an employee and seize documents?

A company employee may cooperate voluntarily with an investigation. Investigative authorities may request that an employee submit documents and/or make a report on necessary matters relating to the investigation. However, if a company employee declines to cooperate with the investigation, investigative authorities cannot compel the employee to cooperate.

However, investigative authorities may also conduct searches, seizures or inspections with a warrant issued by a judge. The judge shall issue a warrant if he/she judges that there is a probable cause that the suspect committed the crime and evidence exists in the company and that a search, seizure, or inspection is necessary. However, the residence or any other place of a person other than the suspect (e.g., a residence used by a company employee who is not the suspect) may be searched only when it is reasonably supposed that articles which should be seized exist there.

The administrative organs may conduct visits, searches, or seizures with a warrant issued by a judge.

7.5 Under what circumstances can the government demand that a third person produce documents to the government, or raid the home or office of a third person and seize documents?

A third person may cooperate voluntarily with the investigation of an investigative authority. Investigative authorities may request the third person to submit documents and/or to make a report on necessary matters relating to the investigation. However, if a third person declines to cooperate with the investigation, investigative authorities cannot compel the third person to cooperate.

However, investigative authorities may conduct searches, seizures, or inspections with a warrant issued by a judge. The judge shall issue the warrant if he/she judges that there is a probable cause that the suspect committed the crime and the articles of evidence exist in the company and that a search, seizure, or inspection is necessary. The third person's residence may be searched only when it is reasonably supposed that articles which should be seized exist.

The administrative organs may also conduct visits, searches, or seizures with a warrant issued by a judge.

Questioning of Individuals:

7.6 Under what circumstances can the government demand that an employee, officer, or director of a company under investigation submit to questioning? In what forum can the questioning take place?

Where an employee, officer, or director of a company is under arrest or under detention, they are obliged to submit to questioning, but they have the right to remain silent and to appoint their counsel. In addition, if they refused to submit to questioning, no sanction shall be imposed on them for such refusal. On the other hand, where they are not under arrest or detention, they have no obligation to submit to questioning, or after they have appeared, they may withdraw from the questioning at any time; therefore, it is entirely up to the person's will whether he/she responds to questioning.

The questioning by the investigative authority takes place in an office of the authority or any other location.

7.7 Under what circumstances can the government demand that a third person submit to questioning? In what forum can the questioning take place?

Investigative authorities may ask any person for questioning if it is necessary for the investigation of a crime. However, it is entirely up to the person's will whether he/she responds to the questioning. Questioning by the authority takes place in an office of the authority or any other location.

Additionally, if the person falls under any of the following, a public prosecutor may, only before the first trial date, request a judge examine the person as a witness. When the summoned witness does not appear without any justifiable reason, the court may punish them by ruling on a non-penal fine of not more than 100,000 yen and subpoena him/her.

The following are:

(i) a person who apparently possesses information essential to the investigation of a crime and refuses to respond to questioning by the investigate authority; or

(ii) a person who has made a voluntary statement to the investigative authority and who is likely to make a statement at trial that differs from the previous statement, provided that the person's statement is deemed essential to prove a fact constituting the crime.

7.8 What protections can a person being questioned by the government assert? Is there a right to refuse to answer the government's questions? Is there a right to be represented by an attorney during questioning?

Under the Constitution of Japan, a suspect may not be compelled to testify against his/her will and, under the CCP, cannot be required to make a statement against his/her will.

A suspect may appoint a counsel at any time. However, they do not have the right to be represented by their counsel during questioning by the investigative authority.

8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

8.1 How are criminal cases initiated?

The prosecution of a criminal case is initiated by a public prosecutor.

8.2 Are there any rules or guidelines governing the government's decision to charge an entity or individual with a crime? If so, please describe them.

These rules and guidelines are not publicly available. A public prosecutor decides whether or not to initiate prosecution by considering the precedents as well as the gravity of the offence, the circumstances under which the offence was committed, and other various factors.

8.3 Can a defendant and the government agree to resolve a criminal investigation through pretrial diversion or an agreement to defer prosecution? If so, please describe any rules or guidelines governing whether pretrial diversion or deferred prosecution are available to dispose of criminal investigations.

Under Japanese law, there is no such system for criminal cases where a defendant and the government agree to resolve a criminal investigation through pre-trial diversion or agreement to defer prosecution.

8.4 In addition to or instead of any criminal disposition to an investigation, can a defendant be subject to any civil penalties or remedies? If so, please describe the circumstances under which civil penalties or remedies are appropriate.

Criminal offences generally correspond with torts under Japanese Civil Code. The victims may sue for damages in tort. However, these damages are compensatory damages. Punitive damages are not permitted.

9 Burden of Proof

9.1 For each element of the business crimes identified above, which party has the burden of proof? Which party has the burden of proof with respect to any affirmative defences?

In criminal cases, the public prosecutor bears the burden of proof of all the charged facts. If a defendant alleges justifiable causes (e.g., its act was performed in the pursuit of lawful business) or causes of non-imputability (e.g., circumstances where any lawful act is unexpected), the public prosecutor bears the burden of proof that there is no such cause.

9.2 What is the standard of proof that the party with the burden must satisfy?

The public prosecutor must prove the charged facts beyond reasonable doubt because the defendant is presumed to be innocent.

9.3 In a criminal trial, who is the arbiter of fact? Who determines whether the party has satisfied its burden of proof?

The arbiter of fact is the court. The court determines whether or not the public prosecutor has satisfied its burden of proof.

10 Conspiracy / Aiding and Abetting

10.1 Can a person who conspires with or assists another to commit a crime be liable? If so, what is the nature of the liability and what are the elements of the offence?

A person who conspires with or assists another to commit a crime may be liable if the other person actually committed the crime on the following grounds:

(i) Co-conspirator

If two or more persons conspired against a crime and any of them committed the crime based on the conspiracy, the person who joined the conspiracy but did not have a direct hand in the crime shall be a co-principal.

(ii) Inducement

A person who induces another to commit a crime shall be punished with the same sentence as the principal of the crime.

(iii) Accessories

A person who aids a crime committed by another is an accessory. The punishment of an accessory shall be reduced from the punishment of the principal.

11 Common Defences

11.1 Is it a defence to a criminal charge that the defendant did not have the requisite intent to commit the crime? If so, who has the burden of proof with respect to intent?

In principle, an act performed without the intent to offend is not punishable. However, where the law provides for a crime caused by negligence, an act performed without intent but with negligence is punishable.

A public prosecutor bears the burden of proof in relation to whether a defendant had the requisite intent at the time of the offence.

11.2 Is it a defence to a criminal charge that the defendant was ignorant of the law i.e. that he did not know that his conduct was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the law?

Ignorance of the law is not a defence. However, such ignorance may lead to a reduced sentence. Furthermore, there are lower court precedents that stipulate that when the defendant verified his/her act with the public organ which has the authority of operation and interpretation of the law and he/she was amenable to the public organ's guidance, there is no possibility that he/she could know that his/her conduct was unlawful; therefore, he/she is not criminally charged.

11.3 Is it a defence to a criminal charge that the defendant was ignorant of the facts i.e. that he did not know that he had engaged in conduct that he knew was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant's knowledge of the facts?

Where a crime has been committed in an organised manner within a company, if an employee did not know that his/her conduct amounted to the crime, he/she is not criminally charged for lacking the intent to offend or conspiracy.

If the defendant alleges the above, a public prosecutor has the burden to prove that the defendant was not ignorant of the facts.

12 Voluntary Disclosure Obligations

12.1 If a person becomes aware that a crime has been committed, must the person report the crime to the government? Can the person be liable for failing to report the crime to the government?

Any person who believes that a crime has been committed may file an accusation.

A government official or local government official shall file an accusation if they believe a crime has been committed. Other persons have no legal obligation to file an accusation and are not liable for failing to file.

13 Cooperation Provisions / Leniency

13.1 If a person voluntarily discloses criminal conduct to the government or cooperates in a government criminal investigation of the person, can the person request leniency from the government? If so, what rules or guidelines govern the government's ability to offer leniency in exchange for voluntary disclosures or cooperation?

(1) Surrender (Penal Code)

With respect to all crimes, the punishment of a person who committed a crime and surrenders himself to an investigative authority before his offence is known to any investigative authority may be reduced. However, there are no specific rules or guidelines as to how much reduction of punishment may be given. It is decided by the court after considering all the circumstances of the case.

(2) Leniency under the AMA

With respect to crimes under the AMA as mentioned in question 3.1, the JFTC does not file an accusation of criminal liability with the Prosecutor General against the first applicant who reported criminal activities to JFTC before JFTC's investigation has commenced.

13.2 Describe the extent of cooperation, including the steps that an entity would take, that is generally required of entities seeking leniency in Japan, and describe the favourable treatment generally received.

(1) Leniency system for surcharge under the AMA

In addition to the leniency policy for criminal cases under the AMA explained in question 13.1, the AMA provides for a leniency system of surcharge as follows.

The members of a Cartel who voluntarily report on such a Cartel to the JFTC may be granted an exemption from such surcharge. Up to five parties can receive leniency; provided that the 4th and 5th applicant must report facts and materials which are unknown to the JFTC. The percentage of the exemption is as set forth below according to the order of filing an application with the JFTC:

- 1st: 100%
- 2nd: 50%
- 3rd through 5th: 30%

However, parties who file applications for leniency after the JFTC has initiated an investigation of the Cartel shall be limited to an exemption of 30%. Also, once an investigation has been initiated, only three parties may receive leniency. So, for example, if the JFTC initiates an investigation after one participant has filed an application for leniency, only three additional participants would be permitted to receive exemptions of 30%.

(2) The surcharge reduction system under the FIEA

As to (a) the offence of disclosure of false information on important matters in the primary or secondary market and (b) the offence of insider trading of its own stock, a person who voluntarily reports on such an offence to the SESC before it initiates investigation on the offence may be granted an exemption of 50% from the amount of surcharge calculated according to the formula provided in the FIEA.

14 Plea Bargaining

14.1 Can a defendant voluntarily decline to contest criminal charges in exchange for a conviction on reduced charges, or in exchange for an agreed upon sentence?

Plea-bargaining is not allowed in Japan. However, a public prosecutor has discretionary power over whether or not to institute prosecution. After prosecution, the public prosecutor also has discretionary power to determine the level of punishment to be requested in the court. As such, the public prosecutor may consider it a favourable factor in exercising such discretion if a defendant voluntarily admits criminal charges after the fact.

14.2 Please describe any rules or guidelines governing the government's ability to plea bargain with a defendant. Must any aspects of the plea bargain be approved by the court?

Plea-bargaining is not allowed in Japan. There are no rules or guidelines, except where it is provided in the CCP that a public prosecutor may decide not to institute prosecution by considering the character, age, environment, gravity of the suspect, circumstances, or situation after the fact.

15 Elements of a Corporate Sentence

15.1 After the court determines that a defendant is guilty of a crime, are there any rules or guidelines governing the court's imposition of sentence on the defendant? Please describe the sentencing process.

These rules and guidelines are not publicly available. When deciding a sentence, the court will consider not only the facts appearing in the trial but also the precedents.

The court will also consider the sentence requested by the public prosecutor which is based on the internal precedents of the Public Prosecutor's Office.

15.2 Before imposing a sentence on a corporation, must the court determine whether the sentence satisfies any elements? If so, please describe those elements.

Under Japanese law, a corporation shall be punished by fines under a dual-punishment provision, if the court finds that a suspect violated a law with regard to the business of the corporation. Please refer to section 4. Any other elements are not required.

16 Appeals

16.1 Is a guilty or a non-guilty verdict appealable by either the defendant or the government?

A public prosecutor can appeal against a non-guilty verdict, and a defendant can appeal against a guilty verdict. Both public prosecutor and defendant can appeal against a guilty verdict on the grounds of inappropriate sentence.

16.2 Is a criminal sentence following a guilty verdict appealable? If so, which party may appeal?

In Japan, the criminal sentencing procedure is not separated from the verdict procedure. A judgment includes a guilty or a not-guilty verdict and a criminal sentence. Please refer to the answer to question 16.1.

16.3 What is the appellate court's standard of review?

The appellate court does not review all issues of facts, but instead reviews the first instance judgment, considering whether there are any errors in the construction or application of law, excessive severity or leniency of the sentence, and any errors in fact-finding, especially focusing on the grounds for the appeal.

The court of final appeal reviews the second instance judgment considering whether there are any violations of the Constitution or errors in its construction or application of law, especially focusing on the grounds for the appeal.

16.4 If the appellate court upholds the appeal, what powers does it have to remedy any injustice by the trial court?

When the first appellate courts or the court of final appeal quash the judgment of prior instance, in principle they should remand the case to the court of prior instance. However, they may render a new judgment immediately where they consider it appropriate.

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