

**International
Comparative
Legal Guides**



Business Crime

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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?

Public prosecutors

Public prosecutors are national investigative agents and have the sole authority to prosecute any crime, including business crimes.

Other enforcement authorities

- (a) Police officers: Under the Code of Criminal Procedure (“CCP”), police officers are the primary investigative authority on business crimes, though sometimes business crimes are investigated solely by public prosecutors. Most police officers are regional agents.
- (b) Administrative officers: Certain types of administrative officers also have investigative authority over specific business crimes. Most administrative officers are national agents as follows:
 - (i) national tax investigators in the National Tax Agency have the power to investigate national tax offences, while regional tax agents have the power to investigate regional tax offences;
 - (ii) investigators in the Japan Fair Trade Commission (“JFTC”) have the power to investigate specific criminal violations of the Antimonopoly Act (“AMA”);
 - (iii) officers in the Special Investigation Section of the Securities and Exchange Surveillance Commission have the power to investigate specific criminal violations of the Financial Instruments and Exchange Act (“FIEA”); and
 - (iv) customs officers in local customs offices, who are national agents, have the power to investigate specific criminal violations of the Customs Act.

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

As public prosecutors solely have the power to prosecute a matter, they are often at the centre of an investigation. The police are obligated to send cases to public prosecutors and the other government agencies are required to file accusations with public prosecutors when criminal prosecutions are to be pursued.

1.3 Can multiple authorities investigate and enforce simultaneously?

Each enforcement agency has the power to conduct investigations independently, and occasionally multiple authorities conduct simultaneous investigations and share information on a voluntary basis.

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

Japan has no civil enforcement against business crimes such as that in the United States.

Certain types of administrative authorities act as administrative law courts and may issue administrative orders, such as orders to impose delinquent taxes, additional taxes, or administrative monetary penalties. An appeal against an administrative order may be brought before the civil courts.

1.5 What are the major business crime cases in your jurisdiction in the past year?

A former director of the Tokyo Organising Committee for the Olympic and Paralympic Games was arrested by the Tokyo District Public Prosecutors Office in August 2022 for receiving bribes from sponsor companies. The arrests of directors of several sponsor companies followed, and the issue expanded into a bid-rigging case involving test competitions.

2 Organisation of the Courts

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

Japan has a unitary legal system and a three-tiered court system. The district courts have first instance jurisdiction over most business crime cases. At the second tier are the high courts and at the third tier is the Supreme Court, which is the highest and final court.

There is no statute establishing a specialised criminal court. However, the Tokyo District Court and the Osaka District Court have a section specialising in tax crimes.

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

Japan does not have a jury system, but a lay-judge system began in 2009 where the general public takes part in criminal trials. However, there is no right to a lay-judge panel and almost no business crimes are subject to the lay-judge trial, while certain serious offences, such as murder, are mandatorily subject to the lay-judge trial.

2.3 Where juries exist, are they composed of citizens members alone or also professional jurists?

Under the lay-judge system, six lay judges, who are selected from among eligible voters, and three judges make a panel, and the panel renders a judgment, including fact-finding and sentencing.

3 Particular Statutes and Crimes

3.1 Please describe the 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

Fraud, in general, constitutes an offence under the Penal Code, and thus fraud in connection with sales of securities constitutes an offence.

Additionally, certain fraudulent acts in connection with dealings in securities, such as market manipulation, spreading rumours in order to manipulate share prices and false statements in securities statements and annual securities reports, constitute offences under the FIEA.

• Accounting fraud

Making false statements in securities regulation statements and annual securities reports constitutes an offence under the FIEA.

If a director or other officer makes, in breach of his/her duties, a false account for the purpose of promoting his/her own interests or a third party's interest, and inflicts damage on the stock company, such act constitutes an offence of aggravated breach of trust under the Companies Act.

• Insider trading

- (1) Insider trading by Corporate Insiders: Any person listed below ("Corporate Insiders") who knows any non-public material fact (including important matters that would have a significant influence on investors' decisions) pertaining to the business of a listed company is prohibited from making a sale, purchase, or other transfer for value, or acceptance of such transfer for value ("trade"), of shares of the listed company until and unless such facts have been publicly disclosed. A violation of such regulation constitutes an offence of insider trading under the FIEA:
 - (i) officers of a listed company (including its parent company and subsidiaries);
 - (ii) persons who are entitled to the right to inspect account books of a listed company;
 - (iii) persons who have statutory authority over a listed company;
 - (iv) persons who have executed or been negotiating contracts with a listed company;
 - (v) officers of a legal entity listed in item (ii) or (iv);
 - (vi) persons who have, within one year, ceased to be a person listed in items (i) through (v);

(vii) persons who have received, from a person listed in items (i) through (vi), information on a material fact; and

(viii) officers of a legal entity who have received, from a person listed in item (vii) belonging to the same legal entity, information on a material fact in the course of his/her duty.

- (2) Insider trading in connection with a tender offer: Purchasers or sellers of shares who know certain facts concerning a tender offer are prohibited from trading shares of the listed company until and unless such facts have been publicly disclosed. A violation of such regulation also constitutes an offence of insider trading under the FIEA.
- (3) Tipping: Corporate Insiders are prohibited from tipping a non-public material fact to other persons. A violation of such regulation constitutes an offence of tipping under the FIEA.

• Embezzlement

Embezzling property in his/her possession that belongs to another person constitutes an offence of embezzlement under the Penal Code.

• Bribery of government officials

Accepting, soliciting, or promising to accept a bribe, or offering, promising, or the actual giving of a bribe in connection with the duties of Japanese public officers constitutes an offence under the Penal Code.

Giving, offering, or promising to give a bribe to foreign public officers constitutes an offence under the Unfair Competition Prevention Act.

• Criminal anti-competition

The following acts constitute offences under the AMA:

- (a) private monopolisation, cartels, and bid rigging;
- (b) international agreements that provide for cartels or bid rigging; and
- (c) restraint of acquiring or holding another corporation's voting rights by a bank (not exceeding 5%) or insurance corporation (not exceeding 10%).

• Cartels and other competition offences

Please see "Criminal anti-competition".

• Tax crimes

The following acts constitute offences under the Income Tax Act, the Corporation Tax Act and the Local Tax Act:

- (1) Evading taxes:
 - (i) Evading taxes or receiving a refund through deception or other wrongful acts, such as making false documents or creating a secret bank account.
 - (ii) Taking actions to deceive tax officers, such as concealing property, for the purpose of avoiding any execution on property from non-payment of taxes.
- (2) Refusing, obstructing, or avoiding an inspection by tax collectors.

• Government-contracting fraud

Defrauding property of the government may constitute an offence of fraud under the Penal Code.

If an officer executes a governmental contract for the purpose of promoting his/her own interest and causes financial loss to the government, such act may constitute an offence of breach of trust under the Penal Code.

• Environmental crimes

Polluting water supplied to the public for drinking constitutes an offence under the Penal Code.

Violation of emission standards for soot and smoke prescribed by an ordinance constitutes an offence under the Air Pollution Control Act.

Discharging of oil and waste from ships constitutes an offence under the Marine Pollution Prevention Act.

• Campaign-finance/election law

The following acts in connection with elections constitute offences under the Public Offices Election Act:

- (1) bribery;
- (2) unlawful donations by a candidate;
- (3) campaigning outside the specified campaign period;
- (4) door-to-door visits;
- (5) providing food or beverages;
- (6) the registered treasurer of the campaign (“Treasurer”) spending in excess of the specified cap; and
- (7) election campaign expenditure, other than the spending of the Treasurer, without the prior written consent of the Treasurer.

• 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 affecting 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 as spreading rumours under the FIEA.

• Money laundering or wire fraud

Money laundering, such as receiving drug crime proceeds with concealment or receiving other crime proceeds with management of an enterprise using other crime proceeds, constitutes an offence under the Anti-Drug Special Provisions Act or the Act on Punishment of Organized Crime.

Sending phishing emails or scam emails eliciting wire transfers may constitute an offence of fraud under the Penal Code.

• Cybersecurity and data protection law

Using an identification code of another person and a password to a computer connected to telecommunications lines in order to operate a computer in an unauthorised manner constitutes an offence under the Act on Prohibition of Unauthorized Computer Access.

Creating a false electronic record by giving false information or a wrongful command to a computer with the intent to cause error in the processing of matters of another person constitutes an offence under the Penal Code.

Obtaining trade secrets by theft, fraud, duress, or other wrongful means, and using or disclosing trade secrets obtained through such wrongful act, constitutes an offence under the Unfair Competition Prevention Act.

There are other types of offences that can be committed by using the internet, such as violation of copyright law, defamation, obstruction of business, violation of the Law Concerning the Regulation of Acts inducing Children Using Internet Dating Services and so on.

• Trade sanctions and export control violations

The following activities constitute offences under the Foreign Exchange and Foreign Trade Act:

- (1) conducting the export or brokerage of controlled goods or technology related to weapons of mass destruction without a licence;
- (2) conducting the export or brokerage of controlled goods or technology related to conventional arms without a licence;
- (3) making a transfer without a licence of controlled technology in another form of transaction that is subject to a licence; and
- (4) failing to subscribe to an admonition issued by the Minister of Economy, Trade and Industry in regard to non-compliance with the Exporters’ Compliance Standards.

• Any other crime of particular interest in your jurisdiction

- (1) Loan sharks: Activities of loan sharks, such as lending money on a regular basis to receive annual interest rates that exceed 20%, or transferring deposit/savings passbooks and cash cards in an illegal way, constitutes an offence under the Act Regulating the Receipt of Contributions, Receipt of Deposits and Interest Rates or the Act on Prevention of Transfer of Criminal Proceeds.
- (2) Intellectual property crime: The infringement of patents, trademarks or copyrights constitutes an offence. Most of the offences actually prosecuted are counterfeit offences (violation of the Trademark Act) and piracy offences (violation of the Copyright Act).

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? Can a person be liable for “misprision” by helping another avoid being located or discovered?

An attempt is punishable only when penal statutes specifically state so. Examples include attempted fraud and attempted breach of trust. Regarding certain serious types of crime, such as counterfeiting of currency, preparatory acts even before an attempt are punishable.

The Penal Code stipulates that it constitutes an offence to harbour or enable the escape of another person who has either committed a crime or has escaped from jail or prison.

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? Are there ways in which an entity can avoid criminal liability for the acts of its employees or agents?

Generally, only a natural person is criminally liable, though a legal entity (judicial person) may also be held criminally liable when there are specific provisions allowing for its punishment, prescribed in the form of a dual liability provision.

A dual liability provision makes corporate entities criminally liable, unless the judicial persons prove that they were not negligent in appointing or supervising the natural person who actually committed the crime.

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

Basically, even if a corporation is held criminally liable based

on a dual liability provision, an officer or employee who has not actually committed the crime is not criminally liable.

However, under a triple punishment provision provided in the AMA and the Labour Standards Act, a fine may be imposed on the representative of such corporation to which the offender belongs, or the employer of the offender who failed to take necessary measures to prevent the offence, even when such representative or employer has not actually committed the crime.

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? Has the preference changed in recent years? How so?

The authorities tend to pursue an entity together with an individual unless there is an exceptional circumstance where an entity made efforts to prevent employees from committing the offence. This tendency has not changed in recent years.

4.4 In a merger or acquisition context, can successor liability apply to the successor entity? When does successor liability apply? When does it not apply?

Following an asset acquisition, the successor entity is not liable for the criminal activities of its predecessor, which is a different judicial person from the successor.

Regarding a merger, the successor entity is deemed as the same judicial person as its predecessor, and may be held criminally liable for the predecessors' activities together with the natural person who actually conducted the predecessors' criminal activities under a dual punishment provision.

5 Statutes of Limitations

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

Limitations periods are stipulated depending on the extent of the statutory penalty. For example, if the maximum statutory penalty for the offence is 10 years' imprisonment, the limitations period is seven years.

The enforcement-limitations period starts from the time when the criminal act has ceased. If multiple accomplices are involved in an offence, the period starts from the time that the final act of all accomplices has ceased.

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

Even when multiple offences are committed, if these crimes are deemed as a single criminal activity from a social point of view, the limitations period with respect to all crimes starts from the time that the final act of all crimes has ceased.

When a certain crime is committed as a means of accomplishing another crime, the limitations period with respect to the former crime starts from the time that the act of the former crime has ceased, unless the latter crime was committed after the end of the limitations period of the former crime, in which case 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 initiated in the case concerned;
- (ii) prosecution is initiated against one of the accomplices;
- (iii) the offender is outside Japan; or
- (iv) the offender conceals himself/herself so that it is impossible to serve him/her a transcript of a charge sheet.

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?

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

Enforcement agencies rely on cooperation with foreign enforcement agencies based upon treaties with these countries, requesting them to conduct investigations and report the results of their investigations.

6.2 How are investigations initiated? Are there any rules or guidelines governing the government's initiation of any investigation? Can third parties learn how the investigation began or obtain the initial file documents? If so, please describe them.

An investigative or administrative authority initiates investigations based on various triggers, such as:

- (i) A complaint or an accusation: A victim of a crime may report the crime to an investigative authority and demand that the offender be punished by submitting a complaint. Any person may report a crime to an investigative authority and demand that the offender be punished by submitting an accusation.
- (ii) A report from a witness: Any person who witnessed a crime may report to an investigative authority, typically through an emergency call to the police.
- (iii) A surrender: An offender himself/herself may report his/her crime to an investigative authority. If such report is made before the offender's identity or the offence is known to the authorities, it is called a surrender and the punishment of the person who surrendered may be reduced.

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?

The Act on International Assistance in Investigation and Other Related Matters ("AIAI") provides requirements and procedures for investigative cooperation at the request of foreign countries through either diplomatic channels or Interpol.

The AIAI permits cooperation only if (1) the offence is not a political crime, (2) the offence also constitutes a crime under the laws of Japan if it was committed in Japan, and (3) the requesting authority submits a statement that cooperation is indispensable.

In addition, the Japanese National Police Agency also cooperates with foreign authorities as a member of the International Criminal Police Organization (“ICPO”). At the request of a foreign authority through the ICPO, police officers will conduct an investigation.

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 that are conducted by investigative authorities:

- (1) Non-compulsory investigations: Investigating authorities may request third parties to provide relevant information to the investigating authorities on a voluntary basis.
- (2) Compulsory investigations: Compulsory investigations include search, seizure, inspection, arrest, and detention upon a warrant issued by a judge, who takes a fair and neutral stance and determines whether there is a probable cause and necessity for compulsory investigations.

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?

Japanese companies often cooperate voluntarily with an investigation and produce documents without a warrant.

If an investigative authority considers that compulsory investigations are necessary, taking into account the possibility of evidence destruction, they must try to establish a probable cause that a crime has been committed based on information they have gathered through non-compulsory investigations, in order to obtain a warrant from a judge.

When a search warrant is issued, the government can raid a company under investigation and seize documents.

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?

Japan does not have legal professional privilege, so the advice of legal counsel and in-house attorneys is not deemed privileged.

However, the CCP allows legal counsel, including attorneys and patent attorneys, to reject the government’s demand for materials.

7.4 Are there any labour or privacy laws in your jurisdiction (such as the General Data Protection Regulation in the European Union) that 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?

The Personal Information Protection Act (“PIPA”) regulates how companies handle personal data, but it does not impact the collecting, processing, or transferring of employees’ personal data.

PIPA stipulates that companies may transfer personal data to a third party, including investigative authorities, without a data subject’s consent, when the transfer is based on laws and regulations or when obtaining the consent is likely to interfere with performing affairs entrusted by the government, and cooperation with the government is necessary.

With regard to cross-border transfers, PIPA stipulates that companies shall not make cross-border transfers to a foreign third party, including a foreign government, without obtaining a data subject’s consent by providing certain types of information.

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?

Japanese employees often cooperate voluntarily with an investigation and produce documents without a warrant.

If an investigative authority successfully establishes a probable cause that a crime has been committed, and the employee is involved in the crime or has some documents related to the crime and a search warrant is issued, the government can raid the home or office of the employee and seize documents.

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?

Japanese people and companies usually cooperate voluntarily with an investigation regarding another person’s crime and produce documents without a warrant.

If an investigative authority successfully establishes a probable cause that a crime has been committed, and the third party has some documents related to the crime and a search warrant is issued, the government can raid the home or office of the third person or entity and seize documents.

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 if they voluntarily submit to questioning, they may withdraw from the questioning at any time. And even when they are under arrest or detention, they have the right against self-incrimination.

The questioning usually takes place in the office of the authority, but the questioning can take place in the company or any other location if the authority considers it appropriate.

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

Investigative authorities can request any person for questioning on a voluntary basis. This type of questioning takes place in an office of the authority or any other location, depending on the nature of the third party and the case.

Public prosecutors can also request a judge to examine a third person in a court as a witness if certain requirements are met. This testimony is compulsory in that if the witness does not appear without any justifiable reason, the court may impose an administrative fine on him/her.

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?

The Japanese system does not guarantee an attorney's presence during the questioning.

The right against self-incrimination can be asserted based on the Constitution. As a corollary to protecting the right against self-incrimination, it is prohibited to infer the defendant's guilt based on the fact that the defendant has asserted the right.

8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

8.1 How are criminal cases initiated?

Public prosecutors may initiate a criminal case by submitting a charge sheet to 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 published guidelines. Public prosecutors exercise their discretionary power to decide whether 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 agreements are available to dispose of criminal investigations.

Generally, there are no pretrial diversions or deferred prosecutions in Japan. However, only under the "plea-bargaining" system, which took effect in 2018, may a prosecutor enter into an agreement with a suspect or defendant (including business entities) with the consent of counsel, under which the prosecutor may agree to drop or reduce criminal charges, or provide a recommendation for a lighter sentence if the suspect or defendant cooperates in the investigation against another person with respect to certain types of crime. To date, this system has been used in only three cases.

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 that courts consider when reviewing deferred prosecution or non-prosecution agreements.

As stated in question 8.3, non-prosecution agreements can be

made only under the "plea-bargaining" system, and a prosecutor may enter into an agreement without obtaining approval from the judge.

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.

Generally, victims of crime can file civil complaints against offenders to claim damages based on tort law, using the result of the criminal investigation by providing documents from the criminal case file after the defendant is convicted.

8.6 Can an individual or corporate commence a private prosecution? If so, can they privately prosecute business crime offences?

An individual or corporate can file civil complaints against offenders as stated in question 8.5.

In cases of certain serious offences, civil complaints may be filed with a criminal court. After conviction, the same judge who presided the criminal case has the power to render a judgment. However, if the defendant makes an objection against the judgment, the case is transferred to a civil court.

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?

The public prosecutor bears the burden of proof of all charges. Even if a defendant claims affirmative defences, the public prosecutor bears the burden of proof that there are no such defences.

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, as the defendant is presumed innocent.

9.3 In a criminal trial, who is the arbiter of fact? Who determines whether the party has satisfied its burden of proof? If a jury or group of juries determine the outcome, must they do so unanimously?

The court is the arbiter of fact and determines whether or not the public prosecutor has satisfied his/her burden of proof.

A guilty decision with the participation of lay judges is made by the majority, including at least one professional judge and one lay judge.

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?

A person can be criminally liable for the acts of others under the Penal Code as follows:

- (i) If two or more persons agree with each other to commit a specific crime, and at least one of these persons actually takes a criminal action based on the agreement, then the persons who made the agreement are all jointly liable.
- (ii) A person who induces another to commit a crime is criminally liable at the same rate as a principal. A person who induces another to induce a crime is also liable.
- (iii) A person who aids a principal is an accessory to a crime and is criminally liable at a lesser rate than a 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?

The Penal Code stipulates that an act performed without the intent to commit a crime is not punishable, except for cases where the code provides for a crime caused by negligence.

The 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?

Generally, ignorance of the law is not a defence. However, according to lower court precedents, when the defendant verified the lawfulness of his/her act with the authoritative administrative organ, a defence of ignorance to the lawfulness of his/her act might be available.

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 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. For example, if the defendant participated in seemingly lawful conduct and was not aware that such conduct was a part of unlawful activities committed by other members, then he/she is not criminally liable, lacking the intent to commit a crime.

The public prosecutor bears the burden of proof in relation 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 are obligated to file an accusation with public prosecutors if they believe that a crime has been committed. Other persons or entities have no legal obligation to file a complaint, and are not liable for failing to do so.

If the person or entity that committed a crime surrendered himself/herself/itself before being identified as a suspect by an investigative authority, the punishment may be reduced under the Penal Code.

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?

Under the AMA, based on an administrative system called the Leniency Program, a corporate entity that voluntarily reports cartels or bid rigging to the JFTC may be granted immunity or a reduction of surcharges, depending on the timing (pre-investigation or post-investigation), the order of application, and the degree of cooperation under the AMA.

Under the FIEA, a corporate entity that reports a certain type of violation of the FIEA to relevant authorities before the investigation commences is entitled to obtain a 50% reduction in surcharge.

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.

Regarding the Leniency Program, up to five entities involved with a cartel may be provided a reduction of surcharges if they report the facts and materials 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%.

In the case that entities report the facts and materials after the initiation of an investigation by the JFTC, the first three entities may receive a reduction of 30% 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?

As stated in question 8.4, agreements promising non-prosecution, reduced charge, or a recommendation for a lighter sentence can be made only under the "plea-bargaining" system.

A prosecutor may enter into an agreement without obtaining approval from a judge.

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 8.4, the "plea-bargaining" system has been used only in a limited number of cases, though a prosecutor is not required to obtain approval from a judge.

15 Sealing

15.1 Are there instances where the court proceedings or investigation files are protected as confidential or sealed?

In general, investigation files are kept strictly confidential, at least prior to the commencement of the trial, and court proceedings are generally conducted in an open court.

After the judgment for a criminal case becomes final, the case files in court are sent to the prosecutor's office and inspection of the files may be granted to a third party, even though the prosecutor usually only allows limited parts of the files to be inspected.

16 Elements of a Corporate Sentence

16.1 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 published guidelines or standards. The court seeks the uniformity of sentencing by referring to precedents, creating *de facto* standards for sentencing. According to case law, a large deviation from precedents is not allowed unless specific and persuasive reasons are shown. The court also refers to the recommendation for sentencing by the prosecutor.

16.2 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. Any other elements are not required. Please refer to the answers in section 4.

16.3 Do victims have an opportunity to be heard before or during sentencing? Are victims ever required to be heard? Can victims obtain financial restitution or damages from the convicted party?

The court may allow victims to present a statement of opinion or their feelings about their experience of crime during trial only if the victims file a petition with the prosecutor and the prosecutor notifies the court of his/her opinion that the statement is appropriate.

Victims of crime can file civil complaints. Please refer to the answers at questions 8.5 and 8.6.

17 Appeals

17.1 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 government. Any guilty judgment is appealable by the defendant, and any non-guilty judgment is also appealable by the government.

Judgments rendered by the district courts are appealable to the high courts. This appeal 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. This appeal is allowed only on the grounds of a violation of the Constitution or a violation of judicial precedents, but the Supreme Court has exercised its discretionary power to reverse judgments on the grounds of legal errors, errors in fact-finding, or inappropriate sentencing.

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

Japan does not have a sentencing procedure independent from a fact-finding procedure. If the court finds the defendant guilty at the trial, the court immediately renders a judgment, including the sentence.

The defendant and the government are both allowed to appeal on the ground of inappropriate sentencing. Please refer to the answer at question 17.1.

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

Regarding any question of law, the standard of review is "*de novo*". Regarding fact-finding and sentencing, the high court's standard is similar to "clearly erroneous", and the Supreme Court applies a higher standard that is similar to a "clear and substantial error".

The Supreme Court is allowed to reverse a judgment on the grounds of legal errors, errors in fact-finding, or inappropriate sentencing only if sustaining the original judgment would be clearly contrary to justice.

17.4 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 court reverses the prior instance's judgment and, in most cases, at the same time renders its own judgment replaced by the original judgment.

In a small number of cases, the court reverses the judgment and remands the case to the prior instance.



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- Cooperation Provisions / Leniency
- Plea Bargaining
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- Appeals