



**COUNTRY  
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# **The Legal 500 Country Comparative Guides**

## **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?

In Japan, bribery of domestic public officials is prohibited mainly under the Penal Code. Under the Code, a public official who, in connection with his/her duties: (i) accepts, solicits, or promises to accept a bribe (Article 197); (ii) causes a bribe to be given to a third party (Article 197-2); (iii) acts illegally or omits to act appropriately after/before committing a crime under one of the preceding two Articles (Article 197-3); or (iv) accepts a bribe for exertion of influence on other public officers (Article 197-4) shall be subject to criminal liability. A person who gives, offers, or promises to give a bribe of the sort described above also shall be subject to criminal liability. The National Public Service Ethics Act and regulations issued thereunder provide guidelines regarding gifts and other kinds of benefits that a public official may receive. Members of the Diet and local assemblies are prohibited from accepting bribes for exerting influence in relation to transactions in which a governmental organization is a party, under the Act on Punishment of Public Officials' Profiting by Exerting Influence (APPOPEI). The Political Fund Control Act regulates political contributions (see answer 8). In addition, there are other laws and regulations regulating bribery of 'quasi-public officials' as well as private persons who are performing duties relating to the public interest, as described in Answer 4 below. Furthermore, bribery of foreign public officials is regulated under the Unfair Competition Prevention Act (UCPA). Under the UCPA, offering, promising, or giving bribes to foreign officials in order to obtain an improper business advantage in the conduct of international business is prohibited (Article 18).

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

Generally, police agencies investigate bribery cases and the public prosecutors' office prosecutes those cases.

The public prosecutors' office sometimes directly investigates and prosecutes special bribery cases that involve notable people such as members of the Diet.

### 3. How is bribery defined?

Under court precedents, 'bribery' is defined to be a benefit as unjust remuneration for the services of a public officer. Such 'benefit' is not limited to property benefits, but includes anything that satisfies one's desires or demands. Hospitality, travel, and entertainment expenses can also be deemed as bribery.

### 4. Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is 'public official' defined? Are there different definitions for bribery of a public official and bribery of a private person?

The laws of Japan in principle distinguish between bribery of a public official and bribery of private persons. A 'public official' is defined under the Penal Code 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.' In the case of a private person performing a service related to public interest, such person is treated as a 'quasi-public official' and regulated in accordance with the same laws and regulations that are applicable to public officials, including the Penal Code. Examples of such quasi-public officials are officers and employees of the Bank of Japan, national universities, state-owned enterprises, and notaries public. Even if a private person is not categorized as a quasi-public official but performs a service of a public nature, bribery of such private person is regulated under specific laws applicable to such person. Such laws can include, for example, the Companies Act, the Financial Instruments and Exchange Act, and the Bankruptcy Act. 'Foreign Public Officer' under Article 18 of the UCPA is defined under paragraph

2 of Article 18 of the Act as (i) a person engaged in public service for the national or local government of a foreign state, (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.

## **5. What are the civil consequences of bribery in your jurisdiction?**

A person who commits bribery may be subject to civil disciplinary action under applicable laws. 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 the statutory duty of care.

## **6. What are the criminal consequences of bribery in your jurisdiction?**

Under the Penal Code, bribery is punishable by imprisonment for a maximum term of seven years, together with forfeiture of such bribe or collection of an equivalent amount, depending on the circumstances. A person who gives, offers or promises to give a bribe shall be punished by imprisonment for not more than three years or a fine not exceeding JPY 2.5 million. Under the UCPA, the crime of bribery of a foreign public official is punishable by (a) imprisonment for not more than five years or a fine not exceeding JPY 5 million (or both) for individuals involved; and (b) a fine not exceeding JPY 300 million for a legal entity (when an officer, etc. of a legal entity commits the crime in relation to the business of the entity).

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

As explained in Answer 3, hospitality, travel and entertainment may fall within the definition of bribery under Japanese laws. However, laws that regulate bribery, including the Penal Code, do not set quantitative or qualitative limitations on hospitality, travel or entertainment expenses. In addition, the National Public Service Ethics Act and regulations issued thereunder place restrictions on national public officials regarding hospitality, travel and entertainment. For example, such officials may not receive entertainment or treats from interested parties or travel (excluding business travel for public service purposes) with interested parties.

## **8. Are political contributions regulated?**

Political contributions are regulated under the Political Fund Control Act. Only political parties and political fund-managing organizations appointed by political parties are eligible to accept donations from corporations and other organizations. The total annual amount of such donations is limited according to the size of the corporation or organization. Individuals can make donations to candidates for elected public office and/or political organizations, and the total annual amount of such donations is similarly limited to a certain amount. Non-Japanese citizens and entities, and organizations in which the majority of members are non-Japanese citizens or entities (with the exception of Japanese listed companies listed for more than five consecutive years), are prohibited from making donations in connection with any political activity. The Political Fund Control Act requires political organizations 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).

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

There is no statute that specifically addresses 'facilitation payments' in Japan. In principle, the relevant laws, including the Penal Code and UCPA, regulate 'facilitation payments' as bribery if the elements of any bribery offense are met. According to the Guidelines for the Prevention of Bribery of Foreign Public Officials (METI Guideline; most recently revised in July, 2015) published by the Ministry of Economy, Trade and Industry, any payment, whether it is for the purpose of avoiding discriminatory disadvantages such as the above, is likely to be considered to be the giving of money or other benefit 'to obtain a wrongful gain in business' for oneself.

## **10. Are there any defences available?**

A defendant facing bribery charges under the Penal Code, the APPOPEI or the UCPA does not have many defences available. A defendant can contend that all the elements constituting the offence of bribery have not been sufficiently proved. For example, in 1994, a court acquitted a politician in the Recruit bribery case, ruling that the prosecutor failed to prove that the payments from Recruit Company were made directly in return for favours from the defendant. A person who gives a bribe cannot claim coercion as defence. A defence of averting present danger stipulated in Article 37 of the Penal Code

is considered to be available, at least theoretically, in a foreign bribery 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.

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

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 in Japan. According to the Code of Criminal Procedure (CCP), prosecutors may refrain from prosecuting an individual if prosecution is deemed unnecessary considering the character of the suspect, his/her age and circumstances, the gravity of the offence, his/her situation after the offense and so on. The provision can be applied to corporate entities treated as suspects based on a dual liability provision. Thus, in a decision where prosecutors apply Article 248 of the CCP, the compliance program of a corporate entity that is a suspect in an investigation may be a mitigating factor and reduce or eliminate liability for bribery offences if the implemented programs have been effectively promoted and managed. The METI Guideline was created 'to support companies involved in international commercial transactions to voluntarily take a preventive approach to the prevention of bribery of foreign public officials' and contains specific information concerning compliance programs for countering bribery of foreign public officials.

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

As a general rule, only a natural person is criminally liable under Japanese law. A judicial person may be held criminally liable only when there are specific provisions for punishment prescribed in the form of dual liability. A dual liability provision makes judicial persons, including corporate entities, punishable together with the natural person who actually committed the offence, unless the judicial persons prove that they were not negligent in appointing or supervising that natural person. Article 22 of the UCPA includes a dual liability provision under which a corporate entity may be prosecuted for violations of Article 18 of the UCPA Act, i.e., bribery of foreign public officials.

### **13. Has the government published any**

### **guidance advising how to comply with anti-corruption and bribery laws in your jurisdiction? If so, what are the elements of an effective corporate compliance program?**

As stated in Answers 9 and 12, the METI Guidelines have been published with respect to anti-corruption and bribery of foreign public officials. The guidelines articulate the details of an effective corporate compliance program. The key elements described in the 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.

### **14. Does the law provide protection to whistle-blowers?**

The Whistleblower Protection Act protects 'whistleblowers' defined as workers who have disclosed 'reportable facts' such as a criminal act described in laws concerning the protection of interests, including individuals' lives and persons, interests of the consumer, conservation of the environment, protection of fair competition, and protection of citizens' lives, persons, property and other interests. The Whistleblower Protection Act prohibits dismissal and disadvantageous treatment, such as a demotion or reduction in salary, of the whistle-blower as a consequence of the whistleblowing.

### **15. How common are government authority investigations into allegations of bribery?**

In recent years, the police have investigated 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 2007, 2008, 2013, 2014 and 2018, companies were investigated for violations of the UCPA, and directors or employees were prosecuted in every case. The 2018 case was the first case to be prosecuted using the new plea-bargaining system in Japan (see Answer 16).

### **16. What are the recent and emerging trends in investigations and enforcement in your jurisdiction? Has the Covid-19 pandemic had any impact and, if so, what?**

In June 2018, the Japanese version of plea-bargaining

took effect. Under the plea-bargaining system, a public prosecutor may enter into an agreement with a suspect or a defendant, including corporate entities, with the consent of his/her defense attorney, under which the prosecutor agrees to drop or reduce criminal charges or provide favourable treatment with respect to certain types of crimes. This includes, but is not limited to, domestic bribery and bribery of foreign public officials regulated by the relevant laws including the Penal Code and the UCPA. The prosecutor has the authority to determine whether to enter into an agreement by taking certain factors into consideration.

Thus far, the plea-bargaining system has been applied in two publicized criminal cases. The first case involved a power plant manufacturer suspected of violating UCPA, i.e., bribery of foreign public officials. 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.

The second case is a high-profile case involving Carlos Ghosn and Nissan Motor Company, where subordinates of Mr Ghosn entered into an agreement whereby the prosecutor agreed not to prosecute them in exchange for provision of relevant information and full cooperation with prosecution of Mr Ghosn on charges of aggravated breach of trust and violation of the Financial Instruments and Exchange Act.

The third case is an embezzlement case where a co-conspirator entered into an agreement whereby the prosecutor agreed to prosecute the co-conspirator in exchange for cooperation to prosecute the former CEO of the company. At this moment, with respect to these three cases, detailed information regarding the terms of the plea bargain is not available.

Under the COVID-19 pandemic, investigation authorities tend to refrain from conducting lengthy interviews and dawn raids, which requires corporations and other organizations to fully and intensively cooperate with limited human resources in an investigation.

### **17. Is there a process of judicial review for challenging government authority action and decisions?**

Even though public prosecutors have enormous 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 a court is appealable by the defendant. Judgments rendered by the district courts are appealable to a high court. An appeal to a high court is allowed on the grounds of non-compliance with procedural law, errors in fact-finding, errors in application of law, or inappropriate sentencing. Judgments rendered by the high court are appealable to the Supreme Court, which is the highest and final court. Even though an appeal to the Supreme Court is allowed only on the grounds of a violation of the Constitution or a violation of judicial precedents, the Supreme Court has discretionary power to strike down judgments rendered by a high court on the grounds of legal errors, errors in fact-finding or inappropriate sentencing.

### **18. Are there any planned developments or reforms of bribery and anti-corruption laws in your jurisdiction?**

There are no specific planned developments or reforms of bribery and anti-corruption such as passing a new statute or amendment of the relevant laws. However, the plea-bargaining system can be expected to be applied actively in bribery cases as stated in Answer 16.

### **19. To which international anti-corruption conventions is your country party?**

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 1997. In connection with acceding to the OECD Convention, the UCPA was amended to criminalise bribery of foreign public officials in 1998. In addition, Japan is a signatory to 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. The UNCAC was ratified in 2006.

### **20. 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.**

Japan does not have a legal concept of attorney-client privilege that protects attorney-client communications from the compulsory collection of evidence in government authority investigations. However, attorneys are given the right to refuse seizure or testimony and can utilize these rights for protecting attorney-client



communications. More specifically, the CCP provides that an attorney (including a foreign attorney registered in Japan) may refuse the seizure of articles containing confidential information concerning others which he/she has been entrusted with and retains or possesses in the course of his/her duties, and may refuse to give testimony in a trial on matters pertaining to confidential information concerning others which he/she came to know through entrusted professional conduct.

**21. 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?**

As stated in Answer 19, Japan has been required to tackle bribery and corruption in compliance with international conventions. Under this national policy, as stated in Answer 16, investigative authorities such as the prosecutors' office and the police have been active to investigate domestic and overseas bribery cases in Japan. It is likely that the application of the plea-bargaining system enables the investigative authorities to collect evidence efficiently and effectively.

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

As explained in the METI Guidelines, in general, '[s]ocial responsibility of business is becoming increasingly weighty as consumer awareness increases and business operations become more and more internationalized, etc. Companies across the board 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, etc.' However, in terms of implementation of preventive measures for bribery and corruption, it appears that the majority of organisations in Japan are in the process of implementing effective preventive measures, including the adoption of global compliance programs and global whistleblowing systems, and the establishment of global audit systems and so forth.

**23. What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your**

**jurisdiction?**

Under Japanese law, prosecutors are required to prove that both a giver and a taker (i.e., a public official) offered and received a bribe while recognising that the purpose is to gain and receive advantageous treatment in connection with the receiver's authority. In addition, as bribery is committed secretly, there would be no explicit evidence to establish the intent of the giver and the taker. As such, one of the biggest challenges that prosecutors and police officers are facing is the difficulty in collecting strong evidence to prove the intent of the bribe-giver and the bribe-taker. In addition, investigations of bribery cases of foreign public officials generally face additional difficulties in collecting relevant evidence because the crime scenes are abroad.

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

It is likely that the adoption of the plea-bargaining system will facilitate investigative authorities in finding information and collecting evidence of domestic and foreign bribery and corruption. With the COVID-19 pandemic, there are fewer opportunities to collect information related to bribery and corruption through face-to-face communication in audit and other monitoring activities. Under the circumstances, one of the most significant challenges posed to businesses is how to detect corruption-related information internally at an early stage in order to mitigate the potential damage of the discovery of bribery or other corruption.

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

N/A

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

Investigative authorities would be expected to find information and collect evidence of domestic and foreign bribery and corruption mainly by way of utilizing the plea-bargaining system. On the other hand, from the businesses' perspective, the first step is to analyse and identify the potential risk of bribery and corruption in their own business activities. The next step is to

implement an effective global compliance program to prevent bribery and corruption based on the results of the first step. Appointment of a compliance officer or a general compliance supervisor to oversee compliance personnel and implementation of educational activities in companies are the typical components of global

compliance programs. In addition, taking effective measures to detect information related to bribery and corruption at an early stage is significant. The typical measures are implementation and improvement of domestic and/or global whistleblowing systems, and establishment and reinforcement of domestic and/or global audit systems.

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