

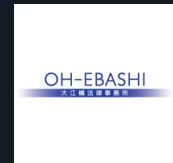
Legal 500 Country Comparative Guides 2024

Japan

Bribery & Corruption

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This country-specific Q&A provides an overview of bribery & corruption laws and regulations applicable in Japan.

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Japan: Bribery & Corruption

1. What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?

Legal restrictions on bribery are basically set out in the Penal Code and the Unfair Competition Prevention Act (UCPA).

Bribery of domestic public officials is prohibited under the Penal Code. Article 197 through 197-4 of the Penal Code provides that the offence related to bribes is committed if a 'public employee', in connection with his/her duties, : (i) accepts, solicits, or promises to accept a bribe; (ii) causes, solicits or promises to a bribe to be given to a third party; (iii) acts illegally or refrains from acting in the exercise of his/her duty after/before committing (i) or (ii); or (iv) accepts, solicits, or promises to accept a bribe as consideration for the influence on another public employee so as to cause the other to act illegally or refrain from acting in the exercise of official duty.

The 'public employee' above includes a 'deemed public employee', who various statutes provide to be 'deemed to be an official engaged in public service by law' for purposes of application of the Penal Code and other penalties (see question 4).

Article 198 of the Penal Code provides that the offence of active bribery is committed if a person gives, offers or promises to give a bribe to a public employee, including a deemed public employee, in connection with his/her duties.

Moreover, the Act on Punishment of Public Officials' Profiting by Exerting Influence (APPOPEI) provides that the offence of profiting by exerting influence is committed if a member of the Diet or a local public entity accepts an economic benefit as consideration for exerting influence in relation to transactions with a national or local public entity or an administrative penalty so as to cause a public employee to act or refrain from acting in the exercise of official duty.

The UCPA provides that the offence of bribery of a foreign public official is committed if a person gives, offers or promises any money or other benefit to a foreign public official in connection with the official's duties.

The National Public Service Ethics Act and related

regulations provide guidelines regarding gifts and other kinds of benefits that a public official may receive.

2. Which authorities have jurisdiction to investigate and prosecute bribery and corruption in your jurisdiction?

Under the Code of Criminal Procedure (CCP), public prosecutors solely have the power to prosecute criminal cases, including bribery and corruption, while police officers are the primary investigative authority on criminal cases, including bribery and corruption. The police officers are obligated to send cases to public prosecutors.

In actuality, however, public prosecutors are often at the centre of an investigation and in certain cases, such as cases involving members of the Diet or other politically sensitive cases, may be investigated solely by public prosecutors.

3. How is 'bribery' or 'corruption' (or any equivalent) defined?

There are no statutory definitions of 'bribery' or 'corruption'.

Under court precedents, 'bribery' is considered to be any benefit as unjust remuneration for the services of a public officer. Such 'benefit' includes anything that satisfies one's desires or demands, such as hospitality, travel, or entertainment expenses.

The government sometimes uses in statistics the word 'corruption' defined as 'misconducts in connection with one's duty in order for personal gain', which includes embezzlement, certain type of fraud, forgery of public documents, etc, or 'the offence of bribery and active bribery, and the offence abuse of authority by public employees (including causing death or injury)'.

4. Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is 'public official' defined? Is a distinction made between a public official and a

foreign public official? Are there different definitions for bribery of a public official and bribery of a private person?

The Penal Code defines a 'public employee' as 'a national or local government official, a member of an assembly or committee, or other employee engaged in the performance of public duties in accordance with laws and regulations.'

A private person can be deemed to be an 'public employee' only for purposes of application of the Penal Code and other penalties, if such person performs a service related to public interest and there is a statute provides that such person shall be treated as a 'deemed public official'. Examples of such deemed public officials are officers and employees of the Bank of Japan, national universities, state-owned enterprises, and notaries public.

A foreign public official under the UCPA is defined as (i) a person engaged in public service for the national or local government of a foreign state; or (ii) a person engaged in the business affairs of an entity established under a special foreign law to carry out specific business affairs in the public interest, etc.

There is no statute that expressly and generally prohibits commercial bribery in Japan.

5. Who may be held liable for bribery? Only individuals, or also corporate entities?

Individuals and corporate entities may be held liable for bribery. A corporate entity (judicial person) may be held criminally liable only when there are specific provisions allowing for its punishment, prescribed in the form of a dual liability provision. A corporate entity is not liable if it proves that it was not negligent in appointing or supervising the natural person who actually committed the offence of bribery.

6. What are the civil consequences of bribery and corruption offences in your jurisdiction?

An employee who commits bribery may be subject to civil disciplinary action under employment law or other applicable laws by an organization or corporate entity which such employee belongs to. It is also possible that if such person causes damage to his/her organization by committing bribery, he/she may be liable for damages arising from a breach of his/her duties, such as a statutory duty of care for directors.

7. What are the criminal consequences of bribery and corruption offences in your jurisdiction?

Under the Penal Code, the punishment for the offence of bribery is imprisonment for a maximum term of seven years, five years or twenty years, depending on the type of the offence, together with forfeiture of such bribe or collection of an equivalent amount of money. The punishment for the offence of active bribery, which means giving, offering or promising to give a bribe, is imprisonment for a maximum term of three years or a fine not exceeding JPY 2.5 million.

Under the UCPA, the punishment for the offence of bribery of a foreign public official is (a) imprisonment for a maximum term of ten years and/or a fine not exceeding JPY 30 million for individuals; or (b) a fine not exceeding JPY 1,000 million for a legal entity in the event that a director, an officer or employee, etc. of such legal entity commits the crime in relation to its business.

8. Are mechanisms such as Deferred Prosecution Agreements (DPAs) available for bribery and corruption offences in your jurisdiction?

There is no pretrial agreement to defer prosecution in Japan.

Under the plea-bargaining system that took effect in 2018, a prosecutor may enter into an agreement with a suspect or defendant (including corporate entities) with the consent of counsel, under which the prosecutor may agree to drop or reduce criminal charges, or provide favourable treatment only if the suspect or defendant cooperates in the investigation against another person or other persons with respect to certain types of crimes. The suspect or defendant may not exempt himself/herself from prosecution or receive a reduced sentence merely for cooperating in the investigation. To date, this plea-bargaining system has rarely been used.

9. Does the law place any restrictions on hospitality, travel and entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials? Are there specific monetary limits?

Hospitality, travel and entertainment can be bribery, if received as remuneration for the services of a public officer under Japanese laws (see question 3), and any statute or legal precedent does not set quantitative or qualitative limitations on hospitality, travel or

entertainment expenses.

According to the guidelines based on the National Public Service Ethics Act and related regulations (see question 1), restrictions are placed on national public officials regarding hospitality, travel and entertainment. For example, such officials are prohibited to receive entertainment or treats from interested parties or to travel (excluding business travel for public service purposes) with interested parties.

10. Are political contributions regulated? If so, please provide details.

The Political Fund Control Act regulates political contributions.

Only political parties and political fund-managing organizations appointed by political parties are allowed to accept donations from corporations and other organizations. The total annual amount of such donations is restricted by the size of the corporation or organization.

Individuals are allowed to make donations to candidates for elected public offices and/or political organizations, while the total annual amount of such donations is restricted.

Non-Japanese citizens, entities and organizations are prohibited from making donations in connection with any political activity. Non-Japanese entities or organizations mean entities or organizations where the majority of the members are non-Japanese citizens or entities, with the exception of Japanese listed companies listed for more than five consecutive years.

Political organizations are required to report their revenues and expenses in detail to the Ministry of General Affairs or a Local Election Management Council, depending on whether the elections are parliamentary or local.

11. Are facilitation payments regulated? If not, what is the general approach to such payments?

The Ministry of Economy, Trade and Industry (METI) publishes the Guidelines for the Prevention of Bribery of Foreign Public Officials (METI Guidelines, revised in May, 2021). According to this guideline, 'since there is no exceptional provision with regard to Small Facilitation Payments (SFP) explicitly under the Unfair Competition Prevention Act, the giving of any money or other benefit to a foreign public official, etc. in order to 'obtain a

wrongful gain in business', even if the amount is small, is a violation of the Unfair Competition Prevention Act'.

However, the guideline also explains that whether or not small facilitation payments violate the Unfair Competition Prevention Act is determined based on the presence of the intention "to obtain a wrongful gain in business", and if the advantage was permitted or required by the written law or regulation of the foreign public official's country, it does not violate the Unfair Competition Prevention Act.

12. Are there any defences available to the bribery and corruption offences in your jurisdiction?

A defence of necessity stipulated in Article 37 of the Penal Code is considered to be available, at least theoretically, in a case where, for example, a foreign government official carrying a gun demanded a bribe in return for leaving the defendant's office without making a groundless arrest against the defendant.

In addition, sometimes a defendant is acquitted because all the elements constituting the offence of bribery are not proven, such as in a case where there is no proof that shows the payments were made directly in return for favours from the defendant.

13. Are compliance programs a mitigating factor to reduce/eliminate liability for bribery offences in your jurisdiction?

According to the METI Guidelines, companies' efforts in the area of internal control are also extremely effective in the prevention of bribery of foreign public officials, which is clearly shown by the agreement reached during the Evian Summit in June 2003 that governments should encourage the private sector to develop compliance programs in respect of bribery of foreign public officials.

Even though there is no statute that explicitly provides that compliance programs should be considered as a mitigating factor to reduce or eliminate criminal liability for bribery offences, public prosecutors may take into consideration the compliance program of a corporate as a mitigating factor and reduce or eliminate liability for bribery offences if the implemented programs have been effectively promoted and managed.

14. Has the government published any guidance advising how to comply with anti-corruption and

bribery laws in your jurisdiction?

The METI Guidelines (see question 9 and 12) articulate the details of an effective corporate compliance program. The key elements described in the METI Guidelines are (i) the importance of the attitude and message from top management, (ii) a risk-based approach, and (iii) the need to take action at a subsidiary level based on the bribery risk.

15. Does the law in your jurisdiction provide protection to whistle-blowers? Do the authorities in your jurisdiction offer any incentives or rewards to whistle-blowers?

The Whistleblower Protection Act protects a 'whistleblower', which means a person who has made a whistleblowing disclosure, by prohibiting dismissal and disadvantageous treatment, such as a demotion or reduction in salary, of the whistleblower as a consequence of the whistleblowing.

A 'whistleblowing disclosure' means disclosure of 'reportable facts' such as the facts of criminal acts constituting the crimes concerning the protection of the life or wellbeing of an individual, etc or the facts constituting the grounds for the foregoing criminal acts, without a purpose of acquiring a wrongful gain, causing damage to others, or any other wrongful purpose, to an administrative organ with the authority to impose a disposition regarding the reportable facts.

Under the current Whistleblower Protection Act, there is neither a provision for reducing or exempting the responsibility of the whistleblower if he/she was involved in the reportable facts, nor a system for rewarding the whistleblower for his/her reporting, though the government encourages each company to establish in its internal rules and regulations a reduction or exemption of liability on the basis of whistleblowing.

16. How common are government authority investigations into allegations of bribery? How effective are they in leading to prosecutions of individuals and corporates?

In recent five years, the police have recognized and investigated approximately 30-40 domestic bribery cases per year.

Even though investigations of foreign bribery cases have been rare in Japan, authorities are now paying more attention to them than ever before. In each of 2009, 2013,

2015, 2019 and 2020, companies were convicted for bribery of a foreign public official under the UCPA in total of 8 cases. The 2019 case was the first case to be prosecuted using the new plea-bargaining system in Japan (see question 8 and 17).

17. What are the recent and emerging trends in investigations and enforcement in your jurisdiction?

Under the new plea-bargaining system, a prosecutor may enter into an agreement with a suspect or defendant in return for cooperation for investigation, even though the number of cases where a plea agreement has been entered into is still very low (see question 8). One of the publicized criminal cases where this plea-bargaining system has been applied is a foreign bribery case involved a power plant manufacturer. The company successfully entered into an agreement whereby the prosecutor agreed not to prosecute in exchange for full cooperation with an investigation to prosecute the three main individual suspects (see question 16).

In August 2022, a former director of the Tokyo Organising Committee for the Olympic and Paralympic Games, who had been a deemed public employee, was arrested by the Tokyo District Public Prosecutors Office for receiving bribes from sponsor companies. The case was investigated solely by the public prosecutors, and it spread into a bid-rigging case involving test competitions.

18. Is there a process of judicial review for challenging government authority action and decisions? If so, please describe key features of this process and remedy.

Even though public prosecutors have discretionary power to decide whether to prosecute a bribery case, the Prosecution Review Board, which is a judicial review panel for non-prosecution cases, can review the decision and recommend the prosecutor to prosecute the case.

After prosecution, any guilty judgment rendered by the district courts are appealable to a high court 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 also appealable to the Supreme Court, which is the highest and final court on the ground of non-compliance with the Constitution or judicial precedents rendered by the Supreme Court.

19. Have there been any significant developments or reforms in this area in your jurisdiction over the past 12 months?

The revised UCPA, effective from April 1st, 2024, has provided the increased statutory penalties for the offences related to bribery of foreign public officials and changed the requirements for the offence.

The punishment for the offence of bribery of a foreign public official has been changed from (a) imprisonment for a maximum term of five (5) years and/or a fine not exceeding JPY 5 million for individuals; or (b) a fine not exceeding JPY 300 million for a legal entity, to (a) imprisonment for a maximum term of ten (10) years and/or a fine not exceeding JPY 30 million for individuals; or (b) a fine not exceeding JPY 1,000 million for a legal entity.

Under the revised UCPA, even if a foreign employee in a foreign country, not a domestic employee, gives, offers or promises any money or other benefit to a foreign public official, it constitutes the offence of bribery of a foreign public official.

20. Are there any planned or potential developments or reforms of bribery and anti-corruption laws in your jurisdiction?

No.

21. To which international anti-corruption conventions is your country party?

In 1997 Japan ratified the Organisation for Economic Cooperation and Development's (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention). In connection with acceding to the OECD Convention, in 1998 the UCPA was revised to criminalise bribery of foreign public officials.

In addition, in 2017 Japan ratified the UN Convention Against Corruption (UNCAC) that includes provisions requiring legal measures against the acceptance of bribes by domestic public officials, and against bribery of domestic or foreign public officials.

22. Do you have a concept of legal privilege in your jurisdiction which applies to lawyer-led investigations? If so, please provide details on

the extent of that protection. Does it cover internal investigations carried out by in-house counsel?

There is no legal professional privilege under which attorney–client communications may be broadly protected. In an administrative investigation into cartels or bid rigging, certain types of documents and communications between the attorney and the officers and employees of a target business may be protected under regulations related to the Act on the Prohibition of Private Monopolisation and Maintenance of Fair Trade, but the scope of this protection is quite limited.

In civil proceedings, a company or person has the right to refuse the production of certain types of documents, including documents prepared exclusively for the use of the company or person in possession. Document created by in-house counsel relate to internal investigations may fall under this category.

23. How much importance does your government place on tackling bribery and corruption? How do you think your jurisdiction's approach to anti-bribery and corruption compares on an international scale?

Japan has been required to tackle bribery and corruption in compliance with international conventions (see question 21).

Under this national policy, investigative authorities have been active to investigate domestic and overseas bribery cases in Japan (see question 17), even though the number of cases where companies or individuals were prosecuted for bribery of a foreign public official is still low.

24. Generally how serious are organisations in your country about preventing bribery and corruption?

Generally, as the METI Guidelines state, social responsibility of businesses is becoming increasingly weighty as business operations become more and more internationalized, and companies are making active efforts in the area of internal controls, in their attempt to ensure statutory compliance and to add more efficiency to their operations.

As a part of such efforts, the majority of Japanese companies are in the process of implementing effective

preventive measures for bribery and corruption, including the adoption of global compliance programs, global whistleblowing systems and global audit systems.

25. What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction? How have they sought to tackle these challenges?

Because bribery is usually committed secretly, it is hard to collect evidence to establish the intent of the offenders, which proves the offering party and the receiving party both recognised that the purpose for offering and receiving benefit was advantageous treatment in connection with the public employee's authority. Investigations of bribery cases of foreign public officials generally face additional difficulties in collecting relevant evidence because the crime scenes are abroad. Public prosecutors have tackled these challenges by using the new plea-bargaining system (see questions 8, 16, 17).

26. What are the biggest challenges businesses face when investigating bribery and corruption issues?

One of the most significant challenges businesses face is how to detect corruption-related information internally at an early stage in order to mitigate the potential damage of the bribery or corruption.

For example, an internal report of bribery related to the Tokyo Organising Committee for the Olympic and Paralympic Games states that, as a corporate culture, employees of the company have a strong tendency to consider that they would suffer disadvantages in personnel matters if they go against the wishes of their superiors.

27. How have authorities in your jurisdiction

sought to address the challenges presented by the significant increase of electronic data in either investigations or prosecutions into bribery and corruption offences?

In the case of bribery related to the Tokyo Organising Committee for the Olympic and Paralympic Games, recorded audio data of meetings and internal e-mails of the Committee were seized and used to prove the case.

In terms of general investigative measure, on February 15, 2024, the Subcommittee of the Legislative Council on Criminal Law related to Information and Communication Technology proposed the creation of a new compulsory investigative measure which enables investigative authority to compel a person to provide certain electronic records specified in a warrant with criminal penalty for non-compliance to the warrant.

28. What do you consider will be the most significant bribery and corruption-related challenges posed to businesses in your jurisdiction over the next 18 months?

Taking effective measures to detect information related to bribery and corruption at an early stage would be significant and challenging.

29. How would you improve the legal framework and process for preventing, investigating and prosecuting cases of bribery and corruption?

In terms of prevention, implementation and improvement of domestic and/or global whistleblowing systems and domestic and/or global audit systems would be significant.

In terms of investigation and prosecution, finding information and collecting evidence by way of utilizing the plea-bargaining system and other new systems would be significant.

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