

International Comparative Legal Guides



Business Crime 2021

A practical cross-border insight into business crime law

11th Edition

Featuring contributions from:

AGS Legal
Anagnostopoulos
AO2LAW
Bae, Kim & Lee LLC
BDO LLP
Boies Schiller Flexner LLP
Clayton Utz
Debevoise & Plimpton LLP
Drew & Napier LLC
ENACHE PIRTEA & Associates S.p.a.r.l.

Geijo & Associates SLP
Haldanes
Joyce Roysen Advogados
Kachwaha and Partners
Kellerhals Carrard
Kobre & Kim
Lawfirm Holzacker
Lee and Li, Attorneys-at-Law
Morais Leitão, Galvão Teles, Soares
da Silva & Associados (Morais Leitão)

Moroğlu Arseven
Nagashima Ohno & Tsunematsu
Peters & Peters Solicitors LLP
Rahman Ravelli
S. Horowitz & Co.
Sjöcrona Van Stigt
Skadden, Arps, Slate, Meagher & Flom LLP
Softysiński Kawecki & Szlęzak
Studio Legale Pisano
Zdolšek – Attorneys at Law

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Japan



Yoshihiko Matake



Shin Mitarai

Nagashima Ohno & Tsunematsu

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) Authority for prosecution
Public prosecutors are basically the sole authority for the prosecution of any crime except in very limited cases (e.g., verdict by Committee for Inquest of Prosecution).
- (2) Investigative authorities
 - (a) Police officers
Under the Code of Criminal Procedure (the “CCP”), the primary investigative authority is police officers. After conducting an investigation, police officers send the case to public prosecutors.
 - (b) Public prosecutors
Public prosecutors can, and often actively investigate cases of business crimes by themselves or by instructing police officers.
 - (c) Other administrative officers
Officers of some administrative agencies have investigative authority over certain business crimes. For example, officers of the Japan Fair Trade Commission (the “JFTC”) can investigate specific criminal violations of the Antimonopoly Act (the “AMA”). After conducting a criminal investigation, the administrative agency could file an accusation with public prosecutors.

1.2 If there is more than one set of enforcement agencies, how are decisions made regarding the body which will investigate and prosecute a matter?

Each investigative authority may conduct investigations at its discretion within its authority. While there is no rule on how to allocate cases, administrative officers specialised in the area of business crime often take the lead in investigations.

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 enforcement
There is no civil enforcement against business crimes in Japan.
- (2) Administrative enforcement
Certain administrative authorities have the power to impose surcharges (*Kabokin*) on specific violations of

certain regulations. For example, the JFTC has the power to impose surcharges on “unreasonable restraint of trade” including cartels, bid rigging affecting prices, private monopolisation and other unfair trade practices violating the AMA.

Also, in certain regulated industries, even if surcharge or criminal sanction is not applicable, the competent regulatory authority could request a reporting of potential misconduct and revoke the licence of such regulated business operators.

1.4 Have there been any major business crime cases in your jurisdiction in the past year?

A former CEO of a major global automobile manufacturer was arrested and prosecuted by the special investigation team of the Tokyo Public Prosecutors Office for false statements in annual securities reports and an aggravated breach of trust. He fled abroad during his bail and the criminal proceeding was suspended.

2 Organisation of the Courts

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

The Japanese criminal court system is a three-tiered unitary system that does not have a specialised criminal court. The first instance of the three tiers is in the district courts or the summary courts. With respect to most business crime cases, the district courts have first instance jurisdiction, the high courts have second instance (appellate) jurisdiction and the Supreme Court is the highest and final court. Causes for appeal to the Supreme Court are limited to certain critical issues (e.g., violation of the Constitution).

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

Japan does not have a jury system, but has the “*saiban-in* system” (the lay judge system). Under this system, six members of the *saiban-in* (lay judges) and three professional judges make a panel, and the panel renders a judgment including fact-finding and sentencing. As this system is applied only to serious felonies such as homicide, cases of business crime are usually not subject to this system.

3 Particular Statutes and Crimes

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

• Securities fraud

Various types of fraudulent acts in connection with transactions of securities, such as market manipulation, spreading rumours in order to manipulate stock prices and false statements in annual securities reports and other disclosure documents required under the securities regulation, are punishable based on the Financial Instruments and Exchange Act (“FIEA”).

• Accounting fraud

In addition to false statements of financial information in violation of the securities regulation, paying excessive dividends over the statutory distributable profit, including false accounting, is punishable based on the Companies Act.

• Insider trading

(1) Insider trading by corporate insiders

The FIEA provides that officers, employees, and agents of a listed company (including its parent company and subsidiaries) and other statutory defined corporate insiders who knows any non-public material fact pertaining to the business or other matters of a listed company (“Material Fact”) are prohibited from making a sale, purchase or other transfer for value or acceptance of such transfer for value of shares of the listed company until and unless such facts have been publicly disclosed.

Material Facts are statutorily defined as: (a) decisions by those who are responsible for executing operations of a listed company to carry out certain important matters; (b) occurrence of certain important events in a listed company; (c) significant difference between the latest publicised forecasts of sales, current profits, net income, or other account title of a listed company and new forecasts prepared by the company; and (d) any other important matters which would have a significant influence on investors’ decisions. Such facts regarding the subsidiaries of a listed company are also included in the definition of “Material Fact”.

(2) Insider trading in connection with a tender offer

The FIEA provides that purchasers of shares who know facts concerning a launch of a tender offer, and sellers of shares who know facts concerning a termination of a tender offer, are prohibited to trade shares of the listed company until and unless such facts have been publicly disclosed.

(3) Tip-offs

The FIEA provides that corporate insiders are prohibited from tipping off non-public Material Facts to other persons, or from recommending other persons to engage in trading for their own profit or avoidance of loss.

• Embezzlement

The Penal Code provides that a person who embezzles property in his/her possession which belongs to another person (e.g., employing company or customer) shall be punished.

• Bribery of government officials

The Penal Code provides that accepting, soliciting or promising to accept a bribe, or giving, offering or promising to give a bribe, in connection with the duties of Japanese public officers, are punishable.

The Unfair Competition Prevention Act (the “UCPA”) provides that giving, offering, or promising to give money or any other benefit to foreign public officers in order to have the officers act or refrain from acting in a particular way in relation to the duties of officers or in order to obtain a wrongful gain with regard to international commercial transactions is punishable.

• Criminal anti-competition

The AMA criminalises certain conducts such as private monopolisation and unreasonable restraint of trade (e.g., cartels, bid rigging).

• Cartels and other competition offences

Please see “Criminal anti-competition” above.

• Tax crimes

Tax evasion is punishable under laws prescribed for each type of tax. For example, tax evasion or receiving a refund through deception or other wrongful acts, such as making false documents or creating a secret bank account.

• Government-contracting fraud

There is no specific statute prohibiting government-contracting fraud. However, defrauding property of the government may constitute criminal fraud and bid rigging in relation to a government contract constitutes a crime under the Penal Code.

• Environmental crimes

Polluting water that is intended for human drinking or supplied to the public for drinking is punishable based on the Penal Code. Certain violations of the Air Pollution Control Act, such as violations of emission standards for soot and smoke prescribed by an ordinance, are punishable. The Waste Management and Public Cleansing Act prohibits the disposal of certain waste and toxic chemicals and requires business owners to provide notice to the government before importing, manufacturing or using new chemicals.

• Campaign-finance/election law

The Public Offices Election Act prohibits various actions in connection with elections, such as bribery, unlawful donations by a candidate and so on.

If an elected person is subsequently found guilty of having committed any of the above crimes, subject to a very limited number of exceptions, the election of such person shall automatically become void. Additionally, an elected person may lose his/her position if a person in his/her campaign has committed the crimes above.

• Market manipulation in connection with the sale of derivatives

The following are prohibited as “market manipulation” under the FIEA:

- (1) conducting a series of trades that mislead other investors into thinking that trading of a certain listed security is active, with the purpose of having other investors become willing to trade such security;
- (2) conducting a series of trades to influence the market price of such security for the same purpose; and
- (3) making trades without the intention of effecting a transfer of rights (wash sales), or conspiring with others on certain trades (collusive trading) with the purpose of misleading other investors, such as leading them to believe that the trading is active.

Disseminating information in connection with the sale of securities that is inconsistent with the facts and/or has no rational basis, for the purpose of trading or influencing the price of securities, is prohibited by the FIEA as “spreading rumours”.

• Money laundering or wire fraud

Money laundering is punishable based on the Anti-Drug Special Provisions Act and the Act on Punishment of Organized Crime and Control of Crime Proceeds. The former prohibits concealment and receipt of drug crime proceeds. The latter prohibits concealment and receipt of crime proceeds, and managing an enterprise by the use of crime proceeds. There is no statute that specifically criminalises wire fraud, but a wire fraud could be punishable under the Penal Code or other Acts.

• Cybersecurity and data protection law

The Act on Prohibition of Unauthorized Computer Access prohibits use of an identification code of another person or other information or commands to a computer via telecommunications lines in order to operate a computer in a manner which is not allowed or authorised.

Obtaining profits from creating a false electromagnetic record by giving false information or a wrongful command to a computer is punishable under the Penal Code.

• Trade sanctions and export control violations

The Foreign Exchange and Foreign Trade Act criminalises certain conducts, including export or brokerage of controlled goods or technology related to weapons of mass destruction or conventional arms without a licence.

• Any other crime of particular interest in your jurisdiction

The UCPA prohibits misrepresenting information on goods or services, in an advertisement thereof, or in a document or a communication used in a transaction thereof, in a manner that is likely to mislead the public as to the place of origin, quality, contents, manufacturing method, use, or quality of such goods or services. In recent years, some manufacturers were convicted for falsification of quality data of their products under this statute.

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

An attempt to commit criminal conduct is punishable only when it is specifically criminalised under the relevant statutes. Additionally, the Act on Punishment of Organized Crime and Control of Crime Proceeds criminalises conspiracy of certain crimes.

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?

In principle, only a natural person is criminally liable under Japanese law. An entity may be held criminally liable only when there are specific provisions for punishment prescribed in the form of a dual liability provision (“*ryobatsu-keitei*”). A dual liability provision makes entities, including corporations, punishable together with the natural person who is employed by the entity and actually committed the offence, unless the judicial person proves that it was not negligent in appointing or supervising that natural person, or that it was not negligent regarding the measures it took to prevent the crime.

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

In addition to the case of dual liability described in question 4.1 above, when there is a triple liability provision (“*sanbatsu-keitei*”), the representative of the entity in which the offender is employed may be held liable when such representative did not take necessary measures to prevent the crime. For comparison, the AMA and the Labour Standard Act have such provisions.

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?

There is no written public policy as to when to pursue an entity, an individual, or both. While an entity can be convicted only if a certain natural person is criminally liable, a prosecutor sometimes indicts only an entity and suspends an indictment against a natural person when the case is found to not be egregious.

4.4 In a merger or acquisition context, can successor liability apply to the successor entity? When does successor liability apply?

There seems to be no intensive discussion about criminal successor liability in Japan because only a natural person can be principally liable in the criminal context. While the successor may not be held liable for the predecessor's conduct in an asset deal, the successor's liability cannot be ruled out in case of a merger.

5 Statutes of Limitations

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

The enforcement-limitations period starts from the time when the criminal act has ceased. In the case of complicity, the period with respect to all accomplices starts from the time the final act of all accomplices has ceased. The limitations periods are stipulated depending on the type and amount of the statutory penalty.

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 criminal conducts are deemed a single criminal act in substance, the limitations period with respect to the entire crime starts from the time that the final act of the entire crime has ceased.

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

The limitations period is tolled if the offender is outside Japan or in other limited circumstances.

6 Initiation of Investigations

6.1 Do enforcement agencies have jurisdiction to enforce their authority outside your jurisdiction's territory for certain business crimes? If so, which laws can be enforced extraterritorially and what are the jurisdictional grounds that allow such enforcement? How frequently do enforcement agencies rely on extraterritorial jurisdiction to prosecute business crimes?

Japanese enforcement agencies do not have any jurisdiction to enforce their authority outside Japan, even though the Penal Code stipulates that persons who committed certain serious crimes outside Japan are punishable under Japanese law.

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

Except as provided by law, an investigative or administrative authority may initiate the investigation at its discretion. The investigative authority initiates investigations based on various triggers such as a complaint, an accusation, a report from other administrative organs, or a surrender.

6.3 Do the criminal authorities in your jurisdiction have formal and/or informal mechanisms for cooperating with foreign enforcement authorities? Do they cooperate with foreign enforcement authorities?

Regarding the request of foreign authorities for investigative cooperation, the Act on International Assistance in Investigation and Other Related Matters ("AIAI") provides requirements and procedures for investigative cooperation through either diplomatic channels or Interpol. The AIAI permits cooperation only if (1) the offence is not a political crime, (2) the offence also would constitute a crime under the laws of Japan if it were committed in Japan, and (3) the requesting authority submits a statement that the cooperation is indispensable. If such requirements are satisfied, prosecutors or police officers will conduct the investigation, and the evidence collected will then be provided to the requesting authority. In addition, the Japanese National Police Agency ("NPA") also cooperates with foreign authorities as a member of the International Criminal Police Organization if the abovementioned requirements (1) and (2) are satisfied.

When Japanese enforcement agencies request foreign enforcement agencies to conduct investigations and report the results of the investigations, they rely on the cooperation of such foreign agencies based upon treaties or international comity with these jurisdictions.

7 Procedures for Gathering Information from a Company

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

Police officers and prosecutors have authority for compulsory investigations which include search, seizure, inspection, arrest and detention upon a warrant issued by a judge. Articles 33 and 35 of the Constitution state that no person shall be apprehended, searched, or seized except upon a warrant issued by a judge, unless he/she is committing or has just committed an offence.

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?

When there is a need for gathering documents, in many cases, investigative authorities request a relevant company to voluntarily produce documents and the company cooperates voluntarily with an investigation without a warrant in Japan. However, if a company declines to cooperate with an investigation, an investigative authority may conduct a search, seizure, or inspection with a warrant issued by a judge.

7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does your jurisdiction recognise any privileges protecting documents prepared by in-house attorneys or external counsel, or corporate communications with in-house attorneys or external counsel?

Presently, since Japanese law does not currently apply attorney-client privilege, companies cannot refuse the seizure of items containing communication between them and their attorneys.

An amendment of the AMA was promulgated in June 2019 and when the amendment comes into effect, attorney-client privilege will apply to an administrative investigation regarding an international agreement which provides for unreasonable restraint of trade as long as targeted documents meet the required elements.

7.4 Are there any labour or privacy laws in your jurisdiction (such as the General Data Protection Regulation in the European Union) which may impact the collection, processing, or transfer of employees' personal data, even if located in company files? Does your jurisdiction have blocking statutes or other domestic laws that may impede cross-border disclosure?

Under the Personal Information Protection Act ("PIPA"), companies or entities shall not, in principle, make transfers of personal data to a third party, including cross-border transfers, without the data subject's consent. However, when (i) the transfer is in accordance with laws and regulations, and (ii) there is a need to cooperate with a state organ, a local government, or a person entrusted by them performing affairs prescribed by laws and regulations, and when a data subject's consent is likely to impede the performance of such affairs, companies or entities may transfer personal data without the data subject's consent. Thus, PIPA does not impact the collection, processing, or transfer of employees' personal data.

7.5 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?

The answer to this question is the same as the answer to question 7.2.

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

The answer to this question is the same as the answer to question 7.2.

Questioning of Individuals:

7.7 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?

The government cannot compel an employee, officer, or director of a company to submit to questioning, unless they are under arrest or detention. Even when they are under arrest or detention and are obliged to submit to questioning, they have the right to remain silent. The questioning can take place in an office of the authority, in the company or any other location.

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

The answer to this question is the same as the answer to question 7.7.

7.9 What protections can a person assert upon being questioned by the government? Is there a right to be represented by an attorney during questioning? Is there a right or privilege against self-incrimination that may be asserted? If a right to assert the privilege against self-incrimination exists, can the assertion of the right result in an inference of guilt at trial?

In principle, the person being questioned does not have a right to be represented by an attorney during questioning and attorney-client privilege does not apply in the context of criminal investigation under Japanese law.

On the other hand, Article 38, paragraph (1) of the Constitution states that no person shall be compelled to testify against himself/herself and there is no statutory adverse inference by exercising that right. Thus, there is a right against self-incrimination and the assertion of the right does not result in an inference of guilt at trial.

8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

8.1 How are criminal cases initiated?

Public prosecutors may initiate a criminal case by filing an indictment with a criminal court.

8.2 What rules or guidelines govern the government's decision to charge an entity or individual with a crime?

There are no written guidelines or standards governing the prosecutor's decision to charge an entity or individual with a crime. Public prosecutors exercise their discretionary power to decide whether to initiate prosecution considering the characteristics of the suspect, the gravity of the offence, his/her situation after the offence, and other circumstances.

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

Prior to the introduction of the Japanese version of plea bargaining created by an amendment to the CCP, which took effect on June 1, 2018, there was no official pre-trial agreement to defer prosecution in Japan.

The Japanese plea bargaining system can function as a deferred prosecution agreement though it has significant differences with the plea bargaining system in the U.S. Under this system, a prosecutor may enter into an agreement with a suspect or a defendant, that includes a corporate entity, with the consent of his/her attorney, under which the prosecutor agrees to drop or reduce criminal charges, or provide favourable treatment only when the suspect or defendant cooperates in the investigation against other individuals or corporate entities with respect to certain types of crimes. This includes, but is not limited to, bribery, embezzlement, tax fraud, crimes under the AMA, the FIEA or other specific laws stipulated by the CCP, and relevant government ordinances. According to the CCP, cooperation in investigations against other suspects or defendants include making a statement of the true facts to the investigation authorities, testifying the true facts as a witness in court and providing evidence. The prosecutor has the authority to determine whether to enter into an agreement by taking into consideration the factors stipulated in the CCP.

8.4 If deferred prosecution or non-prosecution agreements are available to dispose of criminal investigations in your jurisdiction, must any aspects of these agreements be judicially approved? If so, please describe the factors which courts consider when reviewing deferred prosecution or non-prosecution agreements.

The court has no authority to be involved in plea bargaining in any case.

8.5 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 may apply.

In addition to criminal disposition to an investigation, a defendant can be subject to civil remedies if his/her conduct constitutes a tort. In principle, complaints claiming for damages in tort are filed with a civil court and dealt with separately from the criminal case. However, under the restitution order system, complaints claiming for damages in tort may be filed to a criminal court and the judge presiding in the criminal case has the power to render a judgment ordering the defendant to pay damages, only after the court has found the defendant guilty.

9 Burden of Proof

9.1 For each element of the business crimes identified above in Section 3, 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 charges. If a defendant claims affirmative

defences, such as justifiable causes, the public prosecutor bears the burden of proof that there are no such causes.

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

The public prosecutor must prove the charges beyond a reasonable doubt, because the defendant is presumed innocent until such defendant is convicted.

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

The judge, or the panel of judges and lay judges in certain cases, is the arbiter of fact and determines whether or not the public prosecutor has satisfied his/her burden of proof.

10 Conspiracy / Aiding and Abetting

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

The Penal Code has provisions that hold a person criminally liable for the acts of others.

- (i) Co-principals
Two or more persons who jointly committed a crime are all principals. If two or more persons agree with each other to commit a specific crime relying on the other's actions to commit the crime, and one of these persons takes some action based on the conspiracy, then the persons who carried out the crime through the agreement including those who did not take any direct action to commit the crime, are all principals.
- (ii) Inducement
A person who induces another to commit a crime is criminally liable and the range of punishment is same as a principal. A person who induces another to induce a crime is also liable.
- (iii) Accessory
A person who aids a principal is an accessory to a crime, criminally liable and the range of punishment is less than a principal.
- (iv) Conspiracy
The Act on Punishment of Organized Crimes and Control of Crime Proceeds criminalises conspiracy of certain organised crimes, e.g., fraud, embezzlement, bribery.

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?

The Penal Code stipulates that an act performed without criminal intent is not punishable unless otherwise stipulated by the law. The code and other laws provide for crimes by negligence. The public prosecutor bears the burden of proof with regard 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 to a criminal charge.

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?

Ignorance of the facts is a defence because it means there is a lack of criminal intent. The public prosecutor bears the burden of proof with regard to whether a defendant had the knowledge of the facts at the time of the offence.

12 Voluntary Disclosure Obligations

12.1 If a person or entity becomes aware that a crime has been committed, must the person or entity report the crime to the government? Can the person or entity be liable for failing to report the crime to the government? Can the person or entity receive leniency or "credit" for voluntary disclosure?

Government officers at both the local and national levels are obligated to file a complaint with public prosecutors if they believe that a crime has been committed. Other persons or entities basically have no legal obligation to file a complaint, and are not liable for failing to do so unless the law (e.g. the Insurance Business Act) requires certain regulated entities to file notifications when they believe that a crime has been committed in such entities.

The leniency and similar systems are addressed in Section 13 below.

13 Cooperation Provisions / Leniency

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

- (1) Surrender (Penal Code)
The Penal Code stipulates that a criminal sanction may be reduced if a person who committed the crime surrendered himself/herself before being identified as a suspect by an investigative authority. The court decides whether and how much to reduce the penalty 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 to public prosecutors and impose surcharges against the first applicant who reported criminal activities to the JFTC before the JFTC's investigation has commenced.
- (3) Plea bargaining
As addressed in question 8.3, a plea bargain could be available in the case of voluntary disclosure of criminal conduct.

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

- (1) **Plea bargaining system under the CCP**
Under the plea bargaining system, in order for a corporate entity to negotiate with a prosecutor and enter into an agreement, the entity may be required to provide probative and adequate evidence against a criminal charge of an executive or an employee in the entity or another entity.
- (2) **Leniency programme for immunity or reduction of surcharges under the AMA**
As an administrative procedure, the AMA stipulates a leniency programme under which a corporate entity that voluntarily reports a violation to the JFTC may be granted immunity or a reduction of surcharges under specific conditions. With respect to a cartel, up to five entities involved with a cartel may be provided leniency if they report facts that have not been identified by the JFTC. The percentage of reduction of surcharges is as follows:
 - (i) First applicant: 100%.
 - (ii) Second applicant: 50%.
 - (iii) Third to fifth applicants: 30%.

If entities report the facts after the initiation of an investigation by the JFTC, only three entities may receive a reduction of 30% in surcharges.

After the amendment of the AMA promulgated in June 2019 becomes effective, the percentage of reduction of surcharges for applicants except the first one is determined by the JFTC considering the extent of cooperation and sixth and later applicants may receive a reduction in surcharges.

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?

The plea bargaining system in Japan is available only if a suspect or defendant cooperates in the investigation against another person and it is not available merely if a suspect or defendant voluntarily decides not to contest and cooperate with the investigation into his or her own case. However, the prosecutor may consider a voluntary declination of a suspect or defendant when the prosecutor decides on an indictment or a recommendation of sentencing at his or her discretion.

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?

As stated in question 8.3, a prosecutor has wide discretion as to whether to enter into plea bargaining with a defendant, taking into account the factors stipulated in the CCP. The court has no authority to be involved with plea bargaining in any case.

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 a sentence on the defendant? Please describe the sentencing process.

There are no fixed guidelines or standards governing the court's sentencing.

While the judge decides a sentence at his discretion within the statutory range of penalty, the judge seeks uniformity of sentence to some extent by referring to precedents, and this practice is said to have created informal, *de facto* standards for sentencing.

There is no sentencing procedure independent from a fact-finding procedure.

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.

The court may impose fines on a corporation only when there are dual liability provisions. No other elements are required. Please refer to the answers in Section 4.

16 Appeals

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

Appeals are allowed for both the defendant and the prosecutor. Any guilty judgment is appealable by the defendant, and any non-guilty judgment is appealable by the prosecutor.

Judgments rendered by the district courts or summary courts are appealable to the High Court. An appeal to the High Court (*Kaso*) is allowed on the grounds of non-compliance with procedural law, errors in fact-finding, errors in application of law, or inappropriate sentencing.

Judgments rendered by the High Court are appealable to the Supreme Court. Even though an appeal to the Supreme Court (*Jokoku*) is allowed only on the grounds of a violation of the Constitution and a violation of judicial precedents, the Supreme Court has discretionary power to take the case and squash judgments rendered by the High Court on the grounds of legal errors, errors in fact-finding or inappropriate sentencing.

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

There is no independent sentencing procedure. The prosecutor and the defendant present aggravating and mitigating factors respectively together with the assertion of facts. As explained in question 16.1, the defendant and the government are both allowed to appeal on the ground of inappropriate sentencing.

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

The High Court's standard of review is generally the same as the district court's standard, and the Supreme Court applies a higher standard of review, which requires a clear and substantial error.

The High Court is not allowed to quash a lesser court's judgment unless an error in the judgment would have affected the main clause of the judgment.

The Supreme Court is not allowed to quash a High Court's judgment on the grounds of legal errors, errors in fact-finding or inappropriate sentencing, unless sustaining the judgment would be clearly contrary to justice.

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

If the appellate court upholds the appeal, the appellate court quashes the trial court's judgment and, in most cases, at the same time renders its own judgment, replacing the original judgment.

In a small number of cases, the appellate court quashes the trial court's judgment and remands the case to the court of prior instance.



Yoshihiko Matake focuses on corporate crisis management, white-collar crime defence, consultation about compliance framework and international dispute resolution. He also provides legal services for a large variety of corporate matters including M&A, and regulatory matters including import and export controls and data protection legislation. He has a great deal of experience of international crisis management and international dispute resolution such as international cartel and other cross-border legal matters, in particular involving North America. He worked at Nagashima Ohno & Tsunematsu NY LLP as a senior associate from 2010 to 2013. He graduated with an LL.M. from Columbia Law School in 2010 and with an LL.B. from the University of Tokyo in 2003. He was admitted to the Japan Bar in 2004.

Nagashima Ohno & Tsunematsu

JP Tower, 2-7-2 Marunouchi
Chiyoda-ku
Tokyo 100-7036
Japan

Tel: +81 6889 7347
Email: yoshihiko_matake@noandt.com
URL: www.noandt.com



Shin Mitarai has been an associate of Nagashima Ohno & Tsunematsu since 2018. His primary areas of practice involve crisis management, white-collar crime, consultation about compliance frameworks, data protection and corporate crime investigations including international cases. He also provides legal services for a large variety of corporate matters including financial regulations, fintech, tax and capital markets. He speaks Japanese and English.

He graduated with a J.D. from the University of Tokyo School of Law in 2017 and with an LL.B. from the University of Tokyo in 2015. He was admitted to the Japan Bar in 2018.

Nagashima Ohno & Tsunematsu

JP Tower, 2-7-2 Marunouchi
Chiyoda-ku
Tokyo 100-7036
Japan

Tel: +81 6889 7604
Email: shin_mitarai@noandt.com
URL: www.noandt.com

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