

Corporate risk when officers or employees have criminal convictions

25 May 2020 | Contributed by [Nagashima Ohno & Tsunematsu](#)

Introduction

Grounds of disqualification

How to handle officers or representative employees who have been convicted

Dual liability

Comment

Introduction

Companies in Japan that operate in sectors which require permits or licences (eg, the aviation,⁽¹⁾ banking,⁽²⁾ pharmaceutical,⁽³⁾ construction,⁽⁴⁾ outsourcing⁽⁵⁾ and waste disposal⁽⁶⁾ sectors) risk having their licences revoked if their officers or certain employees receive a criminal conviction.

Criminal convictions of company officers or employees may affect a company's reputation but, in a worst-case scenario, they may also lead to a revocation of a licence which could prevent the company from carrying on its normal operations.

This article explains the circumstances in which a company's licence may be revoked and sets out certain measures that companies can take to protect themselves against this risk.

Grounds of disqualification

Japanese laws commonly require that a company itself has no criminal record relevant to its business activities in order to qualify for a licence. In addition, if an individual has certain unspent criminal convictions (eg, a conviction within the last three to five years that included a custodial sentence), they cannot be an officer of the company or an employee who represents the company's offices or branches (a representative employee). A criminal conviction received by a company's officer or representative employee (eg, fraud that constitutes a violation of the Criminal Code or drunk driving pursuant to the Road Traffic Act) can also prevent a company from obtaining a licence.

Even if a company has already obtained a permit or licence, if a company officer or representative employee receives a criminal conviction and remains in their position, the company risks having its licence revoked.

How to handle officers or representative employees who have been convicted

Companies should be aware of the specific crimes where a conviction may endanger their right to hold a licence and carry on their business. Companies must be aware of any criminal records of their (current or potential) officers and representative employees.

If an officer or a representative employee remains in their position after they are convicted of a crime specified in a relevant law and the sentence becomes final (ie, after any appeal rights have been exhausted), the company's licence will be at risk. Accordingly, if it seems likely that the officer or representative employee will be found guilty, the company should ensure that the individual is no longer an officer or a representative employee before the judgment becomes final.

Where an officer or a representative employee may have committed a certain crime, a company should consider removing them from their position and making them a regular employee in order to avoid having its licence revoked. As the case develops, the company can keep its options under review and it may ultimately decide to part ways with the individual.

Dual liability

Various dual liability clauses also exist in certain statutes.⁽⁷⁾ If any individual who is working for a company is accused of committing a crime relevant to the company's business, and there is a dual liability clause in relation to that crime, not only will the individual be at risk of being convicted, but so will the company itself. If the individual is convicted, the company will also receive a criminal conviction and this would be grounds for the company's licence to be revoked. This is the case even if the individual did not receive a custodial sentence (eg, only a fine was imposed).

Where dual liability exists, as long as the individual who is convicted was an employee of the company when the violation occurred, the company will also be convicted regardless of the person's position in the company. In other words, the company can be penalised together with its officers, representative employees and even regular employees holding relatively low-level positions, and this may result in the company's licence being revoked.

The following case clearly illustrates the risk. An employee of a company providing waste disposal services failed to comply with certain record-keeping obligations relating to waste disposal laws and received a fine. While the violation was immaterial, this triggered a dual liability clause and the company itself was also fined. This resulted in the company having its licence relating to waste disposal revoked.

AUTHORS

[John Lane](#)



[Eri Akiyama](#)



Comment

It is impossible to exclude the possibility that a crime is committed in the course of a company's business or the private life of an officer or employee.

Therefore, establishing an appropriate reporting and tracking system for individuals who may have committed criminal offences is essential. By being informed well before charges are brought (and become public), the company will have as much time as possible to consider how to properly handle the incident.

The company may also wish to coordinate closely with the lawyer representing an officer or employee who may be able to make representations to the public prosecutor to avoid charges being brought. Depending on the circumstances and seriousness of the crime, prosecutors have a discretion not to bring charges against an individual and the company for which the individual works. If charges are not brought, there will obviously be no criminal conviction and, without a criminal conviction, the company is not at risk of having its licence revoked. Therefore, companies must be informed of potential criminal offences committed by their employees as soon as possible, and seek the employee's consent to contact the prosecutor to provide details of the case with the aim of persuading the prosecutor not to bring charges.

Where charges have been brought against an officer or a representative employee in relation to an offence which is unrelated to the company's business (and, therefore, where dual liability does not apply), even in instances where the initiation of court proceedings is inevitable, it is in the company's interest that the individual does not receive a custodial sentence if they are convicted. Laws in relation to licences generally require that a company's officers or representative employees have not received a conviction that includes a custodial sentence. Thus, even if an officer or a representative employee is found guilty, but the court imposes only a fine against them, the company will not be at risk of having its licence revoked.

Where dual liability exists and an employee receives a criminal conviction, regardless of whether there is an accompanying custodial sentence, the company's licence is at risk of being revoked. So long as the individual who is convicted worked at the company when the crime occurred, the company cannot avoid receiving a criminal conviction itself by dismissing the individual. Therefore, companies should take measures to try to prevent the occurrence of crimes in relation to their business activities by implementing regular training courses and raising awareness among all officers and employees.

For further information on this topic please contact [John Lane](#) or [Eri Akiyama](#) at Nagashima Ohno & Tsunematsu by telephone (+81 3 6889 7000) or email (john_lane@noandt.com or eri_akiyama@noandt.com). The Nagashima Ohno & Tsunematsu website can be accessed at www.noandt.com.

Endnotes

- (1) The Civil Aeronautics Act www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=01&dn=1&co=01&ia=03&ja=04&x=0&y=0&ky=%E8%88%AA%E7%A9%BA%E6%B3%95&page=6.
- (2) The Banking Act www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=01&dn=1&co=01&ia=03&ja=04&x=0&y=0&ky=%E8%88%AA%E7%A9%BA%E6%B3%95&page=6.
- (3) The Act on Securing Quality, Efficacy and Safety of Products Including Pharmaceuticals and Medical Devices www.japaneselawtranslation.go.jp/law/detail/?re=01&dn=1&x=0&y=0&co=1&ia=03&ja=04&yo=&gn=&sy=&ht=&no=&bu=&ta=&ky=%E5%8C%BB%E7%99%82%E6%A9%9F%E5%99%A8&page=2.
- (4) The Construction Business Act www.japaneselawtranslation.go.jp/law/detail/?ft=2&re=2&dn=1&yo=%E5%BB%BA%E8%A8%AD%E6%A5%AD%E6%B3%95&ia=03&ja=04&ph=&x=0&y=0&ky=&page=1.
- (5) The Act for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatched Workers www.japaneselawtranslation.go.jp/law/detail/?ft=2&re=2&dn=1&yo=%E5%8A%B4%E5%83%8D%E8%80%85%E6%B4%BE%E9%81%A3&ia=03&ja=04&ph=&x=0&y=0&ky=&page=1.
- (6) The Act on Disposal and Processing of Waste https://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?lawId=345AC000000137 (Japanese only).
- (7) For example, Article 32 of the Act on Disposal and Processing of Waste.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).