

## White Collar Crime - Japan

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### Radical reform of white collar crime investigation

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The investigation of white collar crime in Japan is undergoing dramatic changes. The catalyst for reform was an unprecedented scandal caused by the special investigation department of a public prosecutor's office.

The public prosecutor's offices in Japan's main cities have special departments that investigate complex and serious white collar crime. These departments cooperate with other authorities - including the police, the National Tax Agency, the Securities and Exchange Surveillance Commission and the Fair Trade Commission - in the investigation of bribery, breach of trust offences, tax evasion, securities exchange violations and antitrust violations. The departments also have extensive authority to investigate crimes independently and have taken the lead in many cases of bribery and other serious economic wrongdoing. However, the actions of a particular special investigation department have revealed a number of problems associated with its working methods. As a result, the department came under heavy pressure to reform its organisation and procedures.

#### Scandal

In April 2009 the special investigation department of the Osaka District Public Prosecutor's Office arrested and indicted the former director general of a bureau of the Health, Labour and Welfare Ministry for allegedly drafting a false certificate and issuing it to a representative of a disability organisation. The representative used the certificate to abuse a postage discount system for disabled people. During interrogation by public prosecutors, witnesses admitted that the director general had played a role in drafting the false certificate; they later signed written statements to this effect.

However, the director general maintained her innocence. The witnesses then denied her involvement in preparing the false certificate and testified that the public prosecutors had coerced incriminating statements from them. The Osaka District Court decided to exclude most of the written statements obtained from witnesses because of the use of leading questions and coercion. In September 2010 the director general was acquitted.

Following the acquittal, the actions of the public prosecutor in charge of the case came to light. He had altered data on a computer disk that had been seized as evidence, falsifying a date so that it would match the scenario that the special investigation department had put forward. The Supreme Public Prosecutor's Office immediately arrested and indicted the public prosecutor on a charge of tampering with evidence. The Osaka District Court sentenced the public prosecutor to 18 months' imprisonment in April 2011. The Supreme Public Prosecutor's Office also arrested two supervising prosecutors who had subsequently been informed of the tampering, but had failed to act.

In the wake of this unprecedented scandal, the special investigation department was severely criticised for its investigative methods and its tampering with evidence.

#### Problems with criminal investigations

Under Japanese criminal procedure, the police and public prosecutors interrogate suspects and witnesses and take written statements. These written statements are highly valued as evidence. Police officers and public prosecutors are generally unwilling to resort to special investigative methods, such as wiretapping or undercover operations, and their basic approach is to obtain statements by interrogation and to present these as evidence at trial.

Courts attach particularly high value to written statements presented by public prosecutors. When a defendant denies a charge at trial, the court tends to consider a written statement to be more credible than oral testimony. The courts routinely request that public prosecutors submit elaborate written statements from defendants and witnesses. As a result, public prosecutors feel particular pressure to produce written statements, especially in white collar crime cases, as without them it is often difficult to establish the subjective requirements of an offence, such as intention and conspiracy.

The value placed on written statements at trial leads public prosecutors to focus on obtaining incriminating statements from suspects or witnesses. Public prosecutors tend to draw up a scenario of the case and then try to extract confessions from suspects or witnesses that are consistent with the scenario.

Judges are inclined to grant a public prosecutor's request to detain suspects, especially if the suspects deny any part of the charges against them. Suspects may be kept in solitary confinement and interrogated for approximately 20 days until their indictment.<sup>(1)</sup> Public prosecutors interrogate suspects behind closed doors and without a lawyer.<sup>(2)</sup> Suspects are entitled to apply for

bail after indictment, but judges often deny bail applications if the suspect denies the charge.<sup>(3)</sup> This is also true of individuals suspected of white collar crimes, who usually have a high social status and no criminal record.

If suspects deny a charge, public prosecutors strongly encourage them to make a confession that is consistent with the prosecutor's scenario. Public prosecutors sometimes imply that suspects cannot be released on bail and will be kept in solitary confinement for a significant period if they do not admit the charges against them; this often persuades suspects to confess. Suspects may be so exhausted by the experience of long-term confinement and so desperate to be released that they are prepared to amend their statements to fit the public prosecutor's version of events, even signing written statements that are at odds with the facts. Most people who are suspected of white collar crimes are businesspeople without a criminal record; they may suffer serious mental duress as a result of being incarcerated in a detention centre and kept in a stressful environment that is completely different from their everyday life.

When interrogating individuals who are not suspects, but were involved in the incidents in question, public prosecutors generally invite them to sign written statements that are favourable to the prosecution's case. Public prosecutors repeatedly ask such individuals to present themselves for interrogation until satisfactory confessions are obtained. They may even imply a possibility of arrest for failure to cooperate. This pressure may lead some people to sign written statements that are untrue or incomplete.

Legal practitioners and academics have long sought to draw attention to these problems, highlighting the need for video recordings of the entire interrogation process. Former defendants and others have revealed to the media that they underwent coercive interrogation by public prosecutors. On several occasions the Democratic Party has submitted proposals that would have provided for video recordings and the presence of a lawyer during interrogations, but the bills failed to pass.

The scandal has now drawn public attention to the problems with criminal investigations, turning the investigative methods used by the special investigation department into a prominent social issue.

### **Reform of investigatory system**

In response to public criticism, the Ministry of Justice established an advisory panel that included lawyers, academics, journalists and the acquitted director general. The panel was asked to examine the problems associated with investigations by public prosecutors, with measures to be taken in November 2010. In July 2011 the public prosecutor's offices carried out radical reforms of their organisation in compliance with the panel's proposals. The key points of the reform are as follows.

#### ***Checking system***

In order to control the independent investigations conducted by special investigation departments, public prosecutor's offices have introduced a multi-layer checking system, whereby independent special prosecutors review their investigations.

#### ***Expert committee***

In order to strengthen the response to white collar crime, special investigation departments have established expert committees which collect and collate specialist information. Special investigation departments will also strengthen their coordination with related investigating authorities, such as the police, the National Tax Agency and the Securities and Exchange Surveillance Commission.

#### ***Inspection division***

The Supreme Public Prosecutor's Office has established an inspection division which collects information on public prosecutors' misconduct and conducts special inspections.

#### ***Recording interrogations***

The most significant step is the introduction of video recordings of the interrogation process. Public prosecutor's offices, except the special investigation department, introduced video recordings of interrogations in May 2006, but these recorded only the suspect signing his or her written statement.

The special investigation department began full video recordings on a trial basis in April 2011. Although many public prosecutors resisted the move to record the entire process, fearing that it would make suspects more reluctant to reveal information or provide a confession, they could not stop the push for a visual record of interrogations. Video recording will clearly help to discourage the use of leading questions and coercion, thereby restoring a measure of the public confidence that has been lost as a result of the scandal.

According to the Supreme Public Prosecutor's Office, public prosecutor's offices (including special investigation departments) electronically recorded interrogations 979 times in 59 cases from April to December 2011, recording the entire process of interrogations in 24 cases.

As a result of the change, special investigation departments will attach far more importance to objective evidence, as opposed to written statements obtained by interrogation. The investigative methods of special investigation departments are set to alter significantly.

Japanese public prosecutors adopt a cautious approach when exercising their authority to indict suspects and are inclined not to prosecute suspects unless they can collect ample evidence to build a very strong case.<sup>(4)</sup> Public prosecutors in special investigation departments, being subject to various restraints, may find it more difficult to collect sufficient evidence to prosecute those suspected of white collar crimes.<sup>(5)</sup>

Everyone involved in the criminal procedure will need to pay close attention to the changes in the investigative methods of the special investigation departments, as these will have a significant impact on how white collar crimes are dealt with in Japan.

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### **Endnotes**

<sup>(1)</sup> Under Japanese criminal procedure, a person who is arrested by police can be kept in custody for up to three days. The public

prosecutor can ask the judge for the right to detain the suspect. If the judge grants the request, the suspect can be detained for an additional 10 days. The public prosecutor may ask the judge to extend this period of detention if it is necessary for the completion of the investigation. In such cases the judge may grant an extension of up to 10 days.

(2) The suspect may appoint counsel at any time and have an interview with counsel in detention without an official being present, but may not request counsel's presence during interrogations.

(3) Japanese criminal procedure does not allow for release on bail from pre-indictment detention. In 2010 fewer than 20% of suspects were released on bail.

(4) Public prosecutors tend to prosecute only when they are persuaded that the court is certain to find the suspects guilty. As a result, the conviction rate in Japanese criminal procedure is over 99%.

(5) In order to reduce the public prosecutor's burden in investigating and prosecuting white collar crimes, some commentators have suggested the introduction of plea bargaining and immunity, as well as a fuller use of special investigative methods, including wiretapping and undercover operations.

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