

# JAPAN

## Little or no enforcement

3.8% of global exports

### Investigations and cases

In the period 2016-2019, Japan opened one investigation, commenced one case and concluded one case with sanctions.

In 2018, **Mitsubishi Hitachi Power Systems (MHPS)** agreed to a plea bargain – the first in Japan – under Japan’s new Prosecutorial Agreement System.<sup>1</sup> The plea bargain concluded with prosecutors concerned an alleged bribe that MHPS was forced to pay to a Thai Ministry of Transport official to unload cargo in a port. An in-house whistleblower informed the company of the matter in March 2015, which then reported the issue to the prosecutor’s office after an internal inquiry. The agreed plea bargain exempted MHPS from indictment in exchange for cooperation during the investigation and trial. Two former MHPS executives were subsequently charged with bribery and admitted to the charges. In March 2019 they were found guilty by a Tokyo district court and sentenced to prison terms of 18 months and 16 months respectively, suspended for three years.<sup>2</sup> A third person charged, a former MHPS senior executive, pleaded not guilty and was sentenced by a Tokyo court in September 2019 to 18 months, suspended for three years.<sup>3</sup> He has appealed his sentence.

Foreign bribery cases involving Japanese companies have been pursued in other countries. In the United

States in 2016, **Olympus Corp. of the Americas**, a medical equipment subsidiary of a Japanese company, admitted to foreign bribery offences and paid US\$646 million to resolve the charges.<sup>4</sup> In 2018, Japan-based **Panasonic Corp.** agreed to pay more than US\$143 million to resolve charges by the US Securities and Exchange Commission of accounting fraud and violations of the Foreign Corrupt Practices Act involving its global avionics business.<sup>5</sup> There have been no known investigations of these companies by Japanese enforcement authorities.

### Recent developments

The new Prosecutorial Agreement System took effect on 1 June 2018, pursuant to which plea bargaining can be used for violations of the Unfair Competition Prevention Act, including foreign bribery. This has the potential to enable Japanese authorities to investigate and conclude foreign bribery cases more effectively by encouraging those with first-hand knowledge to provide evidence or cooperate with authorities.<sup>6</sup>

In 2019, the president of the Japanese Olympic Committee (JOC) was indicted on corruption charges by French authorities in relation to Tokyo’s successful bid for the 2020 summer Olympics.<sup>7</sup> He allegedly authorised the payment of bribes to Singapore company **Black Tidings** (reportedly linked to Papa Massata Diack, son of Lamine Diack, then an International Olympic Committee member). A JOC internal investigation found no illegality in any payments made by the Japanese bid committee. This highlights the complexities of alleged bribery investigations when they concern international bodies such as sports organisations.

<sup>1</sup> <https://www.mhps.com/news/20180720.html>; <https://asia.nikkei.com/Business/Companies/Japan-s-first-plea-deal-spares-plant-builder-in-Thai-bribery-case>

<sup>2</sup> <https://www.japantimes.co.jp/news/2019/03/01/national/crime-legal/ex-mitsubishi-hitachi-power-systems-execs-convicted-bribes-walk-result-japans-first-plea-bargain/#.XprUm5nTU2w>; The men said they had no option but to agree to the demand and they did not personally benefit from doing so.

<sup>3</sup> <https://www.bangkokpost.com/thailand/general/1749469/japanese-exec-sentenced-for-bribing-thai-official>; Mr Uchida said he did not have the authority to order the other two to pay a bribe. The court found the evidence indicated otherwise.

<sup>4</sup> <https://www.justice.gov/opa/pr/medical-equipment-company-will-pay-646-million-making-illegal-payments-doctors-and-hospitals>

<sup>5</sup> <https://www.sec.gov/news/press-release/2018-73>

<sup>6</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Japan-Phase-4-Report-ENG.pdf> <https://www.internationallawoffice.com/Newsletters/White-Collar-Crime/Japan/Nagashima-Ohno-Tsunematsu/New-plea-bargaining-system-in-practice>

<sup>7</sup> <https://www.nytimes.com/2019/01/11/world/europe/japan-olympics-corruption-tsunekazu-takeda.html>

## Transparency of enforcement information

There is no publicly available data on foreign bribery enforcement in Japan. Statistics on mutual legal assistance (MLA) requests are available on the Ministry of Justice's website, including requests sent and received. However, there are no separate statistics available for MLA related to foreign bribery cases.

Information on court decisions is available through a centralised court website<sup>8</sup> and other law reporting services. For each case, sentencing decisions are summarised and the accused are anonymised. The full text of judgements and commentaries are available online.

## Beneficial ownership transparency

There is no central register of beneficial ownership of companies or trusts, nor is there any proposal to introduce one.

## Inadequacies in legal framework

The foreign bribery offence is in the Unfair Competition Prevention Act, which falls under the authority of the Ministry of Economy, Trade and Industry (METI). As the METI is also responsible for promoting Japan's economic growth, this raises concerns that decisions to pursue foreign bribery cases may be unduly influenced. It would be preferable for the foreign bribery offence to come under a separate act, with responsibility for implementation and for that of other anti-bribery laws falling within the remit of the Ministry of Justice.<sup>9</sup>

Japan's statute of limitations is only five years for foreign bribery. In its Phase 3 Report on Japan in

2011 and its Phase 4 Report in 2019, the OECD WGB recommended that this be extended, but this recommendation has yet to be implemented.<sup>10</sup> The OECD WGB has also noted that the framework in Japan for establishing nationality of jurisdiction over legal persons is too narrow.<sup>11</sup>

The sanctions imposed on the MHPS officers who pleaded guilty were insufficient given the nature of the offence. The OECD WGB has expressed concern that Japan's sanctions for foreign bribery do not sufficiently meet the standard for natural or legal persons and has called for the level to be increased.<sup>12</sup>

Japan's Whistleblower Protection Act prohibits the dismissal or other disadvantageous treatment of whistleblowers who report allegations of foreign bribery in both the public and private sectors.<sup>13</sup> However, as the Act does not provide for independent investigations or prosecutions, it is up to qualified whistleblowers who suffer retaliation to bring a civil action for reinstatement or damages and establish that the retaliation was intentional. The OECD WGB said in its 2019 Phase 4 Report on Japan "Whistleblowing is becoming more prevalent, though Japan needs to further align its law with the 2009 Recommendation and do more to minimise the risk of retaliation."<sup>14</sup>

Under the National Public Service Act, the nomination of high-ranking officials within ministries, including national police and the prosecutors' office, needs cabinet approval. This raises concerns of the possibility of political interference in enforcement and lack of independence in the police and the prosecution service.

## Inadequacies in enforcement system

<sup>8</sup> [http://www.courts.go.jp/app/hanrei\\_jp/search1](http://www.courts.go.jp/app/hanrei_jp/search1); [http://www.courts.go.jp/app/hanrei\\_en/search?](http://www.courts.go.jp/app/hanrei_en/search?) (English translation of major cases)

<sup>9</sup> To meet the requirements of Article 5 of the OECD Anti-Bribery Convention, which states that Parties shall not be influenced by considerations of national economic interest, the potential impact on relations with another state, or the identity of the natural or legal persons involved.

<sup>10</sup> <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/Japanphase3reportEN.pdf>; <https://www.oecd.org/corruption/anti-bribery/OECD-Japan-Phase-4-Report-ENG.pdf>

<sup>11</sup> <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/Japanphase3reportEN.pdf>; <https://www.oecd.org/corruption/anti-bribery/OECD-Japan-Phase-4-Report-ENG.pdf>

<sup>12</sup> Article 3 requires that bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. Where criminal responsibility does not apply to legal persons, the non-criminal sanction imposed shall be effective, proportionate and dissuasive.

<sup>13</sup> <http://www.cas.go.jp/jp/seisaku/hourei/data/WPA.pdf>

<sup>14</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Japan-Phase-4-Report-ENG.pdf>, p.4.

In its Phase 4 Report on Japan in 2019, the OECD WGB remained concerned that despite 20 years of Japan's law prohibiting foreign bribery, the country still had not given it full effect.<sup>15</sup> The agencies that could detect foreign bribery are not proactive. Investigating and prosecuting authorities are also insufficiently proactive and coordinated in their foreign bribery investigations, to the extent that the police have little to no involvement in these cases. Japan seems to rely on voluntary measures and whistleblower reports, as opposed to adopting more coercive measures, such as search and seizure.<sup>16</sup>

The Ministry of Justice's role in transmitting and clarifying certain allegations may create unnecessary delays in opening investigations. Japanese overseas missions have failed to detect any allegations of foreign bribery on their own initiative, e.g. through the monitoring of foreign and local media reports.

by the OECD Anti-Bribery Convention and the 2009 Recommendation.

## Recommendations

- Ensure that the METI or the Ministry of Justice collects and publishes enforcement statistics
- Ensure that the Financial Intelligence Unit establishes a publicly accessible beneficial ownership register for companies and trusts
- Adopt a separate act to regulate foreign bribery and move the responsibility for implementing the OECD Anti-Bribery Convention, the UN Convention against Corruption and other anti-bribery standards to the Ministry of Justice
- Introduce and implement improvements to whistleblower protection and create incentives for whistleblowers to come forward
- Expand the breadth of nationality of jurisdiction for foreign bribery offences
- Extend the statute of limitations as it applies to foreign bribery
- Increase sanctions to be applied to both natural and legal persons
- Improve enforcement through encouraging investigations by the police and increasing investigations by prosecutors
- Ensure that overseas missions actively monitor local media with a view to detecting foreign bribery by Japanese citizens
- Apply the Japanese Unfair Competition Prevention Act to officials of international organisations which run on public funds or are government funded, and to all profit-making international transactions, even if they are not business transactions.

Transparency International Japan also proposes that these aspects be covered

<sup>15</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Japan-Phase-4-Report-ENG.pdf>, p.4.

<sup>16</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Japan-Phase-4-Report-ENG.pdf>