



**COUNTRY  
COMPARATIVE  
GUIDES 2023**

# The Legal 500 Country Comparative Guides

## Japan

# WHITE COLLAR CRIME

### Contributor

GI&T Law Office



#### Kengo Nishigaki (Mr.)

Representative Partner | [kengo.nishigaki@giandt-law.com](mailto:kengo.nishigaki@giandt-law.com)

#### Andrew Trost Griffin (Mr.)

Counsel | [andrew.griffin@giandt-law.com](mailto:andrew.griffin@giandt-law.com)

#### Yuji Yamamoto (Mr.)

Senior Associate | [yuji.yamamoto@giandt-law.com](mailto:yuji.yamamoto@giandt-law.com)

This country-specific Q&A provides an overview of white collar crime laws and regulations applicable in Japan.

For a full list of jurisdictional Q&As visit [legal500.com/guides](https://legal500.com/guides)

# JAPAN

## WHITE COLLAR CRIME



### 1. What are the key financial crime offences applicable to companies and their directors and officers? (E.g. Fraud, money laundering, false accounting, tax evasion, market abuse, corruption, sanctions.) Please explain the governing laws or regulations.

In Japanese law there is a Penal Code, which serves as the fundamental law defining crimes and punishments. The Penal Code stipulates economic crimes such as fraud, breach of trust, embezzlement, and bribery.

In addition to the Penal Code, there are special laws in many other areas. Bribes to foreign public officials are covered by the Unfair Competition Prevention Law, and regulatory laws, such as the Pharmaceuticals and Medical Devices Act, stipulate criminal penalties for various violations.

In addition, the following economic crimes are governed by specific laws and regulations :

- Money Laundering - Crime Proceeds Transfer Prevention Act
- Insider Trading - Financial Instruments and Exchange Act
- Fraudulent Accounting and other accounting fraud - Financial Instruments and Exchange Act and Companies Act
- Tax Evasion - Corporation Tax Act and other tax-related laws
- Trade Secret Infringement - Unfair Competition Prevention Law

### 2. Can corporates be held criminally liable? If yes, how is this determined/attributed?

Under the Japan Penal Code, in principle, the subject of punishment is a natural person, and corporate punishment is permitted only in exceptional cases stipulated in various laws and regulations .

Such laws and regulations are called “dual punishment provisions.” When a representative, agent, or employee of a legal entity commits a criminal act in connection with the business of the legal entity, the penalty is imposed not only on the natural person who committed the act, but also on the legal entity itself.

### 3. What are the commonly prosecuted offences personally applicable to company directors and officers?

Up to now, the main crimes for which directors and officers have been prosecuted in Japan are breach of trust, embezzlement, insider trading, and accounting fraud.

However, in recent years, there were cases where directors and officers of several large companies were prosecuted and convicted for paying bribes to the president of the organizing committee for the Tokyo Olympic and Paralympic Games. In response to the worldwide trend to crackdown on bribery, Japan is expected to further escalate its crackdown on bribery by directors and officers.

### 4. Who are the lead prosecuting authorities which investigate and prosecute financial crime and what are their responsibilities?

The primary investigative authorities in Japan are the police and the prosecutor, with the prosecutor having the exclusive authority to indict.

There is no national Japanese police organization dedicated to investigating economic crimes. Therefore, the Economic Crimes Division of the police in each prefecture (commonly known as the Second Criminal Division) is mainly in charge of such investigations.

On the other hand, the Tokyo, Osaka, and Nagoya prosecutors offices contain specialized investigation departments that, independent of the police, often conduct their own investigations into serious economic

crimes. In particular, the activities of the specialized investigation departments of the Tokyo District Public Prosecutors Office have been quite remarkable. For instance, the department conducted its own investigation of the bribery allegations surrounding the Tokyo Olympics & Paralympics.

In addition, law enforcement agencies such as the National Tax Agency, Fair Trade Commission, and Securities and Exchange Surveillance Commission may be involved in gathering evidence. Such evidence gathering is primarily for the purpose of investigating violations of tax laws and administrative laws, but not as a rule for criminal investigations per se. However, evidence collected by these law enforcement agencies may be used in criminal investigations by police and prosecutors.

### **5. Which courts hear cases of financial crime? Are trials held by jury?**

In Japan, there is no special court to deal with economic crimes, such crimes are subject to ordinary criminal court procedures.

Japan has not introduced a jury system. However, there is a special criminal court procedure called the "lay judge system" (*saiban-in-seido*) only in cases punishable by the death penalty, life imprisonment, or imprisonment, and in cases of voluntary manslaughter. In 2009, in order to reflect the opinions of ordinary citizens in serious criminal cases, a panel system whereby a mixed panel of six lay persons and professional judges is formed to determine the facts of the crime and decide on the sentencing. This system is different from the jury system whereby a jury only reaches a verdict of guilty or not guilty, and then the judge decides the sentence. Economic crimes are not subject to the lay judge system, as there are no punishments that fall under the death penalty, life imprisonment, or imprisonment as contemplated by the lay judge system.

### **6. How do the authorities initiate an investigation? (E.g. Are raids common, are there compulsory document production or evidence taking powers?)**

When suspicions of certain kinds of crimes arise, investigative authorities can obtain search and seizure warrants issued by a judge, allowing them to conduct searches of homes and seize evidence. This method of searching homes is frequently employed in investigations of economic crimes. Therefore, companies

are encouraged to prepare manuals for dealing with such raids.

In addition, law enforcement agencies may ask companies or individuals to voluntarily submit evidence in order to cooperate with the investigation. When a person or company voluntarily cooperates with such investigations, the risk of forceful searches decreases. However, legal authorities do not have the authority to order companies or individuals to submit evidence.

### **7. What powers do the authorities have to conduct interviews?**

If it is necessary to conduct a criminal investigation, an investigative authority may request the voluntary appearance of a suspect.

However, if the suspect has not been arrested and detained, the suspect may refuse to appear or, if the subject chooses to appear, they may leave at any time. On the other hand, if the suspect is already in custody, the suspect may not refuse to be interrogated.

In particularly serious cases, Japanese investigative authorities may conduct interrogations of persons in physical custody and effectively continue their detention until a confession is obtained. This practice is very often criticized internationally as "hostage justice."

### **8. What rights do interviewees have regarding the interview process? (E.g. Is there a right to be represented by a lawyer at an interview? Is there an absolute or qualified right to silence? Is there a right to pre-interview disclosure? Are interviews recorded or transcribed?)**

In Japan, there is no law that allows a defense attorney to be present when a suspect is questioned, and investigative authorities rarely allow defense attorneys to be present.

However, in Japan suspects do have a comprehensive right to remain silent. But, as mentioned above, suspects who have been detained cannot refuse interrogation, so even if they exercise their right to remain silent, they may be kept in the interrogation room, which can be an incubator for "hostage justice."

In response to this opaque interrogation system, in 2019 revisions were made to Japanese law making it mandatory to make audio and video recordings of interrogations in cases subject to lay judge trials (those

involving the death penalty, life imprisonment, or imprisonment, as well as voluntary manslaughter ) and also in independent investigations by the prosecution in which the suspect has been physically detained.

Moreover, even for cases where recording of interrogations is not legally required, in recent years it has become common practice to record interrogations by prosecutors of suspects in custody.

### **9. Do some or all the laws or regulations governing financial crime have extraterritorial effect so as to catch conduct of nationals or companies operating overseas?**

The Japan Penal Code, in principle, applies to crimes committed within Japan (territoriality principle) or crimes committed abroad by Japanese nationals (nationality principle).

According to the principles of territoriality and nationality, as a general rule, the Japan Penal Code does not extend to crimes committed by foreigners outside of Japan.

However, the scope of application of the crime of bribing foreign public officials provided for in Article 18 of the Unfair Competition Prevention Act has been revised in 2023, (although not yet enforced), to allow overseas bribery to be punishable under Japanese criminal law regardless of the nationality of the employee.

### **10. Do the authorities commonly cooperate with foreign authorities? If so, under what arrangements?**

It is common practice for Japanese investigative authorities to request assistance from foreign authorities when the evidence necessary for the investigation of a criminal case exists in a foreign country.

In particular, the United States, South Korea, China, Hong Kong, the European Union, Russia, and Vietnam have signed mutual criminal assistance treaties (agreements) with Japan, whereby Japan can request investigative assistance.

On the other hand, for countries with which Japan has not signed a mutual criminal assistance treaty, requests for investigative assistance based on international courtesy are made through the diplomatic channels of the countries' respective foreign ministries.

In addition, Japan may request the production of

necessary information and others materials through the International Criminal Police Organization (ICPO) channels.

However, Japanese investigative agencies themselves rarely provide international assistance, and their international investigative capabilities are limited.

### **11. What are the rules regarding legal professional privilege? Does it protect communications from being produced/seized by financial crime authorities?**

In Japan, there is no concept of privilege. However, in the case of a suspect in physical custody, under Article 39, Paragraph 1 of the Code of Criminal Procedure, a client (i.e., the suspect) is allowed to meet with their lawyer without the presence of investigative authorities, and the client and lawyer are also allowed to exchange certain items. Moreover, if a lawyer possesses evidence, they have the right refuse it being confiscated by the investigative agencies.

However, in prisons, the contents of correspondence between lawyers and inmates can be censored. Thus, in Japan, one cannot say that the secrecy of correspondence between clients and lawyers is completely guaranteed.

On this issue, the Japan Federation of Bar Associations has been calling for legal clarification of the right to refuse the disclosure of communications between a client and a lawyer.

### **12. What rights do companies and individuals have in relation to privacy or data protection in the context of a financial crime investigation?**

Even when conducting investigations of economic crimes, personal information must be protected in accordance with the Japan Personal Information Protection Law, which sets strict rules for obtaining, using, and providing personal information. In this regard, Article 23, Paragraph 1 of the Personal Information Protection Law prohibits businesses from providing personal information to third parties without obtaining prior consent from the individual. However, as an exception to this rule, certain personal information can be provided to an investigative authority without the individual's consent pursuant to an investigation inquiry.

In addition, a company does not have the right to refuse

to reveal trade secret information held by the company if it is being searched or seized by an investigative authority (In exceptional cases, companies that are victims of the crime of trade secret infringement may ask the court to conceal trade secrets in order to prevent the disclosure of confidential information in a public trial (Article 23 of the Unfair Competition Prevention Act).).

On the other hand, when a company conducts internal investigations for misconduct, it must be careful about personal data protection. A violation of the Act on the Protection of Personal Information may occur if a company monitors employee emails without legitimate reason. However, if there is suspicion of serious misconduct, there may be a valid reason for allowing the company to review internal emails and other records of employees.

### **13. Is there a doctrine of successor criminal liability? For instance in mergers and acquisitions?**

Before a judgment becomes final and binding, if the company being prosecuted disappears in an absorption-type merger, there is no legal principle under which the company remaining after the merger or the company newly established by the merger would assume the criminal responsibility of the absorbed company.

However, fraudulently undergoing a merger or similar process in order to evade a company's criminal responsibility is prohibited by laws governing the wrongdoing of corporate officers, and is punishable as a crime.

Additionally, if a company has incurred a confirmed penalty such as a fine but subsequently ceases to exist due to a merger or similar process, according to Article 492 of the Code of Criminal Procedure, the fine can be enforced against the company that survives after the merger, or the company newly established as a result of the merger.

### **14. What factors must prosecuting authorities consider when deciding whether to charge?**

As a general rule, when making prosecutorial determinations, the public prosecutor will weigh (i) the malicious nature of the crime, (ii) the seriousness of the consequences (such as the amount of damage), and (iii) the motive for the crime as the main factors to be considered. In addition, the prosecutor may consider (iv) whether the victim recovered after the crime, and (v) the

age, circumstances, and prior criminal record of the offender.

### **15. What is the evidential standard required to secure conviction?**

Under the Japan Code of Criminal Procedure, in relation to the determination of facts, it is stipulated that "The probative value of evidence is left to the free discretion of the judge." Thus, Japanese law establishes the principle of free evaluation of evidence. However, a guilty verdict may not be rendered based solely on a confession as the only piece of evidence.

In addition, the level of proof required for a conviction is not preponderance of evidence, but proof beyond a reasonable doubt that the defendant committed the crime.

### **16. Is there a statute of limitations for criminal matters? If so, are there any exceptions?**

In Japan, there is a statute of limitations system whereby the public prosecutor cannot prosecute an alleged criminal after a certain period after the commission of the crime. The statute of limitations period is in proportion to the period of maximum punishment specified for each crime.

For example:

Fraud (maximum penalty: up to 10 years in prison)  
limitation period = 7 years;

Embezzlement in the course of employment (maximum punishment: imprisonment for not more than 10 years)  
= 7 years;

Crime of breach of trust (maximum punishment:  
imprisonment for up to 5 years) = 5 years;

Special Breach of Trust (Breach of Trust by Directors or Other Officers) (Maximum punishment: imprisonment with required labor for not more than 10 years) = 7 years;

Crime of bribery (maximum punishment: imprisonment for up to 3 years) = 3 years;

Bribery of a Foreign Public Officials (maximum punishment: imprisonment for not more than 5 years; revised: imprisonment for not more than 10 years) 5 years (revised: 7 years);

Money laundering (maximum penalty: imprisonment for up to 5 years): = 5 years;

Insider trading (maximum penalty: imprisonment for up to 5 years): = 5 years;

Fraudulent accounting (for example, making false statements in an annual securities report) (maximum penalty: imprisonment for up to 10 years): = 7years;

Tax evasion (maximum punishment: imprisonment for up to 10 years) 7years; and

Violation of trade secrets (maximum punishment: imprisonment for up to 10 years) 7years

**17. Are there any mechanisms commonly used to resolve financial crime issues falling short of a prosecution? (E.g. Deferred prosecution agreements, non-prosecution agreements, civil recovery orders, etc.) If yes, what factors are relevant and what approvals are required by the court?**

In Japan, there is no system of Deferred Prosecution Agreements, Non-Prosecution Agreements or Civil Recovery Orders.

In Japan, the public prosecutor has the discretion to decide whether or not to prosecute a case. In this connection, the public prosecutor can agree with a suspect not to prosecute a case in exchange for the suspect paying compensation for the damage caused or apologizing to the victim. However, depending on the seriousness of the case, the public prosecutor can all the same prosecute a case even if compensation or an apology has been made. Thus, there is no guarantee to avoid prosecution.

In addition, it is possible to conclude an out-of-court agreement with the victim before an investigation has commenced in order to forestall the case being reported to the investigative authorities .

**18. Is there a mechanism for plea bargaining?**

The Japanese version of the plea-bargaining system was introduced in June 2018. According to this system, prosecutors and the suspect/defendant, along with their defense attorney, may reach an agreement whereby if the suspect/defendant cooperates in the investigation or trial of a “third party” criminal case, they receive

favorable treatment in their own case (such as non-indictment or a lenient sentence). This is different from the U.S. plea bargain system where a defendant cooperates with the prosecutor in their own criminal case in order to seek favorable treatment. In the Japanese version of the plea bargain, this explicitly means cooperating in “someone else’s” criminal case.

Also, the Japanese version of plea bargaining is limited to certain crimes such as fraud and embezzlement, bribery, tax evasion, and fraudulent accounting.

However, as of June 2023, the Japanese version of plea bargaining was applied in only 3 cases, although almost five years have passed since its introduction.

**19. Is there any requirement or benefit to a corporate for voluntary disclosure to a prosecuting authority? Is there any guidance?**

In general, when a criminal voluntarily discloses a crime to the police or the prosecutor in criminal proceedings financial, economic or otherwise, the prosecutor may consider this fact as a favorable circumstance for the criminal and decide not ether to indict. The same may apply when a judge decides the sentence in a trial after indictment. The judge may consider the fact that the offender voluntarily disclosed information as a favorable circumstance and determine the sentence with this in mind.

On this note, if one confesses to the investigative authorities before the crime is discovered by them, it constitutes a “self-surrender.” Based on the judge’s discretion, the law provides that in certain cases the sentence can be reduced (Article 42 of the Penal Code).

This voluntary disclosure benefit may also apply to corporate crimes.

Although these are not criminal procedures, in cases of antitrust violations, the Fair-Trade Commission can impose penalties in the form of surcharges. However, there exists a leniency program where if a company voluntarily reports and gives detailed information of its involvement in cartels or bid-rigging to the Fair-Trade Commission, such surcharges can be reduced or revoked.

**20. What rules or guidelines determine sentencing? Are there any leniency or discount policies? If so, how are these**

**applied?**

The factors to be considered when a judge decides a sentence in a criminal trial are the same factors to be considered when a prosecutor decides whether to indict as given in Question 14 above.

Furthermore, it is said that judges in Japan have great discretion when deciding a sentence because the legal system offers a wide range of statutory sentences based on a comparative perspective. There are no sentencing guidelines for Japanese judges to follow when deciding a sentence. For this reason, judges as a general practice decide the sentencing of specific cases by taking into consideration the sentencing rate derived by referring to past court cases of similar cases.

**21. In relation to corporate liability, how are compliance procedures evaluated by the financial crime authorities and how can businesses best protect themselves?**

As stated in Question 20, there are no sentencing guidelines in Japan, and there is no explicit provision that allows companies to have their penalties reduced if they had a legal compliance program in place.

In actual criminal cases, the fact that a company had established compliance programs, or proves its intent to establish such programs to prevent reoccurrence, can be taken into consideration as favorable circumstances for the company.

**22. What penalties do the courts typically impose on individuals and corporates in relation to the key offences listed at Q1?**

An individual (natural person) may be punished with imprisonment and/or a fine within the scope of the statutory punishment provisions. Please refer to Question 16 regarding such provisions.

On the other hand, as mentioned in Question 2, corporations cannot be sentenced to imprisonment, so they are subject to monetary fines. As also stated in Question 2, there are laws that stipulate high fines for corporations in cases such as trade secret infringements or financial statement fraud.

**23. What rights of appeal are there?**

Because the Japanese court system uses a three-trial system, a case can be tried up to three times. In other words, if you are dissatisfied with a judgment made in

the first instance, you can your case tried again in a higher court (appeal), and if you are dissatisfied with a judgment made in the second instance,, you can have your case tried again in the Supreme Court (final appeal).

An appeal to the high court may be granted if there are grounds for appeal such as a factual error or an unjust sentence. On the other hand, a final appeal to the Supreme Court, as a general rule, requires that the appeal court ruling violate the constitution or precedents. This is said to be a higher bar than that for an appeal.

It should be noted that the submission of new court documents is generally not permitted in proceedings before the appeal court or the Supreme Court.

**24. How active are the authorities in tackling financial crime?**

As described in Question 4, the Tokyo, Osaka and Nagoya prosecutor offices have specialized investigation departments for economic and other important crimes. These departments tend to build cases that have a high impact on society. In recent years, the prosecutor officers have focused on investigating and prosecuting bribery in a number of high-profile corruption cases, including the Tokyo Olympics corruption case.

**25. In the last 5 years, have you seen any trends or focus on particular types of offences, sectors and/or industries?**

As mentioned in Question 4, in recent years there has been a global trend towards stricter enforcement against bribery and corruption. This trend is becoming more and more pronounced.

Recent cases include the bribery allegations surrounding the Tokyo Olympics & Paralympics that came to light in 2022, and in 2023, bribery suspicions emerged involving members of the National Diet. Many of these incidents have been investigated and brought to court by the prosecutor office specialized investigation departments.

Additionally, in the Japanese healthcare industry, it used to be common for pharmaceutical and medical device manufacturers to donate to universities. However, in 2021, a pharmaceutical company that made a donation to a national university was prosecuted for bribery on the grounds that the donation was made in return for purchasing its products. Ultimately, employees of the pharmaceutical company and professors from the national university were indicted and found guilty of

bribery. The case drew significant public attention. Given the close relationship between healthcare companies and medical professionals, investigative authorities have been prosecuting a fairly high number of cases in recent years.

## 26. Have there been any landmark or notable cases, investigations or developments in the past year?

A series of cases involving former chairman of NISSAN MOTOR CO., LTD. ("Nissan") Carlos Ghosn, which were commenced in 2018, have attracted global attention.

The specialized investigation department of the Tokyo District Public Prosecutors Office indicted Ghosn and his close aide Greg Kelly, as well as Nissan itself for violating the Financial Instruments and Exchange Act (making false statements in securities reports), alleging that Ghosn understated his executive compensation by about 5 billion yen in securities reports. They also indicted Ghosn for special breach of trust violations.

In the case, Nissan as a corporation was fined 200 million yen and Mr. Kelly was also convicted. However, during the trial, Ghosn obtained bail and fled via private jet from Japan to Lebanon with the support of a few American citizens. He is presently living in Lebanon. As an additional note, in this case the chief secretary of Nissan who cooperated with the investigation was not prosecuted under a plea bargain.

## 27. Are there any planned developments to the legal, regulatory and/or enforcement framework?

Based on recommendation from the OECD Working Group on Bribery that Japan has still not fully implemented laws dealing with the crime of bribery of a foreign public officer, the Unfair Competition Prevention Law was partially revised in June 2023, and the following amendments were made to the crime of bribing foreign public officials:

(i) The statutory penalties (fines and imprisonment) for

natural and legal persons were increased to a level comparable to those of other member countries.

The statutory penalty for natural persons was changed from a fine of up to 5 million yen/imprisonment for up to 5 years to a fine of up to 30 million yen (the maximum fine in Japan's criminal law)/imprisonment for up to 10 years (the maximum period for economic crimes in Japan).

In addition, the fine for corporations was changed from up to 300 million yen to up to 1 billion yen (the maximum fine under Japanese criminal law).

(ii) Expanding the Scope of Punishment for Overseas Independent Bribery

Under previous existing law, bribery by employees of Japanese companies was (a) punishable within Japan regardless of their nationality (territorial principle) and (b) punishable overseas only if the act was committed by a Japanese individual (nationality principle). Acts of bribery committed abroad by foreign employees acting alone were not covered.

With the new changes, bribery committed overseas can be punished regardless of the employee's nationality as long as they work for a Japanese company. As a result, Japanese companies to which foreign employees belong can also be penalized.

In response to the global trend of escalating crackdowns on bribery, Japan has also strengthened its regulations concerning bribing foreign public officials.

## 28. Are there any gaps or areas for improvement in the financial crime legal framework?

Sanctions against economic crimes in Japan are often less severe than those against similar economic crimes abroad, such as those in the United States, and it is said they have gaps in implementing global standards. In this regard, Japan has also taken measures to enhance penalties for various crimes including those related to bribing foreign public officials. These measures include legal revisions aligned with global regulations, indicating a move towards stricter penalties for economic crimes.



---

## Contributors

**Kengo Nishigaki (Mr.)**  
**Representative Partner**

[kengo.nishigaki@giandt-law.com](mailto:kengo.nishigaki@giandt-law.com)



**Andrew Trost Griffin (Mr.)**  
**Counsel**

[andrew.griffin@giandt-law.com](mailto:andrew.griffin@giandt-law.com)



**Yuji Yamamoto (Mr.)**  
**Senior Associate**

[yuji.yamamoto@giandt-law.com](mailto:yuji.yamamoto@giandt-law.com)

