



The Practitioner's Guide to Global Investigations - Tenth Edition

**Japan: challenges and solutions for
cross-border investigations**

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GIR publishes the tenth edition of its practical guide for external and in-house counsel, compliance officers and accounting practitioners. Chapters are authored by leading practitioners from around the world and made available to GIR's readers free to view and download. The chapters in Part I cover, in depth, the broad spectrum of law, practice and procedure applicable to investigations in the United Kingdom and United States. In Part II, local experts from major jurisdictions across the globe respond to a common and comprehensive set of questions designed to identify the local nuances of law and practice that practitioners may encounter in responding to a cross-border investigation.

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Japan: challenges and solutions for cross-border investigations

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GENERAL CONTEXT, KEY PRINCIPLES AND HOT TOPICS

1 IDENTIFY THE HIGHEST-PROFILE CORPORATE INVESTIGATION UNDER WAY IN YOUR COUNTRY, DESCRIBING AND COMMENTING ON ITS MOST NOTEWORTHY ASPECTS.

In 2025, the two most high-profile corporate and public sector investigations in Japan involved Fuji Television and the Governor of Hyogo Prefecture, both of which have drawn significant public and media attention due to their far-reaching implications.

The case involving Fuji Television began with allegations of sexual harassment, which were initially mishandled by the company's senior management. The management's failure to address the issue appropriately, coupled with a poorly managed press conference, led to widespread public criticism and a mass withdrawal of commercial sponsors, pushing the company into a management crisis. In response, an independent third-party investigation committee was established to conduct a thorough investigation. The committee's report was highly critical, not only of the company's handling of the harassment but also of its broader approach to business and human rights. The report emphasised that Fuji Television's failure to address sexual harassment adequately represented a significant human rights issue, prompting a leadership overhaul and the initiation of comprehensive reforms.

Meanwhile, the case concerning the Hyogo Prefecture Governor involved allegations of 'power harassment' (abuse of authority), attempts to identify whistleblowers and possible breaches of the Whistleblower Protection Act, as well as concerns over inappropriate information leaks. Multiple third-party committees were convened to investigate these issues, which was an unusual step that underscored the gravity of the situation. The Governor resigned amid the scandal in 2024, but was re-elected in a subsequent election, which was a rare occurrence that further heightened public interest in the case.

2 OUTLINE THE LEGAL FRAMEWORK FOR CORPORATE LIABILITY IN YOUR COUNTRY.

In Japan, corporations can be held criminally liable under a dual liability provision. Generally, criminal liability is attributed only to natural persons. However, if there is a specific clause in the Criminal Code or other statutes that assigns criminal liability to corporations, entities can be held accountable alongside the natural persons involved.

Dual liability provisions are relatively common in economic crime cases in Japan. These provisions are included in several acts, such as the Unfair Competition Prevention Act, the Financial Instruments and Exchange Act and the Foreign Exchange and Foreign Trade Act. These laws ensure that both individuals and corporate entities can be held criminally liable, reinforcing the accountability of businesses in economic dealings.

3 WHICH LAW ENFORCEMENT AUTHORITIES PROSECUTE (OR REGULATE) CORPORATIONS? HOW IS JURISDICTION BETWEEN THE AUTHORITIES ALLOCATED? DO THE AUTHORITIES HAVE POLICIES OR PROTOCOLS RELATING TO THE PROSECUTION OF CORPORATIONS?

The authority to prosecute anyone, including corporations, is exclusively vested in prosecutors, and no other authority or agency has the power to prosecute any criminal case (as there is no civil prosecution in Japan). Most criminal cases (violations of laws and regulations) that are punishable as crimes are primarily investigated by the police, with few exceptions, and all cases are referred to the public prosecutor's offices. Exceptions to the role of the police as the primary investigative authority over criminal cases are as follows:

- the Securities and Exchange Surveillance Commission has jurisdiction to regulate the Securities and Exchange Law and authority to investigate and impose administrative sanctions for violations of the law;
- the Japan Fair Trade Commission (JFTC) has similar jurisdiction over antimonopoly laws; and
- the National Tax Agency is the regulator that oversees and investigates violations of tax laws.

For these exceptional cases, which often involve corporate liability, the special investigation departments of the public prosecutors' offices in major cities take the initiative to investigate corporations in cooperation with the aforementioned specialised government authorities.

While the prosecutor's offices do not have formal policies or protocols guiding prosecutorial decisions in any type of case or violation, including those involving corporate misconduct, the JFTC has publicly released certain standards and guidelines for enforcing antimonopoly law violations.

4 WHAT GROUNDS MUST THE AUTHORITIES HAVE TO INITIATE AN INVESTIGATION? IS A CERTAIN THRESHOLD OF SUSPICION NECESSARY TO TRIGGER AN INVESTIGATION?

There are no laws, protocols or standards that regulate the bases or grounds on which relevant authorities may initiate an investigation into potential violations of laws and regulations. To the extent that the investigation methods to be deployed are limited to non-compulsory measures, the authorities may commence an investigation into any case on anyone for any possible violations based on any grounds, including rumours or gossip.

5 HOW CAN THE LAWFULNESS OR SCOPE OF A NOTICE OR SUBPOENA FROM AN AUTHORITY BE CHALLENGED IN YOUR COUNTRY?

A person who wishes to challenge the lawfulness or scope of a search warrant or a seizure or arrest warrant, which are compulsory dispositions under the criminal procedure in Japan, or similar orders from investigative authorities, may file a challenge in court.

6 DOES YOUR COUNTRY MAKE USE OF COOPERATIVE AGREEMENTS GIVING IMMUNITY OR LENIENCY TO INDIVIDUALS WHO ASSIST OR COOPERATE WITH AUTHORITIES?

Japan has a plea bargaining system (*goui seido*), which came into effect on 1 June 2018. Suspects and criminal defendants can avoid indictment or obtain lighter sentences by providing information to prosecutors about the criminal acts of others. The system does not require the involvement of the court but does require the involvement of the suspect's or criminal defendant's lawyer.

To date, there have only been four reported cases on the use of the plea bargaining system.

Corporate bodies may also use this plea bargaining system by providing information about the criminal acts of others, including their own officers and employees.

7 WHAT ARE THE TOP PRIORITIES FOR YOUR COUNTRY'S LAW ENFORCEMENT AUTHORITIES?

In recent years, the Japanese government has been actively pursuing various types of white-collar crimes, including political funds-related crimes, tax evasion, insider trading, consumer fraud (including data falsification), bid rigging and cartels.

With respect to bribery, Japan is ranked 20th in Transparency International's 2024 Corruption Perceptions Index and is generally seen as one of the least corrupt countries in the world. However, in recent years, there have been high-profile instances of alleged bribery, such as the Tokyo Olympics scandal, thereby bringing wider attention on bribery to the public social and law enforcement authorities.

8 TO WHAT EXTENT DO LAW ENFORCEMENT AUTHORITIES IN YOUR JURISDICTION PLACE IMPORTANCE ON A CORPORATION HAVING AN EFFECTIVE COMPLIANCE PROGRAMME? WHAT GUIDANCE EXISTS (IN THE FORM OF OFFICIAL GUIDANCE, SPEECHES OR CASE LAW) ON WHAT CONSTITUTES AN EFFECTIVE COMPLIANCE PROGRAMME?

There is no general law or guidance that allows law enforcement authorities to exempt perpetrators from, or reduce, penalties when a corporation has an effective compliance programme in place. However, courts may take into consideration an effective corporate compliance programme when ruling on the criminal liability of that corporate body. In a case regarding a violation of the Foreign Exchange and Foreign Trade Act, the Supreme Court ruled that the legislative intent of a provision that imposes a criminal penalty on corporate bodies is to emphasise that, as there is a presumption of negligence on the corporate body regarding its failure to duly oversee the perpetrating employee and to exercise other precautions necessary to prevent the violation, unless it is found that the corporate body exercised those precautions, it cannot be discharged from its criminal liability. As such, the existence and due operation of an efficient compliance programme may theoretically be taken into account when determining whether a corporate body exercised the necessary precautions. However, in practice, it would be relatively rare for courts to discharge the criminal liability of a corporate body based solely on that factor.

In addition, the existence and due operation of an efficient compliance programme may result in the mitigation of criminal or administrative penalties. For example, in a case involving the illegal provision of funds to individuals connected with public railway corporations in relation to official development assistance projects in Indonesia, Vietnam and Uzbekistan, the Tokyo District Court considered the company's post-violation review of its compliance system and implementation of preventive measures as mitigating factors when determining the criminal penalty.

CYBER-RELATED ISSUES

9 DOES YOUR COUNTRY REGULATE CYBERSECURITY? DESCRIBE THE APPROACH OF LOCAL LAW ENFORCEMENT AUTHORITIES TO CYBERSECURITY-RELATED FAILINGS.

Japan has multiple laws that regulate cybersecurity and data security, including the Basic Act on Cybersecurity (BAC), the Telecommunication Business Act (TBA) and the Act on the Protection of Personal Information (APPI).

The BAC lays out the basic framework for national and local governments to promote cybersecurity measures in Japan. However, it does not impose specific obligations on private companies but obligates national and local governments to take necessary measures to encourage critical information infrastructure operators to exert efforts to enhance cybersecurity and to cooperate with the government in relation to cybersecurity.

The TBA provides for the rules regarding the secrecy of communications. For example, with respect to communications that are handled by telecommunications carriers, this law provides that the secrecy of these communications must not be violated, and any person

who is engaged in a telecommunications business must not disclose secrets learned while in office.

The APPI is the principal data protection legislation in Japan. Under the APPI, a business operator that handles personal data must take necessary and appropriate actions to ensure the security of that data, including preventing the leakage of, loss of or damage to any personal data.

Both the TBA and the APPI impose criminal penalties for violating companies under certain conditions, but, in practice, criminal penalties are rarely imposed except in serious violations.

In addition, the Ministry of Economy, Trade and Industry and the Independent Administrative Agency Information-technology Promotion Agency issue Cybersecurity Management Guidelines, the latest version of which (version 3.0) was published in March 2023. While these Guidelines are not legally binding, many companies observe them in practice when taking cybersecurity measures.

10 DOES YOUR COUNTRY PROSECUTE CYBERCRIME? WHAT IS THE APPROACH OF LAW ENFORCEMENT AUTHORITIES IN YOUR COUNTRY TO CYBERCRIME?

The two main pieces of legislation that regulate cybercrime are the Act on the Prohibition of Unauthorised Computer Access (UCAL) and the Penal Code.

The UCAL imposes criminal penalties on a person who gains 'unauthorised access' to a computer (access controlled computer), the access to and operation of which are under the control of an administrator (access administrator). Under this law, unauthorised access refers to any action of a person to operate an access controlled computer by either inputting an identification code (e.g., password and ID) allocated to a user who is authorised to access the access controlled computer (authorised user), without the permission of the access administrator or the authorised user, or inputting any information (other than an identification code) or command that enables that person to evade control, without the permission of the access administrator.

The Penal Code provides for criminal penalties on the creation and provision of improper command records, which give improper commands, such as a computer virus, to a computer. Improper command records are defined as:

- electromagnetic records that give a computer an improper command that causes the computer to be operated against the operator's intentions or to fail to be operated in accordance with the operator's intentions; and
- electromagnetic or other records that describe improper commands.

Cybercrime is regulated and investigated by the police as general crimes. The police have established specialised units and laboratories to deal with cybercrime and place emphasis on investigation and prevention.

In terms of multinational cooperation agreements, in 2012, Japan became a party to the Convention on Cybercrime (also known as the Budapest Convention), and in August 2023, Japan became the second state to ratify the Convention's Second Additional Protocol on enhanced cooperation and disclosure of electronic evidence.

CROSS-BORDER ISSUES AND FOREIGN AUTHORITIES

11 DOES LOCAL CRIMINAL LAW HAVE GENERAL EXTRATERRITORIAL EFFECT? TO THE EXTENT THAT EXTRATERRITORIAL EFFECT IS LIMITED TO SPECIFIC OFFENCES, GIVE DETAILS.

Japanese criminal law generally applies only if the criminal offence is committed within the territory of Japan. In this regard, if part, or the result, of the criminal offence occurs in Japan, the offence is said to have been committed within Japan and Japanese criminal law will apply.

In addition, Japanese criminal law provides for extraterritorial reach for certain categories of crime (e.g., foreign bribery). This extraterritorial reach usually applies when the criminal offence is committed by a Japanese official or by an officer or employee of a corporation with its principal office in Japan.

12 DESCRIBE THE PRINCIPAL CHALLENGES THAT ARISE IN YOUR COUNTRY IN CROSS-BORDER INVESTIGATIONS, AND EXPLAIN WHETHER AND HOW SUCH CHALLENGES DEPEND ON THE OTHER COUNTRIES INVOLVED.

There are various challenges in conducting cross-border investigations in Japan, primarily due to differences in legal frameworks and geographical factors.

LEGAL FRAMEWORK CHALLENGES

LACK OF DISCOVERY AND ATTORNEY-CLIENT PRIVILEGE

Unlike many jurisdictions, the Japanese legal framework does not generally recognise the concept of discovery or attorney-client privilege, except under very limited circumstances. This poses a significant challenge when framing cross-border investigations, especially when conducting concurrent investigations in jurisdictions where these concepts exist. Care must be taken to ensure that the client does not inadvertently waive the attorney-client privilege or become subject to discovery for key evidence. For instance, when conducting investigations into misconduct, it is not rare to establish what are known as independent investigative committees or third-party committees. These committees are independent from the companies under investigation. Typically, these committees not only carry out the investigations but also publish their findings, a practice that is generally expected by the public and, at times, regulatory authorities. However, caution is necessary as the publication of these findings by the committee could potentially result in a waiver of the attorney-client privilege in other countries.

JUDICIAL BARGAINING MECHANISMS

Although Japan has implemented a plea bargaining system known as *goui seido*, it is not actively used. Cross-border investigations often assume that clients will eventually benefit from plea bargaining agreements. However, these assumptions cannot typically be made in Japan, thus necessitating careful alignment of investigation goals across different jurisdictions.

GEOGRAPHICAL CHALLENGES

LANGUAGE BARRIERS

The Japanese language presents practical challenges in cross-border investigations. It is not widely used outside Japan, and key evidence is often documented exclusively in Japanese, leading to significant translation costs. Additionally, Japanese often omits the subject in sentences, even in official communications, which often creates ambiguities.

Simply translating documents into English may not suffice in various cases due to nuances in the language.

TIME DIFFERENCES

Coordinating concurrent investigations in the United States, the European Union and Japan often creates difficulties due to time zone differences. Finding suitable times for interviews or meetings can be challenging, potentially causing significant delays in the investigation process.

These challenges highlight the need for meticulous planning and consideration when conducting cross-border investigations involving Japan, to ensure effective and efficient outcomes.

13 DOES DOUBLE JEOPARDY, OR A SIMILAR CONCEPT, APPLY TO PREVENT A CORPORATION FROM FACING CRIMINAL EXPOSURE IN YOUR COUNTRY AFTER IT RESOLVES CHARGES ON THE SAME CORE SET OF FACTS IN ANOTHER? IS THERE ANYTHING ANALOGOUS IN YOUR JURISDICTION TO THE 'ANTI-PILING ON' POLICY AS EXISTS IN THE UNITED STATES (THE POLICY ON COORDINATION OF CORPORATE RESOLUTION PENALTIES) TO PREVENT MULTIPLE AUTHORITIES SEEKING TO PENALISE COMPANIES FOR THE SAME CONDUCT?

While there are no relevant provisions of laws or precedents to prescribe applicability of the principle of double jeopardy on the basis of enforcement imposed by foreign authorities, the general principle of double jeopardy is incorporated in the Constitution and criminal procedures in Japan, and administrative authorities, prosecutors and courts generally respect it, even in the cross-border context.

In terms of the possibility of the 'piling' of multiple sanctions from different agencies within Japan, it has been generally interpreted that the principle of double jeopardy does not prevent multiple Japanese authorities from basing different criminal investigations and procedures on the same facts, each separately. For example, there are precedents that hold that the separate impositions of a penalty tax by the national tax authorities and a criminal penalty for the same act of tax evasion, or the separate impositions of a surcharge (i.e., an administrative fine) by the JFTC and a criminal penalty for the same cartel act, are not prohibited by the double jeopardy clause of the Constitution. As for the piling of sanctions from agencies of different countries, in international cartel cases, for example, the JFTC has imposed administrative fines in some cases in which competition authorities of other countries had already taken criminal or administrative action, although the JFTC has apparently taken into consideration enforcement in other countries when it determines fine amounts.

14 ARE 'GLOBAL' SETTLEMENTS COMMON IN YOUR COUNTRY? WHAT ARE THE PRACTICAL CONSIDERATIONS?

Although Japan has implemented a plea bargaining system, it is not frequently utilised, rendering global settlements uncommon. Despite this, we often consult concurrently with the relevant Japanese authorities or prosecutors' offices. This consultation occurs even without the aim of an official settlement to ensure that the announcement of investigation results does not provoke unintended reactions from the relevant authorities.

In cross-border investigations, it is often assumed that clients will benefit from plea bargaining agreements. However, these assumptions cannot typically be made in Japan. This necessitates a careful alignment of investigation goals across different jurisdictions to ensure coherent and effective outcomes.

15 WHAT BEARING DO THE DECISIONS OF FOREIGN AUTHORITIES HAVE ON AN INVESTIGATION OF THE SAME MATTER IN YOUR COUNTRY?

While there are no laws, protocols or standards that prescribe how decisions of foreign authorities should be dealt with in the course of investigating the same matter in Japan, in practice, these decisions could offer basic information and a starting point for the investigation.

ECONOMIC SANCTIONS ENFORCEMENT

16 DESCRIBE YOUR COUNTRY'S SANCTIONS PROGRAMME AND ANY RECENT SANCTIONS IMPOSED BY YOUR JURISDICTION.

Although Japan does not have a comprehensive legislative framework that governs its sanctions regimes such as in the United States and other jurisdictions, the Foreign Exchange and Foreign Trade Act primarily regulates foreign exchange, foreign trade and other international transactions, and provides the rules for economic, financial and trade sanctions. Specific sanctions measures are also outlined in the Act on Special Measures for the Prohibition of Entrance into Ports by Specified Vessels and the Act on Special Measures concerning Freezes of International Terrorists' Assets etc., which were enacted in consideration of United Nations Security Council (UNSC) resolutions.

There have been relatively few significant sanctions enforcement cases in Japan in recent years. In a notable case reported on 10 July 2024, the CEO of a trading company was arrested on suspicion of illegally exporting goods to Russia via South Korea without authorisation. The goods – under an export ban – allegedly included items that could be converted for military use, in violation of sanctions imposed following Russia's invasion of Ukraine.

17 WHAT IS YOUR COUNTRY'S APPROACH TO SANCTIONS ENFORCEMENT? HAS THERE BEEN AN INCREASE IN SANCTIONS ENFORCEMENT ACTIVITY IN RECENT YEARS, FOR EXAMPLE?

There have not been many significant sanctions enforcement cases in Japan in recent years. However, given that the Japanese government has actively and repeatedly issued additional sanctions against Russia following its invasion of Ukraine, enforcement actions could potentially become more prevalent in the near future.

18 DO THE AUTHORITIES RESPONSIBLE FOR SANCTIONS COMPLIANCE AND ENFORCEMENT IN YOUR COUNTRY COOPERATE WITH THEIR COUNTERPARTS IN OTHER COUNTRIES FOR THE PURPOSES OF ENFORCEMENT?

In Japan, economic sanctions against other nations have traditionally been implemented in response to international requests coordinated by the UNSC through its resolutions and by coalitions of willing countries. However, Japanese authorities do not necessarily cooperate with other countries for enforcement purposes.

19 HAS YOUR COUNTRY ENACTED ANY BLOCKING LEGISLATION IN RELATION TO THE SANCTIONS MEASURES OF THIRD COUNTRIES? DESCRIBE HOW SUCH LEGISLATION OPERATES.

Not applicable in this jurisdiction.

20 TO THE EXTENT THAT YOUR COUNTRY HAS ENACTED ANY SANCTIONS BLOCKING LEGISLATION, HOW IS COMPLIANCE ENFORCED BY LOCAL AUTHORITIES IN PRACTICE?

Not applicable in this jurisdiction.

BEFORE AN INTERNAL INVESTIGATION

21 HOW DO ALLEGATIONS OF MISCONDUCT MOST OFTEN COME TO LIGHT IN COMPANIES IN YOUR COUNTRY?

Misconduct is most commonly detected through internal whistleblowing, followed by internal audits and reports from employees.

When media reports bring allegations of misconduct to light, a company must simultaneously verify the facts, manage public relations and explain the situation to the regulatory authorities. Incorrect dissemination of information or provision of data can lead to confusion and damage the company's reputation. Therefore, it is crucial for the company to manage and respond to these issues accurately and swiftly, which can be extremely challenging.

INFORMATION GATHERING

22 DOES YOUR COUNTRY HAVE A DATA PROTECTION REGIME?

The APPI provides for various rules regarding the protection of personal data, including the requirement to notify or announce the purpose of use of personal information, the handling of sensitive data, measures to ensure the secure maintenance of personal data, the provision of personal data to third parties and the transfer of personal data to overseas recipients.

23 TO THE EXTENT NOT DEALT WITH ABOVE AT QUESTION 9, HOW IS THE DATA PROTECTION REGIME ENFORCED?

The Personal Information Protection Commission (PPC) is the supervisory governmental organisation that oversees the protection of personal data. If a company violates the APPI, the PPC may direct it or other concerned parties to submit a report, conduct on-site inspections, provide guidance and advice to the company or other concerned parties, and issue warnings or orders to take remedial measures.

Failure to comply with instructions to report or allow on-site inspections by the PPC may result in criminal penalties (a fine of up to ¥500,000). If a PPC order to take remedial measures is violated, it may make a public announcement to that effect, and, in addition, the person who violates the order may be subject to criminal penalties (imprisonment for up to one year or a fine of up to ¥1 million).

In addition, if a company that handles personal information, or an employee or former employee of that company, discloses or steals a personal information database that is used for that company's business, to gain an unfair advantage for themselves or a third party, a criminal penalty (imprisonment for up to one year or a fine of up to ¥500,000) may be imposed.

In practice, most violations are resolved by the company itself reporting to the PPC and the PPC providing guidance, and more serious disciplinary action is rarely taken.

24 ARE THERE ANY DATA PROTECTION ISSUES THAT CAUSE PARTICULAR CONCERN IN INTERNAL INVESTIGATIONS IN YOUR COUNTRY?

In general, the handling of employees' personal data by a company and its lawyers and other advisers in an internal investigation is normally within the scope of the purposes of use

notified to employees and, thus, does not pose any issues in many cases. However, the APPI has restrictions on the provision of personal data to third parties located outside Japan. Legal advice should be taken on a case-by-case basis when providing personal data, including that of employees, to third parties outside Japan during an internal investigation.

25 DOES YOUR COUNTRY REGULATE OR OTHERWISE RESTRICT THE INTERCEPTION OF EMPLOYEES' COMMUNICATIONS? WHAT ARE ITS FEATURES AND HOW IS THE REGIME ENFORCED?

The email accounts, telephones and computer systems provided by an employer to employees in relation to their work belong to the employer and should be used only for business operations in general. From this perspective, as a general rule, these devices can be monitored or intercepted if the monitoring or interception is carried out for a business necessity. There are no clear statutory rules regarding the monitoring or interception by an employer, but the PPC recommends that an employer that wants to monitor or intercept its employees' communications should take certain measures, including:

- communicating the purpose of the monitoring or interception to employees in advance;
- identifying the manager responsible for managing the monitoring or interception;
- drawing up internal rules regarding monitoring or interception and communicating these to employees in advance; and
- auditing the monitoring or interception programme to ensure that it is being carried out appropriately.

DAWN RAIDS AND SEARCH WARRANTS

26 ARE SEARCH WARRANTS OR DAWN RAIDS ON COMPANIES A FEATURE OF LAW ENFORCEMENT IN YOUR COUNTRY? DESCRIBE ANY LEGAL LIMITATIONS ON AUTHORITIES EXECUTING SEARCH WARRANTS OR DAWN RAIDS, AND WHAT REDRESS A COMPANY HAS IF THOSE LIMITS ARE EXCEEDED.

Whether an investigating agency chooses to use search and seizure on companies depends on the gravity of the alleged violation and the probability of an indictment or other sanctions. Usually, search and seizure for white-collar crimes are deemed to be a sign of the seriousness of the investigation and high probability of indictment, as they precede indictments in most cases. The subject of search and seizure is limited to matters relating to the specific allegation in the case. Other than this, there are almost no limitations on the power of search and seizure as long as they are approved by a warrant, and, as such, companies subject to the warrant would have few means to argue the excessiveness of the search and seizure. If an authority exceeds the scope of a search or seizure approved by a warrant, the evidence gathered may be excluded as illegally obtained evidence, although this is rare in practice as exclusion is subject to a number of exceptions.

27 HOW CAN PRIVILEGED MATERIAL BE LAWFULLY PROTECTED FROM SEIZURE DURING A DAWN RAID OR IN RESPONSE TO A SEARCH WARRANT IN YOUR COUNTRY?

The concept of the attorney–client privilege is not recognised in Japan except under very limited circumstances; therefore, there are no general protections against seizure by relevant authorities. Exceptions exist for any administrative investigation of bid-rigging or cartel allegations by the JFTC in which the holder of certain confidential communication between a company and the company's attorney can request that the communication be subject to

certain protection from seizure during a dawn raid or in response to a request for document production. See questions 38 to 46 for further details of this protection.

28 UNDER WHAT CIRCUMSTANCES MAY AN INDIVIDUAL'S TESTIMONY BE COMPELLED IN YOUR COUNTRY? WHAT CONSEQUENCES FLOW FROM SUCH COMPELLED TESTIMONY? ARE THERE ANY PRIVILEGES THAT WOULD PREVENT AN INDIVIDUAL OR COMPANY FROM PROVIDING TESTIMONY?

In situations where an individual or company may be criminally liable, no person may be compelled to testify against themselves, nor may a forced confession be used as evidence, pursuant to Article 38 of the Constitution of Japan, which sets forth the right against self-incrimination.

That said, any person is obliged to be a witness before the court in principle under the Code of Criminal Procedure, and if a court directs a person to appear as a witness, there is an obligation to testify, except in limited circumstances, such as where the testimony would incriminate the witness or their family or certain relatives, or involve confidential information obtained by professionals, such as doctors or lawyers, in the performance of their professional duties. In addition, in civil procedures, a witness cannot be forced to testify in cases where certain professional secrets obtained by public officials in the performance of their duties or certain technical or professional secrets are involved.

WHISTLEBLOWING AND EMPLOYEE RIGHTS

29 DESCRIBE THE WHISTLEBLOWING FRAMEWORK IN YOUR COUNTRY. WHAT FINANCIAL INCENTIVE SCHEMES, IF ANY, EXIST FOR WHISTLEBLOWERS? WHAT LEGAL PROTECTIONS ARE IN PLACE FOR WHISTLEBLOWERS?

Employees are permitted to make internal disclosures to their employers. An employer is prohibited from treating the disclosing employee unfavourably because of the disclosure. For example, if an employee is dismissed based on having made a disclosure, the dismissal is considered invalid. The Whistleblower Protection Act mandates that businesses with 301 or more regular employees must establish systems to appropriately handle public interest disclosures. Additionally, confidentiality obligations are imposed on information that could identify the whistleblower. Disclosing information without a legitimate reason can result in criminal penalties.

There are no statutory financial incentive schemes for whistleblowers.

30 WHAT RIGHTS DOES LOCAL EMPLOYMENT LAW CONFER ON EMPLOYEES WHOSE CONDUCT IS WITHIN THE SCOPE OF AN INVESTIGATION? IS THERE ANY DISTINCTION BETWEEN OFFICERS AND DIRECTORS OF THE COMPANY FOR THESE PURPOSES?

If a company instructs an employee to participate in an investigation, the employee is obligated to follow instructions as long as they are reasonable. Although there are no specific provisions in Japanese employment law regarding the rights of an employee whose conduct is within the scope of an investigation, a company may not generally take any action that would infringe the employee's privacy (e.g., investigating the contents of a private personal computer or mobile phone without consent). In addition, if there are internal company rules on investigations, these rules must be followed. There is no distinction between officers and directors in this context.

31 DO EMPLOYEES' RIGHTS UNDER LOCAL EMPLOYMENT LAW DIFFER IF A PERSON IS DEEMED TO HAVE ENGAGED IN MISCONDUCT? ARE THERE DISCIPLINARY OR

OTHER STEPS THAT A COMPANY MUST OR SHOULD TAKE WHEN AN EMPLOYEE IS IMPLICATED OR SUSPECTED OF MISCONDUCT, SUCH AS SUSPENSION OR IN RELATION TO COMPENSATION?

Employees' rights under local employment law do not differ even if a person is deemed to have engaged in misconduct, except with respect to the following disciplinary actions.

When an employee violates work rules and other company policies, the employer may take disciplinary action if the grounds for, and types of, disciplinary action are stipulated in the work rules or employment contract. In addition, the court usually takes into consideration the following factors when judging whether a disciplinary action is valid:

- whether the disciplinary action is too severe considering the overall nature, type and degree of the misconduct, motives of the employee, and damage or disorder caused by the misconduct, as well as the disciplinary action that has been imposed following previous similar misconduct at the company; and
- whether the company has taken appropriate steps (due process), such as whether the employee was given an opportunity to give an explanation in their defence and whether they had received a proper warning upon committing similar but less serious misconduct in the past.

32 CAN AN EMPLOYEE BE DISMISSED FOR REFUSING TO PARTICIPATE IN AN INTERNAL INVESTIGATION?

If a company instructs an employee to participate in an internal investigation, the employee is obligated to comply as long as the instructions are reasonable. Thus, the refusal to follow reasonable instructions normally constitutes a violation of the work rules or employment contract, which, in turn, can be grounds for disciplinary action. However, dismissal is generally considered valid only in limited cases in Japan; a typical case in which a disciplinary dismissal is considered valid is when the misconduct constitutes, or almost constitutes, a crime or caused serious damage to the company. Therefore, it may be difficult to impose disciplinary dismissal solely because of an employee's refusal to participate in an investigation, and lighter disciplinary actions such as a disciplinary warning or wage reduction are normally appropriate in these cases.

COMMENCING AN INTERNAL INVESTIGATION

33 IS IT COMMON PRACTICE IN YOUR COUNTRY TO PREPARE A DOCUMENT SETTING OUT TERMS OF REFERENCE OR INVESTIGATORY SCOPE BEFORE COMMENCING AN INTERNAL INVESTIGATION? WHAT ISSUES WOULD IT COVER?

The decision to create this type of document, as well as the nature of its contents, varies depending on the case. However, documents are often prepared for significant investigations, particularly for reporting to the board of directors, among other purposes. These documents typically state the investigating body (investigative structure) and the subjects, methods and duration of the investigation.

34 IF AN ISSUE COMES TO LIGHT PRIOR TO THE AUTHORITIES IN YOUR COUNTRY BECOMING AWARE OR ENGAGED, WHAT INTERNAL STEPS SHOULD A COMPANY TAKE? ARE THERE INTERNAL STEPS THAT A COMPANY IS LEGALLY REQUIRED TO TAKE OR SHOULD CONSIDER TAKING?

Directors have a duty of care as stipulated in Article 330 of the Companies Act and Article 644 of the Civil Code. As part of this duty, directors are responsible if they fail to take

appropriate measures or adequately supervise in situations where they should have been aware of potential misconduct or malfeasance, or if they fail to prevent further damage after the discovery of misconduct. Therefore, when an issue comes to light, it is imperative to conduct an investigation into the matter and take appropriate actions.

35 WHAT INTERNAL STEPS SHOULD A COMPANY IN YOUR COUNTRY TAKE IF IT RECEIVES A NOTICE OR SUBPOENA FROM A LAW ENFORCEMENT AUTHORITY SEEKING THE PRODUCTION OR PRESERVATION OF DOCUMENTS OR DATA?

If a company conceals or refuses to submit the documents requested from law enforcement authorities, it may face criminal penalties or unfavourable factual determinations. Therefore, it is essential for the company to ensure that employees are aware that they should not destroy data but preserve it. The company must either submit the requested information to the authorities or allow law enforcement to have access to the company premises to seize the relevant documents.

36 AT WHAT POINT MUST A COMPANY IN YOUR COUNTRY PUBLICLY DISCLOSE THE EXISTENCE OF AN INTERNAL INVESTIGATION OR CONTACT FROM A LAW ENFORCEMENT AUTHORITY?

Under Japanese law, there is no general obligation to publicly disclose the existence of an internal investigation or contact from a law enforcement authority. However, listed companies may need to make a public disclosure if the foregoing matters fulfil the requirements of public disclosure obligations under the law or stock exchange rules.

37 HOW ARE INTERNAL INVESTIGATIONS VIEWED BY LOCAL ENFORCEMENT BODIES IN YOUR COUNTRY?

Internal investigations are generally accepted in Japan, with particular respect given to investigations that ensure third-party impartiality. Independent committees are often established to ensure independence from the company. Therefore, regulatory authorities may guide companies to set up these committees instead of conducting internal investigations on their own, to ensure that the investigations are objective and neutral. In these cases, the regulatory bodies typically wait for the independent committee to complete its investigation and require the company to report the findings. Based on these reports, regulators may take administrative action.

ATTORNEY–CLIENT PRIVILEGE

38 CAN THE ATTORNEY–CLIENT PRIVILEGE BE CLAIMED OVER ANY ASPECTS OF INTERNAL INVESTIGATIONS IN YOUR COUNTRY? WHAT STEPS SHOULD A COMPANY TAKE IN YOUR COUNTRY TO PROTECT THE PRIVILEGE OR CONFIDENTIALITY OF AN INTERNAL INVESTIGATION?

The concept of the attorney–client privilege is not recognised in Japan except under very limited circumstances. Exceptions exist for any administrative investigation of bid-rigging or cartel allegations by the JFTC in which the holder of certain confidential communications between a company and its attorney can request that it be protected from seizure during a dawn raid or in response to a request for document production.

The holder of communications containing legal advice (specified communications) between a company and its attorney can request confidential treatment and the return of the specified communications from the JFTC, which prevents JFTC investigators from gaining access to the communications. The request must be made by the company in writing within two

weeks of its receipt of the JFTC's document production request. The JFTC would then assign an officer outside the investigation team to confirm that the content of the specified communications meets certain prescribed criteria in the JFTC's Guidelines (such as the nature of the communications, whether there is indication of the inclusion of specified communications and the place of storage of these communications). Upon confirmation by the officer, the JFTC would return the relevant materials to the holder.

39 SET OUT THE KEY PRINCIPLES OR ELEMENTS OF THE ATTORNEY-CLIENT PRIVILEGE IN YOUR COUNTRY AS IT RELATES TO CORPORATIONS. WHO IS THE HOLDER OF THE PRIVILEGE? ARE THERE ANY DIFFERENCES WHEN THE CLIENT IS AN INDIVIDUAL?

Certain protection of specified communications would apply only to bid-rigging or cartel allegations by the JFTC that are under the scope of the following rules; there is no protection for other antimonopoly violation allegations such as private monopolisation or unfair trade practice:

- the communication must relate to legal advice concerning bid-rigging or cartel allegations and it can take various forms, such as documents, memoranda and emails. The communications must be clearly identified as 'specified communications under JFTC Guidelines' (as defined in the relevant JFTC Guidelines). The access to the communications must be limited to those on a need-to-know basis; and
- this protection is not a legal right per se. It is provided by the JFTC Guidelines. Any company officer or employee who holds specified communications in an officer or employee capacity would be covered by this protection; however, an individual outside this capacity would not be protected.

40 DOES THE ATTORNEY-CLIENT PRIVILEGE APPLY EQUALLY TO IN-HOUSE AND EXTERNAL COUNSEL IN YOUR COUNTRY?

Specified communications protection applies only to communications between a company and its external legal counsel, provided the counsel is conducting legal business independently of the company. The protection does not apply to communications made between a company and its in-house counsel.

41 DOES THE ATTORNEY-CLIENT PRIVILEGE APPLY EQUALLY TO ADVICE SOUGHT FROM FOREIGN LAWYERS IN RELATION TO INVESTIGATIONS IN YOUR COUNTRY?

Specified communications protection applies only to external lawyers registered in Japan under the Attorneys Act and does not apply to external or internal lawyers registered in a foreign country.

42 TO WHAT EXTENT IS WAIVER OF THE ATTORNEY-CLIENT PRIVILEGE REGARDED AS A COOPERATIVE STEP IN YOUR COUNTRY? ARE THERE ANY CONTEXTS WHERE PRIVILEGE WAIVER IS MANDATORY OR REQUIRED?

Specified communications protection is not a legal right per se; therefore, the concept of waiver of the attorney-client privilege does not exist.

43 DOES THE CONCEPT OF LIMITED WAIVER OF PRIVILEGE EXIST AS A CONCEPT IN YOUR JURISDICTION? WHAT IS ITS SCOPE?

No, this concept does not exist in Japan.

44 IF PRIVILEGE HAS BEEN WAIVED ON A LIMITED BASIS IN ANOTHER COUNTRY, CAN PRIVILEGE BE MAINTAINED IN YOUR OWN COUNTRY?

Any waiver of privilege (whether entirely or on a limited basis) in another country has no bearing on the ability of a holder of specified communications to request protection of communications under the JFTC Guidelines.

45 DO COMMON INTEREST PRIVILEGES EXIST AS CONCEPTS IN YOUR COUNTRY? WHAT ARE THE REQUIREMENTS AND SCOPE?

No, these concepts do not exist in Japan.

46 CAN PRIVILEGE BE CLAIMED OVER COMMUNICATIONS WITH THIRD PARTIES?

Specified communications protection applies to communications including memoranda, minutes of meetings and internal investigation reports, provided that they were conducted by external lawyers and relate to legal advice concerning bid-rigging or cartel allegations. Communications with third parties who support external lawyers in an investigation may be covered by this protection to the extent that it forms part of the specified communications.

WITNESS INTERVIEWS

47 DOES YOUR COUNTRY PERMIT THE INTERVIEWING OF WITNESSES AS PART OF AN INTERNAL INVESTIGATION?

It is not legally prohibited. However, where company officers or employees are defendants in a criminal proceeding, conducting interviews may inappropriately influence their testimony in the criminal trial; therefore, interviews are often avoided in practice. Additionally, because a defendant's testimony can serve as evidence, there is a risk that if a company communicates with the defendant and influences their testimony, it could be accused of tampering with evidence. Therefore, it is common practice to exercise caution when communicating with company executives or employees who are defendants.

48 CAN A COMPANY CLAIM THE ATTORNEY-CLIENT PRIVILEGE OVER INTERNAL WITNESS INTERVIEWS OR ATTORNEY REPORTS?

Specified communications protection applies to communications including memoranda, minutes of meetings and internal investigation reports, provided they were conducted by external lawyers and relate to legal advice concerning bid-rigging or cartel allegations. The protection does not apply if the reports merely document factual findings.

49 WHEN CONDUCTING A WITNESS INTERVIEW OF AN EMPLOYEE IN YOUR COUNTRY, WHAT LEGAL OR ETHICAL REQUIREMENTS OR GUIDANCE MUST BE ADHERED TO? ARE THERE DIFFERENT REQUIREMENTS WHEN INTERVIEWING THIRD PARTIES?

There are no specific requirements. However, it is common to explain how the information obtained from employees may be used, especially if it could be used against the employees themselves if they are involved in wrongdoing. Additionally, when an interview is conducted by a lawyer representing the company, it is crucial to clarify that the lawyer is not representing the interviewee. This is to prevent any misunderstanding that the lawyer may be acting as the interviewee's representative. The lawyer's role as the company's representative, rather than the interviewee's, is explicitly explained at the start of the interview.

50 HOW IS AN INTERNAL INTERVIEW TYPICALLY CONDUCTED IN YOUR COUNTRY? ARE DOCUMENTS PUT TO THE WITNESS? MAY OR MUST EMPLOYEES IN YOUR COUNTRY HAVE THEIR OWN LEGAL REPRESENTATION AT THE INTERVIEW?

The company would schedule an interview with the interviewee, usually with several interviewers. Requests for interviews with employees are made as part of official work orders. Typically, the company requests these interviews orally or via email, but if an employee does not comply, the company may issue a written request to mandate their participation in the interview. While employees are allowed to have legal representation, it is generally understood that the company, which holds the authority to issue work orders, decides how the internal interview would be conducted. As a result, it is rare for employees to have legal representation during these interviews.

REPORTING TO THE AUTHORITIES

51 ARE THERE CIRCUMSTANCES UNDER WHICH REPORTING MISCONDUCT TO LAW ENFORCEMENT AUTHORITIES IS MANDATORY IN YOUR COUNTRY?

There is no general requirement under law to report misconduct to law enforcement authorities. However, in specific circumstances (e.g., leaks of sensitive personal information or a serious workplace accident) or for specific incidents in certain regulated businesses (e.g., banks), companies are required to report misconduct to law enforcement authorities.

52 IN WHAT CIRCUMSTANCES MIGHT YOU ADVISE A COMPANY TO SELF-REPORT TO LAW ENFORCEMENT EVEN IF IT HAS NO LEGAL OBLIGATION TO DO SO? IN WHAT CIRCUMSTANCES WOULD THAT ADVICE TO SELF-REPORT EXTEND TO COUNTRIES BEYOND YOUR COUNTRY?

We may advise a company to self-report to law enforcement even if it has no legal obligation to do so when there is potential benefit, such as immunity from, or reduction in, fines under various leniency programmes. A leniency programme is available for bid-rigging or cartel allegations, under the Act on Prohibition of Monopolisation and Maintenance of Fair Trade, and misleading representation allegations, under the Act against Unjustifiable Premiums and Misleading Representations. In addition, although it is not set forth in the statute, the JFTC would consider lenient treatment where companies self-reported violations of the Subcontract Act.

We may extend our advice to self-report potential violations beyond Japan when those violations could be subject to the extraterritorial reach of foreign regulations and there is a similar potential benefit of self-reporting under these regulations.

53 WHAT ARE THE PRACTICAL STEPS NEEDED TO SELF-REPORT TO LAW ENFORCEMENT IN YOUR COUNTRY?

The company needs to conduct a thorough investigation to determine the nature, scope and seriousness of the allegations in an efficient manner. This would typically include interviewing relevant personnel, and reviewing and examining documents, including emails and other electronically stored information, financial records and test data, depending on the nature of allegations. The company then needs to prepare submission papers and accompanying documents to support the finding of violation as required by the relevant authorities. The JFTC, for example, requires companies to submit certain forms when applying for immunity from, or reduction in, fines under the leniency programme.

Furthermore, to receive any benefit from self-reporting (e.g., immunity from fines), applicants should cooperate with the authority throughout the course of the investigation by making their officers and employees available for interview, responding to various requests

for documents and data, and answering the authority's questions on the facts and circumstances of the case.

RESPONDING TO THE AUTHORITIES

54 IN PRACTICE, HOW DOES A COMPANY IN YOUR COUNTRY RESPOND TO A NOTICE OR SUBPOENA FROM A LAW ENFORCEMENT AUTHORITY? IS IT POSSIBLE TO ENTER INTO DIALOGUE WITH THE AUTHORITIES TO ADDRESS THEIR CONCERNS BEFORE OR EVEN AFTER CHARGES ARE BROUGHT? HOW?

Almost all companies diligently respond to requests from law enforcement authorities, whether mandatory or voluntary, and rarely refuse.

Before formal prosecution, companies may communicate and cooperate with the enforcement authorities and show their cooperative attitude in the investigation and remorse for the violation they committed in an effort to mitigate the charges and punishment. The main channels of communication and cooperation are legal counsel and, most importantly, through interrogation of the suspected employees and executives of the companies by the prosecutor. After formal indictment is brought and the trial phase commences, no communication channels are available and the prosecutor would have already reached a legal opinion on the sentence.

55 ARE ONGOING AUTHORITY INVESTIGATIONS SUBJECT TO CHALLENGE BEFORE THE COURTS?

There is no avenue for this, other than the filing of a motion to dismiss a warrant authorising search and seizure, arrest or detention. But because of the secrecy of investigations, it is difficult to file a motion to challenge ongoing investigations before the court.

56 IN THE EVENT THAT AUTHORITIES IN YOUR COUNTRY AND ONE OR MORE OTHER COUNTRIES ISSUE SEPARATE NOTICES OR SUBPOENAS REGARDING THE SAME FACTS OR ALLEGATIONS, HOW SHOULD THE COMPANY APPROACH THIS?

As requests for evidence or any other form of cooperation by Japanese enforcement authorities and requests from foreign authorities do not usually have any connection with each other, corporations tend to deal with each request separately by taking into account the degree of legal risk in each jurisdiction, whether foreign authorities have jurisdiction over Japanese entities and whether there are any issues from the perspective of personal data protection (see questions 61 and 62). In areas in which active international enforcement cooperation and information exchange among authorities in different jurisdictions occur, companies are advised to strive for consistency of the information and materials submitted to each authority.

57 IF A NOTICE OR SUBPOENA FROM THE AUTHORITIES IN YOUR COUNTRY SEEKS PRODUCTION OF MATERIAL RELATING TO A PARTICULAR MATTER THAT CROSSES BORDERS, MUST THE COMPANY SEARCH FOR AND PRODUCE MATERIAL IN OTHER COUNTRIES TO SATISFY THE REQUEST? WHAT ARE THE DIFFICULTIES IN THAT REGARD?

Japanese investigative authorities do not have the power to issue a subpoena or any other means to compel disclosure or submission of evidence outside Japan. Therefore, aside from conducting a compulsory search and seizure authorised by a warrant, they can only request that relevant individuals or entities voluntarily submit the requested evidence or cooperate with voluntary interrogations. Therefore, companies subject to these requests do not necessarily need to search and produce materials that are not in their possession or

in Japan. Because Japanese authorities seem to greatly fear being seen to infringe foreign jurisdiction or sovereignty, they rarely request evidence located outside Japan and would normally seek assistance from authorities of other jurisdictions through official channels if it became necessary to obtain material located outside Japan.

58 DOES LAW ENFORCEMENT IN YOUR COUNTRY ROUTINELY SHARE INFORMATION OR INVESTIGATIVE MATERIALS WITH LAW ENFORCEMENT IN OTHER COUNTRIES? WHAT FRAMEWORK IS IN PLACE IN YOUR COUNTRY FOR COOPERATION WITH FOREIGN AUTHORITIES?

According to a recent report published by the Japanese government, the number of annual requests for cooperation in investigations sent or received between foreign law enforcement agencies and the Japanese government through Interpol over the past decade ranged from 1,000 to several thousand, with several hundred requests being made through the formal international investigative assistance channel each year.

59 DO LAW ENFORCEMENT AUTHORITIES IN YOUR COUNTRY HAVE ANY CONFIDENTIALITY OBLIGATIONS IN RELATION TO INFORMATION RECEIVED DURING AN INVESTIGATION OR ONWARD DISCLOSURE AND USE OF THAT INFORMATION BY THIRD PARTIES?

In addition to the general confidentiality obligation imposed on public officials, information obtained through or during the investigation of criminal cases or any other investigative procedure is strictly confidential. Violation of confidentiality may be subject to criminal charge. The level of confidentiality of information received or disclosed during investigations depends on the type, nature and phase of law enforcement activities, but there are certain cases where information and materials disclosed to law enforcement authorities could be made accessible to third parties through court proceedings or made known to the public by publication of authority decisions, notifications or press releases.

60 HOW WOULD YOU ADVISE A COMPANY THAT HAS RECEIVED A REQUEST FROM A LAW ENFORCEMENT AUTHORITY IN YOUR COUNTRY SEEKING DOCUMENTS FROM ANOTHER COUNTRY, WHERE PRODUCTION WOULD VIOLATE THE LAWS OF THAT OTHER COUNTRY?

We would first analyse whether the law enforcement authority has the power to legally order the client to produce documents from another country without undermining the sovereignty of that country and whether the company can legally refuse to produce those documents based on the ground that the production would violate the laws of the other country under the applicable laws of both Japan and the other country. Subject to the analysis results, we would advise the company to refuse the requested document production by explaining the grounds for refusal to the authority and suggest that the authority seek assistance from the government of the other country through official channels.

61 DOES YOUR COUNTRY HAVE SECRECY OR BLOCKING STATUTES? WHAT RELATED ISSUES ARISE FROM COMPLIANCE WITH A NOTICE OR SUBPOENA?

Japan does not have secrecy or blocking statutes that generally prohibit the production of certain information to law enforcement authorities or courts in other jurisdictions.

Under the APPI, a company may not transfer personal data to third parties, including those located outside Japan, without the data subject's consent. A company may transfer personal data without the data subject's consent when the transfer is 'in accordance with laws and regulations', but it is considered that 'laws and regulations' means Japanese laws and

regulations only. Therefore, legal advice should be taken on a case-by-case basis when documents that contain personal data are produced in accordance with a notice or subpoena from law enforcement authorities or courts in other jurisdictions.

62 WHAT ARE THE RISKS IN VOLUNTARY PRODUCTION VERSUS COMPELLED PRODUCTION OF MATERIAL TO AUTHORITIES IN YOUR COUNTRY? IS THIS MATERIAL DISCOVERABLE BY THIRD PARTIES? IS THERE ANY CONFIDENTIALITY ATTACHED TO PRODUCTIONS TO LAW ENFORCEMENT IN YOUR COUNTRY?

Under the APPI, a company may transfer personal data without the data subject's consent if the transfer is in accordance with laws and regulations, but a voluntary production is not 'in accordance with laws and regulations'. In addition, non-disclosure obligations in commercial contracts are typically used to lawfully refuse disclosure to law enforcement authorities and courts despite production or disclosure orders, although the obligated contract party may choose to make a voluntary production (and breach the contract). Therefore, the risks associated with the APPI and non-disclosure obligations should be assessed when the materials produced voluntarily include information that should be treated as confidential under contracts or as personal information.

In general, Japanese law enforcement authorities maintain the confidentiality of the information provided to them, and their officers have confidentiality obligations. However, the authorities can normally use the information in enforcement activities under the relevant laws and regulations, and, therefore, the information could be made accessible to third parties through court proceedings or made known to the public by publication of authority decisions, notifications or press releases.

PROSECUTION AND PENALTIES

63 WHAT TYPES OF PENALTIES MAY COMPANIES OR THEIR DIRECTORS, OFFICERS OR EMPLOYEES FACE FOR MISCONDUCT IN YOUR COUNTRY?

Companies and their directors, officers or employees may face monetary fines and the confiscation of items associated with the misconduct or a fine equivalent to the value of the items. Individuals involved in misconduct may also be subject to imprisonment.

Under Japanese criminal law, companies may only be held criminally liable when there is specific provision under the law allowing for a company's punishment (dual liability provision). Under a dual liability provision, a company is criminally punishable only when it has been proved that one of its officers or employees committed a specific criminal offence in connection with the business of that company. To avoid punishment under a dual liability provision, the company must prove that it was not negligent in appointing or supervising the individual who committed the offence, which is often a challenging task.

64 WHERE THERE IS A RISK OF A CORPORATE'S SUSPENSION, DEBARMENT OR OTHER RESTRICTIONS ON CONTINUING BUSINESS IN YOUR COUNTRY, WHAT OPTIONS OR RESTRICTIONS APPLY TO A CORPORATE WANTING TO SETTLE IN ANOTHER COUNTRY?

There is no general law that requires companies to be excluded from participating in public procurement for a specific period when they have been convicted of certain offences. However, one of the requirements of public procurement participation may be that the applicant has not been convicted of a certain offence. For example, if the JFTC has taken action against a company for cartel or bid-rigging practices, the company may not be entitled to participate in certain government work. As such, it is important to consider the types of

public procurement that the company is, or may need to be, involved in and understand the requirements or expected requirements.

Similarly there is no general law that would result in companies being excluded from public procurement by settling in another jurisdiction. However, certain implications may apply based on the type of procurement in question. Therefore, companies should carefully assess each situation and understand the requirements or expected requirements.

65 WHAT DO THE AUTHORITIES IN YOUR COUNTRY CONSIDER WHEN FIXING PENALTIES?

Penalties, whether criminal or punitive, are largely decided in accordance with the severity of the results of the misconduct, namely the gravity of the damage caused to victims and the undue profit obtained through the breach. Statute amendments generally make penalties for violations harsher, not lighter, and, in practice, punishments imposed for all categories of crime and violations of law, including those by corporations, are generally becoming more severe.

RESOLUTION AND SETTLEMENTS SHORT OF TRIAL

66 ARE NON-PROSECUTION AGREEMENTS OR DEFERRED PROSECUTION AGREEMENTS AVAILABLE IN YOUR JURISDICTION FOR CORPORATIONS?

The *goui seido* plea bargaining system is available to corporations. Suspects and criminal defendants can avoid indictment or obtain lighter sentences by providing information to prosecutors about the criminal acts of others.

To date, there have only been four reported cases on the use of the plea bargaining system. In one instance, officers and employees were convicted of bribing a foreign public official. The company utilised the plea bargaining system to provide information on the bribery committed by its officers and employees, thereby avoiding prosecution.

67 DOES YOUR JURISDICTION PROVIDE FOR REPORTING RESTRICTIONS OR ANONYMITY FOR CORPORATES THAT HAVE ENTERED INTO NON-PROSECUTION AGREEMENTS OR DEFERRED PROSECUTION AGREEMENTS UNTIL THE CONCLUSION OF CRIMINAL PROCEEDINGS IN RELATION TO CONNECTED INDIVIDUALS TO ENSURE FAIRNESS IN THOSE PROCEEDINGS?

A plea bargaining agreement will only become public when a case is brought before a criminal court. At this time, the corporation's details will be included and there is no reporting restriction or anonymity available.

68 PRIOR TO ANY SETTLEMENT WITH A LAW ENFORCEMENT AUTHORITY IN YOUR COUNTRY, WHAT CONSIDERATIONS SHOULD COMPANIES BE AWARE OF?

Companies should seek the advice of legal counsel and assess the relevant evidence and the advantages and disadvantages of a plea bargain prior to settling. Furthermore, given the very limited number of reported cases on the use of the plea bargaining system, companies should assess – through legal counsel – whether the prosecutor's office is likely to agree to a plea bargain.

69 TO WHAT EXTENT DO LAW ENFORCEMENT AUTHORITIES IN YOUR COUNTRY USE EXTERNAL CORPORATE COMPLIANCE MONITORS AS AN ENFORCEMENT TOOL?

Japanese law enforcement authorities do not generally use external corporate compliance monitors as an enforcement tool. The JFTC has stated that it plans to further utilise monitoring by external experts.

70 ARE PARALLEL PRIVATE ACTIONS ALLOWED? MAY PRIVATE PLAINTIFFS GAIN ACCESS TO THE AUTHORITIES' FILES?

Parallel private actions are allowed under Japanese law.

With respect to access to the authorities' files, if a private plaintiff is a victim of the criminal act for which the defendant is being prosecuted, they can request the court's permission to view or copy criminal litigation records, even while the criminal proceeding is pending. In addition, if a criminal proceeding has been concluded, a private plaintiff may view the criminal litigation records regardless of whether they were a victim of the crime.

If the defendant was investigated but not prosecuted, a private plaintiff will generally not be able to view or copy the case records. However, when there is a public necessity and it is deemed appropriate, the prosecutor's office may allow access to records. In practice, it is not unusual for prosecutors to allow victims to access these records. Therefore, private plaintiffs should consult with their legal counsel about whether to request access to the records in cases in which the defendant was not prosecuted.

PUBLICITY AND REPUTATIONAL ISSUES

71 OUTLINE THE LAW IN YOUR COUNTRY SURROUNDING PUBLICITY OF CRIMINAL CASES AT THE INVESTIGATORY STAGE AND ONCE A CASE IS BEFORE A COURT.

There are no specific legal rules regarding the publicity of criminal investigations. However, it is common practice not to disclose details of ongoing police or prosecutorial investigations to avoid influencing the investigation. On the other hand, criminal trials are generally open to the public (Japanese Constitution, Article 82) and court records are typically accessible (Criminal Procedure Law, Article 53).

72 WHAT STEPS DO YOU TAKE TO MANAGE CORPORATE COMMUNICATIONS IN YOUR COUNTRY? IS IT COMMON FOR COMPANIES TO USE A PUBLIC RELATIONS FIRM TO MANAGE A CORPORATE CRISIS IN YOUR COUNTRY?

Most companies have a public relations department that manages corporate communications. However, for significant issues that directly relate to the company's reputational risk, such as corporate misconduct, discussions and decisions are often made by higher-level committees or the board of directors, rather than solely by the public relations department. Additionally, regulatory bodies may take an interest in the company's public statements; in these cases, companies may consult with government agencies before making public disclosures. Furthermore, it is not uncommon for companies to retain a public relations firm to handle communications, especially in cases of high public interest.

73 HOW IS PUBLICITY MANAGED WHEN THERE ARE ONGOING RELATED PROCEEDINGS?

Public relations responses are conducted with consideration for ongoing related litigation. Particularly during criminal proceedings, publicity about matters under judicial review is restrained to avoid undue influence on the proceedings. In cases where civil litigation is pending against a company, the content of public disclosures is carefully considered and decided upon, as it could potentially be submitted as evidence in court.

DUTY TO THE MARKET

74 IS DISCLOSURE TO THE MARKET MANDATORY IN CIRCUMSTANCES WHERE A SETTLEMENT HAS BEEN AGREED BUT NOT YET MADE PUBLIC?

Generally, there is no mandatory disclosure requirement to the market when a settlement is agreed upon. However, depending on the significance of the settlement, timely disclosure to the market or the filing of an extraordinary report may be required if the company is listed or is a reporting company in Japan.

ENVIRONMENTAL, SOCIAL AND CORPORATE GOVERNANCE

75 DOES YOUR COUNTRY REGULATE OR PROSECUTE ENVIRONMENTAL, SOCIAL AND GOVERNANCE MATTERS?

Japan does not have a comprehensive environmental, social and governance (ESG) regulation equivalent to the EU Corporate Sustainability Due Diligence Directive. Instead, ESG-related regulation is scattered across various laws and regulations, such as:

- the Act on the Promotion of Global Warming Countermeasures and the Act on Rationalising Energy Use for environmental matters;
- the Act on Equal Opportunity and Treatment between Men and Women in Employment and the Act on the Promotion of Women's Participation and Advancement in the Workplace for social matters; and
- the Companies Act or various anti-corruption regulations in the Criminal Code or the Unfair Competition Prevention Act for governance matters.

Additionally, there are various soft laws that provide practical guidance for implementing certain ESG initiatives in companies, including:

- the Guidelines on Respecting Human Rights in Responsible Supply Chains, issued by the Japanese government, and the Reference Material on Practical Approaches for Business Enterprises to Respect Human Rights in Responsible Supply Chains, issued by the Ministry of Economy, Trade and Industry; and
- the Introductory Guide on Environmental Due Diligence along the Value Chain, issued by the Ministry of the Environment.

Certain disclosure requirements are also stated in various laws and regulations. For example, mandatory disclosure requirements under the Financial Instruments and Exchange Act require reporting companies to include specific information about sustainability initiatives in one section of their annual report. Currently, there are no standards for sustainability disclosures in Japan. However, the Sustainability Standards Board of Japan (SSBJ) has been addressing this gap, and in March 2025, it published the final version of the Sustainability Disclosure Standards.

76 DO YOU EXPECT TO SEE ANY KEY REGULATORY OR LEGISLATIVE CHANGES EMERGE IN THE NEXT YEAR OR SO DESIGNED TO ADDRESS ENVIRONMENTAL, SOCIAL AND GOVERNANCE MATTERS, AND WHAT HAS BEEN THE RESPONSE TO ANY RECENT REGULATORY OR LEGISLATIVE CHANGE?

According to the interim summary report by the Financial System Council's Working Group on Disclosure and Assurance of Sustainability Information, the application timeline for the SSBJ's Sustainability Disclosure Standards is as follows:

- for companies with a market capitalisation of ¥3 trillion or more, the standards will apply from the fiscal year ending March 2027;
- for companies with a market capitalisation of less than ¥3 trillion but ¥1 trillion or more, the standards will apply from the fiscal year ending March 2028; and
- for companies with a market capitalisation of less than ¥1 trillion but ¥500 billion or more, the standards will apply from the fiscal year ending March 2029.

Regarding human rights, it remains uncertain whether Japan will introduce mandatory due diligence requirements comparable to the EU Corporate Sustainability Due Diligence Directive or implement export/import controls and economic sanctions for human rights violations similar to those in the United States or Europe.

77 HAS THERE BEEN AN INCREASE IN RELATED LITIGATION, INVESTIGATIONS OR ENFORCEMENT ACTIVITY IN RECENT YEARS IN YOUR COUNTRY?

While no clear trend in ESG-related litigation has yet emerged, various lawsuits concerning environmental or social issues have taken place. A notable decision involving LGBTQ rights was made in July 2023, when the Supreme Court ruled that restricting a transgender employee's access to the women's bathroom at the Ministry of Economy, Trade and Industry was illegal. This ruling drew significant public attention.

Separately, Japanese manufacturers with supply chains in Southeast Asia, particularly in countries such as Malaysia, are increasingly facing allegations of forced labour at supplier facilities. These concerns have led to warnings and potential litigation in jurisdictions such as the United States.

Investigations have also begun into misrepresentations in both mandatory and voluntary sustainability disclosures. Additionally, enforcement activity has targeted Japanese manufacturing companies for falsifying data or testing results in relation to products specifically designed for ESG purposes.

ANTICIPATED DEVELOPMENTS

78 DO YOU EXPECT TO SEE ANY KEY REGULATORY OR LEGISLATIVE CHANGES EMERGE IN THE NEXT YEAR OR SO DESIGNED TO ADDRESS CORPORATE MISCONDUCT?

No significant regulatory changes addressing corporate misconduct are currently planned.

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