Anti-Money Laundering

Contributing editors
Lamia R Matta, Leila Babaeva and Ann K Sultan

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GETTING THE DEAL THROUGH

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Japan

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Domestic legislation

1 Domestic law

Identify your jurisdiction's money laundering and anti-money laundering (AML) laws and regulations. Describe the main elements of these laws.

Japanese AML laws consist of the following three Acts:

- the Act on Special Provisions for the Narcotics and Psychotropics Control Act, etc, and Other Matters for the Prevention of Activities Encouraging Illicit Conduct and Other Activities Involving Controlled Substances through International Cooperation (Act No. 94 of 1991) (the Anti-Drug Special Provisions Act);
- the Act on Punishment of Organised Crimes and Control of Crime Proceeds (Act No. 136 of 1999) (the Act on Punishment of Organised Crimes); and
- the Act on Prevention of Transfer of Criminal Proceeds (Act No. 22 of 2007).

In 1992, the Anti-Drug Special Provisions Act was established in order to implement the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The Act criminalised money laundering activities and provided for the confiscation of criminal proceeds related to drug crimes. In 2000, the Act on Punishment of Organised Crimes was enforced and the scope of predicated offences of money laundering was extended from drug-related crimes to other serious crimes.

The Act on Prevention of Transfer of Criminal Proceeds imposes an obligation on business operators to take preventive measures, such as customer due diligence. This Act criminalises the provision of false information at the time of a transaction to covered institutions and persons listed in question 13 for the purpose of concealing customer identification data. The Act criminalises the reception, delivery and provision of deposit and savings passbooks, ATM cards and exchange transaction cards in order to prevent the misuse of these passbooks and cards in money laundering crimes.

Money laundering

2 Criminal enforcement

Which government entities enforce your jurisdiction's money laundering laws?

There is no special government entity that enforces the AML laws. Like criminal laws, the police departments of each prefecture and public prosecutor's offices enforce the AML laws.

3 Defendants

Can both natural and legal persons be prosecuted for money laundering?

Both natural and legal persons can be prosecuted for money laundering (article 15 of the Anti-Drug Special Provisions Act and article 17 of the Act on Punishment of Organised Crimes).

4 The offence of money laundering

What constitutes money laundering?

As noted in question 1, both the Anti-Drug Special Provisions Act and the Act on Punishment of Organised Crimes criminalise money laundering activities.

The Anti-Drug Special Provisions Act criminalises as money laundering:

- concealment of drug crime proceeds (article 6), which includes:
  - disguising facts with respect to acquisition or disposition of drug crime proceeds;
  - concealing drug crime proceeds; and
  - disguising facts with respect to the source of drug crime proceeds. The predicate crimes that generate drug crime proceeds are listed in article 2, paragraph 2 of the Anti-Drug Special Provisions Act; and
- receipt of drug crime proceeds (article 7).

The Anti-Drug Special Provisions Act also criminalises the act of knowingly receiving drug crime proceeds.

The Act on Punishment of Organised Crimes criminalises as money laundering:

- managing an enterprise by the use of criminal proceeds (article 9). The predicate crimes that generate crime proceeds are listed in the attachment to the Act on Punishment of Organised Crimes;
- concealment of crime proceeds (article 10); and
- receipt of crime proceeds (article 11).

Both acts require intention or knowledge as the substantive requirement of crimes. Neither a strict liability standard nor negligence standard applies to money laundering.

Financial institutions or other money-centred businesses can be prosecuted for their customers' money laundering crimes if they knowingly assist their customers in concealing or receiving crime proceeds.

5 Qualifying assets and transactions

Is there any limitation on the types of assets or transactions that can form the basis of a money laundering offence?

There is no limitation on the types of assets or transactions that can form the basis of a money laundering offence. There is no monetary threshold for prosecution.

6 Predicate offences

Generally, what constitute predicate offences?

As noted in question 4, predicate offences are listed in the Anti-Drug Special Provisions Act and the Act on Punishment of Organised Crimes. The predicate offences include a wide range of serious crimes, but violations of tax or currency exchange laws do not serve as predicate offences.

7 Defences

Are there any codified or common law defences to charges of money laundering?

There is no special codified or common law defence to charges of money laundering.

8 Resolutions and sanctions

What is the range of outcomes in criminal money laundering cases?

Public prosecutors have discretion to decide whether or not they prosecute a suspect who committed a money laundering crime. After the public prosecutor prosecutes the defendant, the court will decide whether the defendant is guilty or not in the light of evidence and, if the court finds the defendant guilty, will pronounce a sentence on the defendant.

In Japanese criminal procedure, there are no resolutions through plea agreements, settlement agreements or other similar means as alternatives to trial.

The criminal sanction for money laundering is imprisonment for up to five years or a fine of up to ¥10 million, or both. The maximum sentence varies according to the types of money laundering activities.

9 Forfeiture

Describe any related asset freezing, forfeiture, disgorgement and victim compensation laws.

Related asset freezing
In order to ensure the forfeiture of crime proceeds, the court may, upon the request of a public prosecutor or police officer, issue a protective order that prohibits the disposing of crime proceeds before the prosecution. The court may also issue such a protective order after the prosecution.

Forfeiture
The court may order the forfeiture of crime proceeds and, if crime proceeds have already been consumed or transferred to a third party and cannot be forfeited, the court may order to collect an equivalent value of the crime proceeds. Drug crime proceeds are subject to mandatory forfeiture.

Victim compensation
The court may not order the forfeiture of a crime victim's property (crime proceeds obtained from victims through crimes relating to property) because it would cause an obstruction to damages claimed by victims. However, the court may forfeit a crime victim's property if it is difficult for the victim to recover damages by executing the right to seek damages or other rights. The government will convert the crime victim's property to money and distribute the money to the victims (see the Act on Recovery Payment to be Paid from Assets Generated from Crime (Act No. 87 of 2006) for the procedure of victim compensation).

10 Limitation periods

What are the limitation periods governing money laundering prosecutions?

The limitation period governing money laundering prosecutions is three or five years. The limitation period varies according to the maximum sentence of money laundering activities.

11 Extraterritorial reach

Do your jurisdiction's money laundering laws have extraterritorial reach?

Japanese AML laws can apply to non-citizens and non-residents who are involved in money laundering activities within the jurisdiction.

The AML laws also apply to money laundering activities committed by Japanese nationals outside the jurisdiction's borders.

AML requirements for covered institutions and individuals

12 Enforcement and regulation

Which government entities enforce your jurisdiction's AML regime and regulate covered institutions and persons? Do the AML rules provide for ongoing and periodic assessments of covered institutions and persons?

As noted in question 2, the prefectural police and the public prosecutor's office have authority to enforce AML laws if covered institutions and persons are involved in criminal money laundering activities.

If there is any suspicion that covered institutions and persons violate the obligation prescribed in the Act on Prevention of Transfer of Criminal Proceeds, the National Public Safety Commission and the National Police Agency may make requests to the alleged covered institutions and persons for the submission of reports or orders to the relevant prefectural police to conduct necessary inquiries.

The National Public Safety Commission and the National Police Agency may issue an opinion statement to competent administrative authorities in charge of supervising the alleged covered institutions and persons and encourage the administrative authorities to take necessary measures to correct the violation.

Competent administrative authorities may, to the extent necessary for the enforcement of AML laws, request covered institutions and persons to submit reports or materials concerning its business affairs, conduct on-site inspections, provide necessary guidance and issue a correction order to covered institutions and persons.

13 Covered institutions and persons

Which institutions and persons must carry out AML measures?

The following institutions and persons must carry out AML measures:

- financial institutions;
- financial leasing operators;
- credit card operators;
- real estate agents;
- dealers in precious metals and stones;
- postal receiving service providers or telephone call receiving service providers;
- lawyers (including foreign lawyers registered in Japan) or legal profession corporations;
- judicial scriveners or judicial scrivener corporations;
- certified administrative scriveners or administrative scrivener corporations;
- certified public accountants or audit firms; and
- certified tax accountants or certified tax accountancy corporations.

14 Compliance

Do the AML laws in your jurisdiction require covered institutions and persons to implement AML compliance programmes? What are the required elements of such programmes?

The AML laws have no provisions requiring covered institutions and persons to implement AML compliance programmes. Competent administrative authorities have authority to supervise covered institutions and persons and some administrative authorities such as the Financial Services Agency publish guidelines, which require covered institutions and persons to implement AML compliance programmes.

15 Breach of AML requirements

What constitutes breach of AML duties imposed by the law?

As noted in question 16 in detail, AML laws impose several duties on covered institutions and persons. The most typical breach of AML duties is the failure to verify the identification data of customers at the time of transaction and report suspicious transactions.

Update and trends

In November 2014, the following amendments were made to the Act on Prevention of Transfer of Criminal Proceeds to ensure that verification at the time of a transaction is conducted appropriately by covered institutions and persons.

Clarification of the method for determining suspicious transactions
The National Public Safety Commission is responsible for researching and analysing the current situation regarding the transfer of criminal proceeds and publishing the 'Report on the Riskiness of the Transfer of Criminal Proceeds' every year. Covered institutions and persons are obliged to determine whether property accepted from a customer is suspected to have been criminal proceeds in light of the results of verification at the time of a transaction, other conditions and the 'Report on the Riskiness of the Transfer of Criminal Proceeds'.

Confirmation of exchange dealer residing in a foreign country
In the case where covered institutions and persons conclude a correspondent contract with an exchange dealer residing in a foreign country, they are obliged to confirm that they have developed necessary systems in order to appropriately conduct verification of the exchange dealer at the time of a transaction.

Measures to conduct verification appropriately at the time of a transaction
As noted in question 16, the Act requires covered institutions and persons to take measures to keep identification data up to date, implement education and training for employees and develop other necessary systems in order to appropriately take measures, such as verification at the time of a transaction. The following obligations are added by the amendment:

- the preparation for rules of taking measures such as verification at the time of a transaction;
- the appointment of an administrator who controls audits, which are necessary to take appropriate measures such as verification at the time of a transaction; and
- the measures that should be taken in consideration of the 'Report on the Riskiness of the Transfer of Criminal Proceeds'.

The amended Act will come into force on 1 October 2016.

16 Customer and business partner due diligence

Describe due diligence requirements in your jurisdiction's AML regime.

The Act on Prevention of Transfer of Criminal Proceeds requires covered institutions and persons to conduct the following due diligences on customers and business partners.

Verification at the time of transaction
The Act requires covered institutions and persons to verify:

- identification data of customers such as their name, domicile and date of birth documents;
- the purpose of the transaction;
- the occupation (natural person) and content of business (juridical person); and
- information on the beneficial owner by such verification methods as asking customers to present identification documents. As for judicial scriveners, administrative scriveners, certified public accountants or tax accountants or tax accountancy corporations, the Act requires them to verify only the identification data of customers.

Covered institutions and persons shall verify the matters listed above by verification methods different from the methods listed above if:

- a party of transaction is suspected of pretending to be a customer;
- a customer is suspected to have given false information when the verification at the time of transaction was conducted;
- a customer resides or is located in the state or area in which a system for the prevention of the transfer of criminal proceeds is deemed to be not sufficiently prepared (such as North Korea and Iran); or
- it is found that there is a substantial need to perform enhanced customer due diligence for the prevention of the transfer of criminal proceeds.

If the transaction involves a transfer of property of a value exceeding ¥2 million, covered institutions and persons shall also verify the status of the property and income.

Measures to appropriately conduct verification at the time of transaction
The Act requires covered institutions and persons to take measures to keep identification data up to date, implement education and training for employees and develop other necessary systems.

Notification pertaining to foreign exchange transactions
In conducting exchange transactions pertaining to payment from Japan to foreign countries, financial institutions shall notify the receiving institutions of certain identification data of customers.

17 High-risk categories of customers, business partners and transactions

Do your jurisdiction's AML rules require that covered institutions and persons conduct risk-based analyses? Which high-risk categories are specified?

See question 16.

18 Record-keeping and reporting requirements

Describe the record-keeping and reporting requirements for covered institutions and persons.

Record-keeping requirement
Covered institutions and persons have a duty to prepare and preserve records of the verified information collected at the stage of transaction and the measures taken to verify the customer for seven years from the day the transaction was terminated.

Covered institutions and persons also have a duty to prepare and preserve the records of transactions for seven years from the day of transaction.

Reporting requirement
If property accepted from a customer is suspected, in consideration of the results of verification at the time of transaction and other conditions, to have been criminal proceeds or the customer is suspected of committing a certain crime, covered institutions and persons shall promptly report the transaction to a competent administrative authority such as the Financial Services Agency and the Ministry of Economy, Trade and Industry. A competent administrative authority shall, when having received the report of suspicious transactions from covered institutions and persons, promptly notify the matters pertaining to the report of suspicious transactions to the National Safety Commission. When the National Safety Commission finds that matters pertaining to the report of suspicious transactions will contribute to the investigation of criminal cases conducted by public prosecutors, the police or other investigators, the National Safety Commission shall disseminate such information to the investigators.

19 Privacy laws

Describe any privacy laws that affect record-keeping requirements, due diligence efforts and information sharing.

The Act on the Protection of Personal Information (Act No. 57 of 30 May 2003) prescribes the duties to be observed by business entities regarding the proper handling of personal information, but this Act does not have the record-keeping requirements, due diligence efforts and information sharing prescribed in the Act on Prevention of Transfer of Criminal Proceeds.

20 Resolutions and sanctions

What is the range of outcomes in AML controversies? What are the possible sanctions for breach of AML laws?

There is no criminal sanction even if covered institutions and persons commit a breach of AML laws. As noted in question 12, the National Public Safety Commission, the National Police Agency and competitive administrative authorities can take administrative measures against covered institutions and persons who violate AML laws.

21 Limitation periods

What are the limitation periods governing AML matters?

There is no limitation period for administrative measures regarding AML violations.

22 Extraterritoriality

Do your jurisdiction's AML laws have extraterritorial reach?

If foreign institutions and persons and their subsidiaries fall within the category of covered institutions and persons listed in question 13 under the relevant laws, AML laws apply to them. There is no specific provision that prescribes the applicability of AML laws to subsidiaries of domestic institutions in foreign jurisdictions and conduct outside the Japanese jurisdiction's borders.

Civil claims

23 Civil claims and private enforcement

Enumerate and describe the required elements of a civil claim or private right of action against money launderers and covered institutions and persons in breach of AML laws.

There is no specific provision regarding civil claims or a private right of action against money launderers and covered institutions and persons in breach of AML laws. Victims of crime can bring an action for damages against money launderers who have concealed crime proceeds and have caused damage to the victim.

International anti-money laundering efforts

24 Supranational

List your jurisdiction's memberships of supranational organisations that address money laundering.

Japan is a member of:
- the Financial Action Task Force (FATF);
- the Asia/Pacific Group on Money Laundering (APG); and
- the Egmont Group.

25 Anti-money laundering assessments

Give details of any assessments of your jurisdiction's money laundering regime conducted by virtue of your membership of supranational organisations.

The FATF conducted the third mutual evaluation of Japan regarding compliance with the FATF's 40 Recommendations and nine Special Recommendations from 2007 to 2008.

As for the recommendation regarding customer due diligence by financial institutions, the FATF pointed out that Japan's AML laws should directly provide for the verification of the purpose of transaction and beneficial owner and introduce additional customer identification measures in the case of identifying a customer without photo ID.

In April 2011, in consideration of the recommendations made by the FATF, the following amendments were made to the Act on Prevention of Transfer of Criminal Proceeds:
- the verification of the purpose of transactions and beneficial owner at the time of transaction;
- the addition of call forwarding service providers to the list of covered institutions and persons;
- the addition of measures for the verification at the time of transactions; and
- strengthening the punishments on illicit transfers of passbooks.

The amended Act came into force on 1 April 2013.

26 FIUs

Give details of your jurisdiction's Financial Intelligence Unit (FIU).

Japan's first FIU was established within the Financial Supervisory Agency (FSA) in 2000. As the Act on Prevention of Transfer of Criminal Proceeds was established in 2007, the FIU was transferred from FSA to the National Police Agency. This new FIU is called the Japan Financial Intelligence Center (JAFIC) and is a member of the Egmont Group. The contact details are as follows:

Japan Financial Intelligence Center
2-1-2 Kasumigaseki Chiyoda-ku
Tokyo 100-8974
Japan
Tel: +81 3 3581 0141
www.npa.go.jp/sosikihanzai/jafic/index_e.htm.

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27 Mutual legal assistance

In which circumstances will your jurisdiction provide mutual legal assistance with respect to money laundering investigations? What are your jurisdiction's policies and procedures with respect to requests from foreign countries for identifying, freezing and seizing assets?

Japan provides mutual legal assistance with respect to money laundering investigations under the same conditions as other crimes.

Japan also provides mutual legal assistance with respect to the forfeiture and asset freezing of crime proceeds under the Act on Punishment of Organised Crimes and the Anti-Drug Special Provisions Act.

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