

Annex 1

DRAFT QUESTIONNAIRE

Country self-assessment report on implementation and enforcement of G20 commitments on foreign bribery

G20 countries are invited to complete the questionnaire, below, on the implementation and enforcement of G20 commitments on foreign bribery.

Part I questions are drafted directly from the principles outlined in the G20 Guiding Principles on Enforcement of the Foreign Bribery Offence endorsed by G20 Leaders in St. Petersburg, and its background note on Enforcement of Foreign Bribery Offences. Part II questions are drafted from the G20 Anti-Corruption Action Plan and the St. Petersburg Leaders' Declaration.

Responses to this questionnaire could be compiled into a summary on the "state of play" in G20 countries on steps taken to date to implement the aforementioned instruments, as well as plans for future actions in this area.

I. Implementation of the Guiding Principles on Enforcement of the Foreign Bribery Offence in G20 Countries

Note 1: This section of the questionnaire is drafted from the principles outlined in the G20 Guiding Principles on Enforcement of the Foreign Bribery Offence and the background note on Enforcement of Foreign Bribery Offences.

A. A robust legislative framework

In your jurisdiction:

1. Is there a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery, including offering, promising or giving of a bribe, bribery through intermediaries, and bribes paid to third party beneficiaries?

- *If your jurisdiction criminalises foreign bribery, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your jurisdiction does not have a foreign bribery offence:*
 - Please note whether an offence has been "drafted", "submitted for government review", or "adopted but not yet entered into force".
 - Please provide a timeline for the entry into force of draft legislation, where applicable.

Response:

Yes, Japan criminalizes foreign bribery under the Unfair Competition Prevention Law (UCPL). The relevant provision is as follows:

Article 18 Prohibition of provision of illicit profit, etc. to foreign public officials, etc.

No person shall give, or offer or promise to give, any money or other benefits to a foreign public officer

for the purpose of having the foreign public officer act or refrain from acting in a particular way in relation to his/her duties, or having the foreign public officer use his/her position to influence another foreign public officer to act or refrain from acting in a particular way in relation to that officer's duties, in order to obtain illicit gains in business with regard to international commercial transactions.

Note 2: For questions 2 through 11, jurisdictions without a foreign bribery offence should include updates on plans to address the following issues in efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.

2. What is the statute of limitations for investigating and prosecuting foreign bribery?

Response:

The statute of limitations for natural persons and legal persons is 5 years.

3. Please describe the form of jurisdiction available over the foreign bribery offence (i.e.; territorial or nationality jurisdiction).

Response:

Nationality jurisdiction is applied to the offence of bribery of a foreign public official.

4. Please indicate whether your jurisdiction has a corporate liability regime for the offence of foreign bribery.

If your jurisdiction does not have a corporate liability regime for the offence of foreign bribery, please provide a timeline for implementation of corporate liability.

Response:

Yes, Japan has a corporate liability regime for the offence of foreign bribery.

5(a) Please describe the sanctions and confiscation measures available for natural and legal persons for the crime of foreign bribery.

5(b) Please provide the number of criminal, administrative, and civil cases of foreign bribery that have been opened against natural or legal persons, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned, specifying the actual enforcement outcome (e.g. fine and/or imprisonment).

- *Where possible, please provide references to the relevant provisions and/or the full text, if possible.*

Response:

5 (a) The sanctions available for natural and legal persons for the crime of foreign bribery are as follows:

Sanctions

1) Natural persons: The term of imprisonment is a maximum of 5 years. The fine is a maximum of JPY 5 million. Imprisonment and a fine could be imposed together.

2) Legal persons are liable to a maximum of fine of JPY 300 million for the offence of bribing a foreign public official.

Confiscation of the proceeds of bribing a foreign public official is not available.

5 (b) :

7 individuals and 1 legal person were sanctioned and there were no cases where individuals or legal persons resulted in acquittal from 1999 to June 2014.

1 legal person was sanctioned in administrative and civil cases and there were no cases where individuals or legal persons resulted in acquittal in administrative and civil cases from 1999 to June 2014.

B. Effective detection and domestic coordination

In your jurisdiction:

5. How is the exchange of information encouraged and facilitated between investigative and prosecutorial authorities in charge of the foreign bribery offence and other competent authorities in charge of related economic and financial crimes (i.e., tax, financial intelligence, money laundering, securities, and other regulators)? Where possible, please cite specific examples.

Response:

In Japan, the framework of effective coordination between special investigative divisions in district prosecutors offices and relevant agencies, including Police, the National Tax Agency (NTA) and the Securities and Exchange Surveillance Commission (SESC) has been well established and executed in practice, with respect to economic and financial crimes such as fraud, bribery, tax invasion, security crime. Such framework of effective coordination includes interchange of personnel, individual case consultations prior to case referral to prosecutors office and the establishments and executions of joint-investigation.

6. What steps have been taken to engage with relevant agencies, such as overseas missions, broader tax administrations, trade promotion, public procurement and export credit agencies, as well as with the private sector, on issues related to implementation and enforcement of the foreign bribery offence? Where possible, please cite specific examples.

Response:

The Ministry of Foreign Affairs (MOFA) has instructed all overseas missions that officials designated as contact points for the OECD Anti-bribery Convention learn the training material to collect and analyze information on allegations of foreign bribery and respond to questions from Japanese citizens and companies overseas regarding Japan's foreign bribery offence.

The Japan Bank for International Cooperation (JBIC) sets an internal rule about the response to any act in violation of laws or regulations, including foreign bribery, which stipulates JBIC employees' reporting duty immediately after detecting any illegal event with regard to projects in which JBIC is involved. To raise staffs' awareness of compliance issues including the risk of foreign bribery, JBIC implements compliance trainings in a timely manner and checks its staffs' understanding by conducting a text. JBIC also displays the brochure made by the Ministry of Economy, Trade and Industry (METI) for prevention of foreign bribery on its public space of the meeting room.

Nippon Export and Investment Insurance (NEXI) has continued its efforts to raise awareness of risks of foreign bribery among Japanese companies in particular SMEs by calling their attention to it and cooperating with METI in distributing educational leaflets.

Japan Business Federation (Keidanren) developed the guideline "Charter of Corporate Behavior" and "The Charter of Corporate Behavior and its Implementation Guidance", which contained "not give gifts to or entertain foreign public officials for the purpose of obtaining illicit gains" and encourages member corporations to comply with the Charter. "The Charter of Corporate Behavior and its Implementation Guidance" calls for basic attitude and stance as followings; "A corporation should set up an in-house mechanism and educate employees and raise their awareness so that there can be no illegal or suspicious behavior. A similar control mechanism should be applied to its overseas branches and affiliates and arrange educational and awareness-raising programs."

7(a) Are appropriate reporting channels available for whistleblowers in both the private and public sectors?

7(b) Are appropriate protections available for whistleblowers in both the private and public sectors?

Where possible, specific reference should be made to implementation of the G20 Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation.¹

Response:

7(a): Japan's Whistleblower Protection Act which was enacted in 2006 defines the procedures and prescribed channels for facilitating reporting as stipulated under the principle of 4. of the G20 Guiding Principles for Legislation on the Protection of Whistleblowers. Under the act, whistleblowers in both the private and public sectors can use reporting channels of such as employers, administrative organs, media, consumer organizations.

7(b): The Act protects whistleblowers, in both the private and public sectors, against dismissal and unfair treatment and it provides a clear definition of the scope of protected disclosures and of the persons afforded protection as stipulated under the principle of 2. of the G20 Guiding Principles for Legislation on the Protection of Whistleblowers .

¹ Available online here: <http://www.oecd.org/corruption/48972967.pdf>

C. Effective investigation and prosecution

In your jurisdiction:

8. What measures are in place to ensure that the investigation and prosecution of foreign bribery should not be subject to improper influence based on concerns of the national economic interest, the potential effect upon relations with another state, or the identity of the natural or legal person involved.

Response:

In Japan, public prosecutors properly investigate and prosecute criminal cases including foreign bribery cases, based upon laws and evidence at all times, not to be influenced by any enticement or pressure in the exercise of their duties.

Article 14 of Public Prosecutor's Office Act stipulates that with regard to the exercise of prosecutorial power, the Minister of Justice may direct and supervise the public prosecutors in a general manner, but the Minister may direct only the Prosecutor General, for the handling of individual criminal cases.

9(a) Please describe the investigative powers granted to law enforcement authorities to proactively and effectively investigate and prosecute foreign bribery, including access to information from financial institutions.

9(b) Please describe the specialized training on detecting, investigating and prosecuting foreign bribery provided and/or planned to be provided to law enforcement authorities.

Response:

9 (a) Based on Act of Prevention of Transfer of Criminal Proceeds, JAFIC (Japan's FIU, independent from law enforcement authorities) collects, arranges, and analyzes all Suspicious Transaction Report (STRs) received from specified business operators and provides law enforcement authorities (i.e. Police, Public Prosecutors Office, Narcotics Control Department, Japan Coast Guard, Japan Customs and Security and Exchange Surveillance Commission) with STRs that have been deemed conducive to the investigation of money laundering, predicate offenses or other offenses.

The police utilize the STRs provided by JAFIC in the course of investigations on criminal offences including foreign bribery.

When investigating and prosecuting foreign bribery cases, public prosecutors may collect evidence existing in Japan and request mutual legal assistance in connection with investigations to collect evidence existing in foreign country.

Methods of collecting evidence in Japan includes, but not limited to,

- Taking statements from witnesses and suspects (Article 198 and 223 of Code of Criminal Procedure)
- Asking to make a report on necessary matters relating to the investigation (Article 197 -2 of Code of Criminal Procedure)
- Arresting suspects (Article 199 of Code of Criminal Procedure)
- Searches and Seizures (Article 218 of Code of Criminal Procedure)

9(b) The ministry of Justice conducts training targeted at public prosecutors who have approximately three years' experience. During the course of the training, public prosecutors are delivered lectures about investigation and prosecution of foreign bribery. Moreover, the ministry of Justice held a conference in 2011 where public prosecutors in charge of financial and economic crimes from district prosecutor's office

throughout Japan attended and reported the foreign bribery cases which resulted in conviction in order to share the enforcement best practices among public prosecutors.

National Police Agency gives lectures on the foreign bribery offense in the UCPL to Security Officers who will be dispatched to overseas missions.

10(a) Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases. Please indicate how many responses were provided to MLA requests and how many MLA requests were made.

10(b) Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system.

Where possible, specific reference should be made to implementation of the G20 High-Level Principles on Mutual Legal Assistance.²

Response:

10 (a) Our domestic laws provide mutual legal assistance, MLA, to requesting countries including to those countries which do not have treaty relationship with Japan.

However, in order to conduct MLA more efficiently and effectively, Japan has concluded treaties or agreement on MLA, with the U.S, South Korea, China, Hong Kong, Russia and the EU. Under these MLATs, we can provide and request treaty based on MLA.

In 2012, requests received by Japan for assistance in investigation are 98 and requests made by Japan for assistance in investigation are 79.

10 (b) In general, it is possible to gather and provide information in reply to a request through Interpol channels for the purpose of criminal investigation, as long as it doesn't require compulsory measures. Information gathered in such a way and provided through Interpol channels is not to be used in court procedures as evidence.

Prior to the submission of a MLA request, the central authorities exchange advice on the procedure and substantive requirements for MLA, as well as details regarding evidence or other information available to help narrow the scope of the request.

11. If possible and/or relevant, please describe efforts made to consult with another country or countries' enforcement authorities on the investigation, prosecution and sanctioning of the same alleged act(s) of foreign bribery.

Response:

While a law enforcement authority of Japan investigates a case of foreign bribery, the central authority of Japan contacts and discusses the investigation, prosecution and sanctioning of the same alleged acts of foreign bribery with the central authority of foreign country which has also the jurisdiction.

² Available online here: <http://www.oecd.org/g20/topics/anti-corruption/High-Level-Principles-on-Mutual-Legal-Assistance.pdf>

National Police Agency participated in the meeting with the Technical Delegation from OECD Working Group on Bribery in September 2013, and the Foreign Bribery Conference hosted by DOJ, SEC and FBI of United States in Washington D.C in February 2013.

II. Implementation of Foreign Bribery Provisions in the 2012-2013 G20 Anti-Corruption Action and the St Petersburg Declaration

Note 3: This section of the questionnaire is drafted from the 2012-2013 G20 Anti-Corruption Action Plan and the St. Petersburg Leaders' Declaration. It also seeks updates from G20 countries on next steps for fighting foreign bribery.

12. Please specify next steps for continuing "efforts to adopt and enforce laws and other measures against foreign bribery".³

Response:

Japan's next steps include the following;

- Proactively detect bribe payments by tax inspectors
- Review the materials on the treatment of facilitation payments
- Newly specialized prosecutors for foreign bribery were designated in the three largest district prosecutors offices in April 2014 in order to proactively detect, investigate and prosecute foreign bribery cases. Public Prosecutors Office in Japan will continuously monitor the performance.
- Ministry of Justice will continuously provide training and lectures for prosecutors about foreign bribery and disseminate treaties and laws relevant to foreign bribery to public prosecutors.

13. Please specify next steps for engagement with the OECD Working Group on Bribery with a view to explore possible adherence to the OECD Anti-bribery Convention as appropriate.

Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2014;
- Co-organize or attend meetings on foreign bribery; and/or
- Engage in technical assistance activities on the issue of implementation and enforcement of the foreign bribery offence;
- Open discussion for Membership in the WGB, with a view to acceding to the OECD Anti-Bribery Convention.

Response:

As Japan is a member of the OECD Working Group on Bribery, this question is not applicable.

³ G20 Anti-Corruption Action Plan 2013 – 2014, Point 2.