

White Collar Crime - Japan

Enforcing the anti-corruption laws

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Bribery of foreign public officials

In 1997 Japan signed the Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and in 1998 it revised the Unfair Competition Prevention Law in order to criminalise the bribery of foreign public officials based on the convention.⁽¹⁾

Since the offence of bribing foreign public officials came into operation, the press has reported several foreign bribery cases in which Japanese companies were allegedly involved. However, no cases have been formally investigated or prosecuted by the Japanese investigative authorities for a long time.

Bribery is inherently difficult for the criminal investigative authorities to detect because both the briber and the public official take care to leave no evidence. In particular, in foreign bribery cases investigative authorities find it difficult to gather evidence located in the foreign country. Even if an employee of a Japanese company pays a bribe to a foreign public official in a foreign country, the Japanese police and public prosecutors are unable to conduct criminal investigations there directly. Although the police and public prosecutors can make great use of mutual legal assistance in foreign bribery investigations, it is not always easy to gather sufficient evidence to establish the briber's guilt.

Due to these difficulties, the Japanese police and public prosecutors have not always been active in investigating the bribery of foreign public officials.

Phase 2bis evaluation

In 2006 an evaluation team from the OECD Working Group on Bribery conducted the Phase 2bis evaluation of Japan's implementation of the convention and released the Phase 2bis report. In the report, the working group observed that the Japanese authorities had not made a serious effort to address the legal and procedural impediments to the effective investigation and prosecution of the offence of bribing foreign public officials, despite the continued absence of formal investigations and prosecutions.⁽²⁾

After the Phase 2bis evaluation, Japanese investigation authorities made enhanced efforts to detect the offence of bribing foreign public officials and prosecuted two cases.

Giving illegal profit to Filipino public officials

Two employees of a local subsidiary of a major Japanese electrical installation company in the Philippines invited two Filipino senior officials of the National Bureau of Investigation to Japan and offered them gifts (eg, sets of golf clubs) equivalent to approximately Y800,000 in order to conclude the contract for a fingerprint recognition programme promptly. In 2007 fines of Y500,000 and Y200,000, respectively, were imposed on the two defendants.

Giving illegal profit to Vietnamese public official

Four employees of a Japanese construction consulting company paid bribes of approximately \$820,000 to a Vietnamese senior official in order to obtain consulting business related to a highway construction project in Vietnam. In 2009 the four defendants were respectively sentenced to imprisonment for two and a half years, two years, 18 months and 20 months (each with a suspended sentence of three years), and a fine of Y70 million was imposed on the defendant company.

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Phase 3 evaluation

In 2011 the OECD Working Group conducted the Phase 3 evaluation of Japan's implementation of the convention, and again issued a harsh evaluation:

"The Group notes that Japan has obtained convictions for foreign bribery in two cases since the foreign bribery offence came into force in Japan in 1999... Nevertheless, prosecutions in two foreign bribery cases in 12 years appears very low in view of the size of the Japanese economy, and the Working Group continues to have serious concerns that Japan still does not appear to be actively enforcing its foreign bribery offence... The Working Group also has a clear expectation that Japan will give serious consideration to using new investigative techniques, such as wire-tapping and grants of immunity from prosecution."⁽³⁾

As the working group pointed out, Japanese investigative authorities might find it difficult to detect the bribery of foreign public officials using existing investigative techniques. However, it is hard for them to make use of new investigative techniques (eg, wiretapping and grants of immunity from the prosecution), because the Japanese people are largely reluctant to introduce such techniques into the investigation of white collar crimes.⁽⁴⁾

Recent bribery case

In March 2011 a senior official of the Indonesian Transportation Ministry was arrested by the Indonesian Corruption Eradication Commission for allegedly overcharging the government \$2.5 million in connection with the purchase of a used railway car from a major Japanese trading company. He was sentenced to three years in prison and fined \$11,000.

The Tokyo Metropolitan Police Department also investigated local employees of the Japanese trading company who invited the senior official for a golfing trip in Japan on suspicion of bribery of the foreign public official. However, in June 2012 the Tokyo District Public Prosecutors Office finally decided not to prosecute the employees on the ground of insufficient incriminating evidence.

Although the case in Indonesia did not lead to court proceedings, the Japanese investigative authorities will continue to monitor business closely in order to detect and investigate the offence of bribery of foreign public officials committed by Japanese companies.

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Endnotes

- (1) Articles 18 and 21 of the Unfair Competition Prevention Act (47/1993).
- (2) OECD Working Group on Bribery, "Japan: Phase 2bis Report on the Application of the Convention On Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions".
- (3) OECD Working Group on Bribery, "Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Japan".
- (4) In 1999 the Act on Wiretapping for Criminal Investigation was enacted, but this act authorises investigators to use wiretapping only in criminal investigations of drug-related crimes, gun-related crimes, mass smuggling of illegal immigrants and organised homicide.

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