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Executive summary

Note by the Secretariat

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II. Executive summary

Japan

1. Introduction: overview of the legal and institutional framework of Japan in the context of implementation of the United Nations Convention against Corruption

Japan signed the United Nations Convention against Corruption on 9 December 2003 and accepted it through an amendment to the Act on Punishment of Organized Crimes and Control of Proceeds of Crime. Japan deposited its instrument of acceptance of the Convention with the Secretary-General of the United Nations on 11 July 2017.

The main sources of law in Japan are the Constitution, treaties, codes and laws, cabinet orders, ministry ordinances and ministry notifications. Case law and judicial decisions are not regarded as sources of law, but they provide non-binding guidance for the interpretation of laws.

The National Diet is the highest organ of State power and the sole law-making organ at the national level. It is composed of the House of Representatives and the House of Councillors (arts. 41 and 42 of the Constitution).

The Japanese legal system is based on both civil and common law. The anti-corruption framework comprises provisions from several laws, notably, the Penal Code, the Code of Criminal Procedure, the Unfair Competition Prevention Act, the Act on Punishment of Public Officials' Profiting by Exerting Influence, the Act on the Prevention of Transfer of Criminal Proceeds and the Act on Punishment of Organized Crimes and Control of Proceeds of Crime.

Treaties concluded by Japan form part of domestic legislation and can be implemented directly (art. 98 of the Constitution). However, Japan, as a practice, establishes implementing legislation for treaties before their conclusion.

Japan has several authorities and bodies with mandates relevant to the fight against corruption. These include the National Police Agency, the Public Prosecutor's Office and the Japan Financial Intelligence Centre.

2. Chapter III: criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Article 7 of the Penal Code defines "public officer" as any national or local government official, member of an assembly or committee, or other employee engaged in the performance of public duties.

Article 197 of the Code criminalizes the solicitation or acceptance of a bribe by a public officer in connection with his or her duties. The article also criminalizes the solicitation of or promise to accept a bribe in advance of assumption of office. Article 197-2 of the Code criminalizes indirect bribery and bribery for the benefit of third parties.

Article 198 of the Code criminalizes the promise, offering or giving of bribes provided for in articles 197 to 197-4.

Although the Code does not provide a definition of a "bribe", under a judicial precedent set by the Supreme Court in 1910, a "bribe" covers any profit that satisfies the needs or desires of people, irrespective of whether it is tangible or intangible.

The Unfair Competition Prevention Act criminalizes the active bribery of foreign public officials and officials of public international organizations (arts. 18 (1) and 21 (2) (vii)). Those provisions have been enforced in many cases.

The country's legislation does not criminalize the passive bribery of foreign public officials or officials of public international organizations.

The Penal Code criminalizes active and passive bribery, specifically, the acceptance or solicitation by a public officer of a bribe, or any promise to accept a bribe, as consideration for the influence that the officer exerted or is to exert upon another public officer so as to cause the other to act illegally or refrain from acting in the exercise of official duty (arts. 197-4 and 198). The Act on Punishment of Public Officials' Profiting by Exerting Influence includes similar provisions applicable to members and employees of the House of Representatives and the House of Councillors (arts. 1, 2 and 4). The relevant provisions do not extend to persons other than public officials or cover trading in "supposed influence".

Article 967 of the Companies Act criminalizes the active and passive bribery of persons with managerial, executive or supervisory authorities in companies. This provision does not cover persons working in companies in other capacities or extend to other private sector entities.

Money-laundering, concealment (arts. 23 and 24)

Articles 10 and 11 of the Act on Punishment of Organized Crimes and Control of Proceeds of Crime criminalize money-laundering.

Article 10 of the Act covers the act of concealing proceeds of crime and the act of disguising facts with respect to the acquisition or disposal of proceeds of crime and with respect to the source of proceeds of crime. The act of receiving proceeds of crime is also covered (art. 11 of the Act).

The Act can cover many money-laundering scenarios. Although it does not use identical terminology to the Convention in relation to the acts of "conversion or transfer of property" and "the concealment or disguise of the true nature, [...] location, [...] movement or ownership of or rights with respect to such property", according to judicial precedent these acts are punishable under article 10 of the Act.

Article 38 of the Penal Code provides for the punishment of offenders who wilfully and intentionally commit offences. This general rule therefore applies to the offence of money-laundering.

Article 10 (2) of the Act on Punishment of Organized Crimes and Control of Proceeds of Crime criminalizes attempt. Articles 60 to 62 of the Penal Code capture the different aspects of criminal participation.

Japan has adopted a list-based approach to designating the predicate offences for money-laundering. The list covers a wide range of offences, including those established in accordance with the Convention (art. 2 of the Act on Punishment of Organized Crimes and Control of Proceeds of Crime and annexed schedule).

Predicate offences include offences committed abroad, provided that the act would have been a criminal offence under Japanese law had it been committed in Japan (art. 2 of the Act).

Perpetrators of predicate offences can be punished for self-laundering, since money-laundering is criminalized without regard to who perpetrated the predicate offence.

Article 256 of the Penal Code and article 10 of the Act on Punishment of Organized Crimes and Control of Proceeds of Crime criminalize the concealment or retention of proceeds of crime; these two provisions complement each other with respect to the scope of application and statutory penalty.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Article 252 of the Penal Code criminalizes the embezzlement of property. The misappropriation or other diversion of property is covered under article 247 of the Code, criminalizing breach of trust. Both articles are general in nature and are equally applicable to embezzlement by public officials and embezzlement in the private sector.

Article 193 of the Penal Code criminalizes abuse of authority by public officers when such abuse causes another person to perform an act that the person has no obligation to perform or hinders another person from exercising his or her right. Article 194 of the Code criminalizes abuse of authority by special public officers.

Japan does not criminalize illicit enrichment because of concerns that it may infringe on fundamental principles of the country's legal system, such as the presumption of innocence (*in dubio pro reo*). However, there are disclosure requirements for members of the Diet and senior public officials relating to assets, gifts and certain income. If illicit enrichment is the result of a crime, it can be punished.

Obstruction of justice (art. 25)

Obstruction of justice through the use of physical force, threats or intimidation is criminalized pursuant to the general provisions of articles 222 and 223 of the Penal Code on "intimidation" and "compulsion", in addition to article 105-2 of the Code on "intimidation of witness". Obstruction of justice through bribery is criminalized pursuant to article 7-2 of the Act on Punishment of Organized Crimes and Control of Proceeds of Crime on "bribing witnesses".

Article 95 of the Penal Code criminalizes assault or intimidation of a public officer in the performance of public duties or in order to cause the officer to perform or refrain from performing public duties.

Liability of legal persons (art. 26)

With the exception of the offences of money-laundering (art. 17 of the Act on Punishment of Organized Crimes and Control of Proceeds of Crime) and active bribery of foreign public officials and officials of public international organizations (art. 22 (1) of the Unfair Competition Prevention Act), the country's legislation does not provide for the criminal liability of legal persons with respect to offences under the Convention. Articles 709 and 715 of the Civil Code can be used as a basis for the civil liability of a legal person if the prejudicial act was committed by one of its employees in relation to the execution of its business.

The Companies Act provides for the administrative liability of legal persons (dissolution) in cases where an executive director, executive officer or partner who executes the business has committed an act that violates criminal laws and regulations, if that person commits such an act continuously or repeatedly despite receiving a written warning from the Minister of Justice (arts. 824 and 827).

The criminal sanction foreseen for active bribery of foreign public officials and officials of public international organizations is a fine of up to 300 million yen. The criminal sanction foreseen for money-laundering is a fine of up to 3 million yen, which is the same punishment as for natural persons. Although other corruption offences do not carry criminal sanctions, legal persons may be subject to civil and administrative penalties for participation in offences established in accordance with the Convention.

Participation and attempt (art. 27)

Criminal participation is dealt with under articles 60 to 65 of the Penal Code. Attempt is punishable only when specifically so provided (art. 44 of the Code). Accordingly, only attempted money-laundering (art. 10 (2) of the Act on Punishment of Organized Crimes and Control of Proceeds of Crime), intimidation (art. 223 (3) of the Penal Code) and breach of trust (art. 250 of the Penal Code) are criminalized. Attempt to commit any of the other offences covered by the Convention cannot be sanctioned.

Preparatory acts for the crime of money-laundering can be punishable at the stage of preparation before the stage of attempt (art. 10 (3) of the Act on Punishment of Organized Crimes and Control of Proceeds of Crime). Planning to commit a serious crime that entails an act of preparation by an organized criminal group can also be punishable (art. 6-2 of the Act).

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Japan has adopted penalties for corruption offences that range from a fine of not less than 10,000 yen up to 10 years of imprisonment with work. Although the gravity of the offence and other relevant circumstances can be taken into account in sentencing, for money-laundering (art. 10 of the Act on Punishment of Organized Crimes and Control of Proceeds of Crime), active bribery (art. 198 of the Penal Code) and assault or intimidation of a public officer (art. 95 of the Code), the minimum statutory penalty of a fine of 10,000 yen (art. 15 of the Penal Code), if imposed, may be inadequate. Authorities indicated that the imposition of the minimum statutory penalty in such cases is unlikely as the gravity of the offences is taken into account.

Immunities do not seem to constitute an impediment to the effective prosecution of corruption offences. Article 21 of the Imperial Household Law can be interpreted to provide that the Emperor cannot be subject to legal action while in office.¹ Pursuant to article 75 of the Constitution, ministers of State cannot be subject to legal action during their tenure without the consent of the Prime Minister. However, there are no established judicial precedents on whether prime ministers could be subject to legal action during their tenure, and constitutional scholars are divided on this point. During a session of the Diet, a member of the House of Representatives or the House of Councillors cannot be apprehended without the consent of that House, unless caught in the act of committing a criminal offence outside the House (art. 50 of the Constitution; art. 33 of the Diet Law). These provisions do not prevent a member of the House from being investigated and prosecuted, even during a session of the Diet.

Prosecution in Japan follows the principle of discretionary prosecution. Accordingly, article 248 of the Code of Criminal Procedure lists the conditions where prosecution is deemed unnecessary owing to the character, age and environment of the offender, the circumstances and gravity of the offence, or the circumstances or situation after the offence. Japan has not established clear rules or guidelines for prosecutors on how to exercise their discretionary legal powers relating to the prosecution of persons. However, if the prosecutor decides not to prosecute, the case can be subject to review by the Committee for Inquest of Prosecution and, in some cases, prosecution of the case is obligatory.

Detention can be applied for corruption offences (art. 60 of the Code of Criminal Procedure). Release on bail pending trial is possible. The amount of bail should be sufficient to ensure the appearance of the accused. The court may also specify the residence of the accused or add other appropriate bail conditions (art. 93 of the Code). Early release from imprisonment is possible if one third of the definite term imposed, or 10 years in the case of life imprisonment, has been served (art. 28 of the Penal Code).

Public officials may be placed on administrative leave if they are prosecuted in a criminal case (art. 79 of the National Public Service Act; art. 28 of the Local Public Service Act). In addition, a prosecuted judge may be suspended at any time (art. 39 of the Judge Impeachment Act).

Public officials who have been sentenced to imprisonment or a more severe punishment lose their position as a matter of course (art. 76 of the National Public Service Act; art. 28 of the Local Public Service Act), and they are not eligible to assume a position in Government until they have served their sentence (art. 38 of the National Public Service Act; art. 16 of the Local Public Service Act). In addition, former public officials who have been dismissed by a disciplinary action are not eligible to assume a position in Government for a period of two years (art. 38 of the National Public Service Act; art. 16 of the Local Public Service Act). State-owned

¹ Article 21 stipulates that the regent (a person who performs acts in relation to matters of the State in the Emperor's name when the Emperor is a minor or is otherwise unable to perform such acts) cannot be prosecuted while in office. The article does not explicitly refer to the Emperor, and whether the Emperor can be subject to legal action is a matter of interpretation.

enterprises may establish procedures for the disqualification of persons convicted of offences from assuming positions in such enterprises after serving their sentence.

Disciplinary sanctions can be taken under the National Public Service Act (art. 82) and can be imposed in addition to criminal sanctions in corruption cases (art. 85).

Japan has a comprehensive legal and institutional framework for the rehabilitation of convicted persons, in addition to dedicated programmes for the reintegration of such persons into society.

Offenders who surrender themselves before being identified as suspects might receive a reduced sentence (art. 42 of the Penal Code). Moreover, the Code of Criminal Procedure provides for the possibility of agreements and consultations in relation to specific crimes, whereby the public prosecutor may, if the defence counsel so consents, make an agreement with the suspect or defendant under which the suspect or defendant gives testimony to clarify the facts related to a crime committed by another person and the public prosecutor does not prosecute the suspect or recommends a specific penalty for the defendant, or, if the suspect pleads guilty, an expedited trial is held (arts. 350-2 to 350-6). Such cooperation may also be taken into account in sentencing or, under the conditions of article 25 of the Penal Code, when deciding on the suspension of a sentence.

The country's legal provisions related to witness protection apply when perpetrators become witnesses.

The country's legislation does not allow the conclusion of agreements to provide for the exemption from punishment of persons collaborating with justice who are located abroad.

Protection of witnesses and reporting persons (arts. 32 and 33)

Japan has measures to protect the identity and safety of victims when they give testimony but does not have a witness protection programme. The Code of Criminal Procedure (arts. 290-2, 290-3, 299-3, 299-4 and 299-6) provides for non-disclosure or limitations on disclosure of information concerning the identity and whereabouts of witnesses, experts and victims when there is a risk of physical harm to those persons or their relatives, or to their property.

Japan permits testimony to be given through the use of communications technology. Moreover, the Code of Criminal Procedure allows the court to have the accused leave the courtroom while a witness gives testimony (art. 304-2). The Code further allows the submission of written statements in lieu of oral ones when a victim or witness states an opinion relating to the case (art. 292-2 (7)).

Japan does not have any arrangements regarding the relocation of persons, but could consider entering into such arrangements if necessary.

Japan provides for the legal protection of reporting persons in both the private and public sectors, pursuant to the Whistle-blower Protection Act and other relevant provisions in the National Public Service Act and the National Public Service Ethics Code.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Confiscation in Japan is a supplementary punishment (art. 9 of the Penal Code); accordingly, it is conviction-based.

Japan provides for the possibility of confiscating proceeds of crime and instrumentalities used or destined for use in the commission of offences (art. 19 of the Penal Code; art. 13 of the Act on Punishment of Organized Crimes and Control of Proceeds of Crime). Japan also allows for value-based confiscation (art. 19-2 of the Code; art. 16 of the Act).

The Code of Criminal Procedure (arts. 99–127 and 189–246) and the Act on Punishment of Organized Crimes and Control of Proceeds of Crime (arts. 22–53)

establish a wide range of investigative measures for identifying, tracing, freezing or seizing proceeds of crime and instrumentalities.

The Code of Criminal Procedure and the Rules of Criminal Procedure establish some measures relating to the administration of seized and confiscated property. With regard to seized articles, appropriate measures can be taken in order to prevent any loss or damage (art. 98 of the Rules). Seized items that are inconvenient to transport or retain may be put under guard or the owner or another person, after giving consent, may be made to retain them, and articles that are likely to cause danger may be disposed of (art. 121 of the Code). Furthermore, seized items that may be confiscated and that risk being lost or damaged, or that are inconvenient to retain, may be sold and their proceeds retained (art. 122 of the Code). Confiscated articles must be dealt with by the public prosecutor (art. 496 of the Code). If the confiscated material is of value, it must be sold. If the confiscated material is of no value, or if it is of value but is dangerous or to be destroyed or disposed of, it must be destroyed or disposed of (arts. 29 and 30 of the Rules for the Affairs of Evidence).

Japan allows for the possibility of seizing and confiscating transformed or converted property (art. 19 of the Penal Code) or intermingled property (art. 14 of the Act on Punishment of Organized Crimes and Control of Proceeds of Crime), in addition to income or other benefits derived from proceeds of crime (art. 13 (1) (ii) of the Act).

The Code of Criminal Procedure allows the courts and the investigating authorities to order that bank, financial or commercial records be made available or seized (arts. 99, 197 (2), 218 and 222). Bank secrecy does not constitute grounds for refusal and does not seem to be an obstacle to effective criminal investigations.

Japan does not require that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation.

The Penal Code (art. 19 (2)), the Code of Criminal Procedure (art. 124 (2)) and the Act on Punishment of Organized Crimes and Control of Proceeds of Crime (art. 15) provide for the protection of the rights of bona fide third parties.

Statute of limitations; criminal record (arts. 29 and 41)

Article 250 of the Code of Criminal Procedure establishes statute of limitations periods ranging from 1 to 30 years depending on the seriousness of the statutory penalty. Accordingly, the statute of limitations periods for the offences covered by the Convention range from three to seven years. The statute of limitations commences at the time when the criminal act has ceased (art. 253 of the Code). It ceases upon the institution of prosecution (art. 254 of the Code) and is suspended where the offender is outside Japan or is in hiding and cannot be found in order to be notified (art. 255 of the Code).

Article 5 of the Penal Code provides that foreign judgments do not preclude further punishment of the same acts in Japan, provided, however, that when the person has already served the punishment abroad, execution of the punishment should be mitigated or remitted.

Jurisdiction (art. 42)

Japan has established jurisdiction with regard to the circumstances referred to in article 42, with the exception of corruption offences committed against Japan or Japanese nationals (arts. 1–4 of the Penal Code). The country's active personal jurisdiction extends to several Convention offences, including passive bribery of national public officials and concealment or retention of proceeds of crime, but it does not cover stateless persons who have their habitual residence in Japan and commit offences covered by the Convention outside its territory.

Japan does not extradite its own nationals (art. 2 (ix) of the Extradition Act), but it has established its jurisdiction over some offences established in accordance with the Convention, except for those that are considered punishable in Japan in order to

protect the interests of its own State, when the alleged offender is present in its territory and is not extradited solely on the ground of nationality.

Japanese legislation does not specifically address jurisdiction over offences that have been committed outside its territory and when the alleged offender who is not a national is present in its territory and is not extradited.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Japan has taken some measures to address the consequences of corruption in relation to the award of tenders. Article 71 of the Cabinet Order on Budgets, the Settlement of Accounts and Accounting provides for the disqualification of persons from participating in open tenders for up to three years if such persons have obstructed the fair implementation of tenders, hindered a fair price from being reached or colluded with others to obtain unlawful profits. Outside the procurement process there are no provisions in place to address the consequences of corruption, and the country's legislation does not consider corruption a relevant factor in legal proceedings to annul or rescind contracts, withdraw concessions or similar instruments or take other remedial action.

Article 709 of the Civil Code establishes the right of affected parties to claim civil compensation for damages caused by the accused.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The main authorities in Japan responsible for combating corruption through law enforcement are the Public Prosecutor's Office and the National Police Agency. Each prefectural police organization has specialized sections within its second investigation division that are in charge of combating corruption (including bribery of foreign public officials) and financial crimes and that are instructed by the second investigation division of the National Police Agency. Public prosecutors specializing in domestic and foreign bribery and other offences are also deployed in the special investigation departments established in three major district public prosecutor's offices. It appears that this structure works effectively, adequate training and resources are provided and the institutions enjoy sufficient independence.

Regarding cooperation between national authorities, article 239 of the Code of Criminal Procedure establishes the obligation of any government official or local government official to file an accusation when they believe an offence has been committed. Pursuant to article 197 of the Code of Criminal Procedure, public offices or public or private organizations may be asked to produce a report on necessary matters relating to the investigation.

Article 8 of the Act on the Prevention of Transfer of Criminal Proceeds establishes the obligation of a number of private sector entities (specified business operators), when property accepted through specified business affairs is suspected to have been criminal proceeds, to promptly report the matter to the Japan Financial Intelligence Centre. The Centre and other competent authorities have also provided training and awareness-raising activities to the private sector.

Article 239 of the Code of Criminal Procedure allows any person who believes that an offence has been committed to file an accusation.

2.2. Successes and good practices

- The criminalization of active and passive bribery in advance of assumption of office (art. 15).
- The existence of public prosecutors specializing in domestic and foreign bribery and other offences (art. 36).

2.3. Challenges in implementation

The following could further strengthen existing anti-corruption measures:

- Consider criminalizing passive bribery of foreign public officials and officials of public international organizations (art. 16, para. 2).
- Consider extending the scope of active and passive trading in influence to persons other than public officials and to include trading in “supposed influence” (art. 18).
- Noting that article 193 of the Penal Code covers a wide range of types of abuse of functions, consider further extending the scope of the offence (art. 19).
- Consider criminalizing illicit enrichment (art. 20).
- Consider extending the scope of active and passive bribery in the private sector to cover persons working in companies in any capacity and to cover private sector entities other than companies (art. 21).
- Subject legal persons to more robust sanctions for participation in the offences established in accordance with the Convention (beyond active bribery of foreign public officials and officials of public international organizations), and ensure that the sanctions are effective, proportionate and dissuasive, in accordance with the Convention (art. 26, para. 4).
- Review its statute of limitations regime to provide for longer periods or a different starting time (i.e., date of leaving office) in the case of corruption offences (art. 29).
- Review the statutory sanctions for offences established in accordance with the Convention, in particular the minimum penalty of a fine of 10,000 yen (the common statutory minimal penalty prescribed in article 15 of the Penal Code) that can, theoretically, be imposed for active bribery, money-laundering and assault or intimidation of a public officer (art. 30, para. 1).
- Assess whether prime ministers could be subject to legal action during their tenure of office, in accordance with the country’s legal system and constitutional principles, while maintaining an appropriate balance between immunities and jurisdictional privileges and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with the Convention (art. 30, para. 2).
- Endeavour to establish clear rules or guidelines for prosecutors on how to exercise their discretionary legal powers relating to the prosecution of persons (art. 30, para. 3).
- Adopt additional measures to further enhance the administration of frozen, seized or confiscated property (art. 31, para. 3).
- Consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation (art. 31, para. 8).
- Adopt further measures to provide effective protection for witnesses and experts who give testimony concerning offences established in accordance with the Convention and for their relatives and other persons close to them, including procedures for physical protection, where appropriate (art. 32, para. 2 (a)).
- Adopt additional measures to address consequences of acts of corruption, which could include considering corruption a relevant factor to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action (art. 34).
- Adopt measures to provide effective protection to perpetrators who cooperate with justice and to their relatives and people close to them (art. 37, para. 4).

- Adopt measures to establish its jurisdiction over all offences established in accordance with the Convention when the alleged offender is present in its territory and it does not extradite that person solely on the ground that he or she is one of its nationals (art. 42, para. 3).

Japan is further encouraged to:

- Consider establishing the criminal liability of legal persons for participation in all offences established in accordance with the Convention (art. 26, paras. 1 and 2).
- Consider criminalizing any attempt to commit the offences established in accordance with the Convention, beyond money-laundering and intimidation (art. 27, para. 2).
- Consider establishing its jurisdiction over corruption offences committed against Japan or Japanese nationals and extending its active personal jurisdiction to all offences covered by the Convention, including offences committed abroad by stateless persons who have their habitual residence in its territory (art. 42, paras. 2 (a), 2 (b) and 2 (d)).
- Consider establishing its jurisdiction over corruption offences when the alleged offender is present in its territory and it does not extradite him or her (art. 42, para. 4).

3. Chapter IV: international cooperation

3.1. Observations on the implementation of the articles under review

Although aggregate statistics on the number of mutual legal assistance requests sent and received were available, no disaggregated statistics on the number of mutual legal assistance requests executed or refused by Japan were available. Japan provided statistics on the number of extraditions from and to foreign countries, but the number of extradition requests sent or received was not available.

Extradition, transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Although treaties concluded by Japan form part of domestic legislation and can be implemented directly (art. 98 of the Constitution), the country, as a practice, establishes implementing legislation for treaties before their conclusion.

Extradition is governed by the Extradition Act. Japan may surrender a fugitive without an extradition treaty provided that the request satisfies the requirements of the Act and on the condition of reciprocity (art. 3 (ii) of the Act).

When the Minister for Foreign Affairs receives a request pursuant to an extradition treaty from a foreign State, he or she forwards the request and related documents to the Minister of Justice for examination and further transmission to the competent authorities, namely, the public prosecutor, to order an application to the High Court for examination as to whether the case is one in which the fugitive can be extradited (arts. 3 and 4 of the Extradition Act).

Japan has only two bilateral extradition treaties; one with the United States of America and one with the Republic of Korea.

The absence of dual criminality is a mandatory ground for refusing extradition (art. 2 (v) of the Extradition Act). A minimum requirement, as prescribed by statute, of a “long” term of imprisonment of three years or more is prescribed for offences to be extraditable under the Extradition Act (art. 2 (iii) and (iv)); this may present practical limitations, as not all Convention offences (e.g., certain elements of

obstruction of justice) satisfy this threshold.² Certain conditions are alleviated in accordance with the extradition treaties concluded with the United States and the Republic of Korea, such as the minimum penalty requirement (reduced to one year) and the refusal of extradition of nationals (made discretionary).

Article 4 (1) (iv) of the Extradition Act gives the Minister of Justice broad discretion to refuse extradition requests that are not based on a treaty when it is deemed inappropriate to extradite the fugitive, on the basis of consideration of factors including whether the criminal procedures of the requesting country adequately protect human rights. Article 2 of the Act sets out grounds for refusal and provides that extradition cannot be granted for political offences. It is generally understood that corruption offences are not considered political offences.

The Extradition Act (arts. 6, 10 and 13) and the Rules of Procedure of the Act (art. 14) contain provisions that require the central authority to handle cases without delay. In addition, under articles 8, 9 and 16 of the Act, specific time limits for handling cases are prescribed.

Japan does not extradite its nationals, but establishes jurisdiction over nationals who commit offences outside the country (arts. 2–4 of the Penal Code); however, not all Convention offences are covered. There are no measures to enforce the remainder of a foreign sentence where extradition of nationals is refused.

Basic measures are in place under the Extradition Act and the Code of Criminal Procedure to ensure the fair treatment of persons wanted for extradition. For example, cases are heard in open court in order to determine whether the request meets the procedural requirements and conditions for extradition set out in the Extradition Act and relevant treaties (art. 9 of the Extradition Act). The fugitive and his or her legal counsel must be given an opportunity to express their opinions before the court (art. 9 (3) of the Act). In cases where the fugitive is detained, a decision must be made within two months of the day of detention (art. 9 (1) of the Act). The country's legislation does not specifically refer to discriminatory grounds for refusing extradition.

The Extradition Act does not explicitly refer to accessory extradition. Japan consults with requesting States as a matter of practice before refusing requests for extradition.

Japan has entered into bilateral and multilateral agreements and arrangements on the transfer of sentenced persons, namely, the Convention on the Transfer of Sentenced Persons of the Council of Europe and bilateral treaties with Brazil, Iran (Islamic Republic of), Thailand and Viet Nam.

There is no law or practice on the transfer of criminal proceedings, and there have been no cases requiring such agreements.

Mutual legal assistance (art. 46)

Although the Act on International Assistance in Investigation and Other Related Matters provides a basic framework for the provision of mutual legal assistance, several provisions of article 46 of the Convention (listed below) are not addressed in domestic legislation.

Japan is a party to seven bilateral treaties on mutual legal assistance, as well as several international conventions, and assistance may be rendered in the absence of a treaty on the condition of reciprocity (art. 4 (ii) of the Act on International Assistance in Investigation and Other Related Matters). Japan considers the Convention as a basis for mutual legal assistance.

Dual criminality is a requirement for rendering assistance; Japan is considering concluding additional treaties to reduce this requirement. There are no measures on

² Most corruption offences are punishable in Japan by a maximum term of imprisonment of more than three years, although some offences (abuse of authority and bribery of witnesses) are punishable by a maximum term of imprisonment of two years.

the provision of non-coercive assistance in the absence of dual criminality. Japan reserves the right to refuse assistance if the matter is considered trivial.

There are no statutory limitations on providing assistance for offences involving legal persons or on the spontaneous exchange of information, although in principle, information must be obtained through mutual legal assistance if such information is intended to be used formally as evidence.

Chapter 3 of the Act on International Assistance in Investigation and Other Related Matters provides for the transfer of sentenced inmates, provided that a treaty on mutual legal assistance is in place with the requesting State. The requirement for prisoner consent and the possibility of establishing conditions for the transfer are addressed (art. 19 (1) (i) and (2)).

The Minister of Justice is the central authority for mutual legal assistance under the Convention. It is not necessary for requests to be made through diplomatic channels when a treaty or agreement on mutual legal assistance is in place with the requesting State. Requests must be accompanied by a Japanese translation and are required to be submitted in writing. Requests for cooperation in investigating a criminal case of a foreign State may also be made through the International Criminal Police Organization (INTERPOL) (art. 18 of the Act on International Assistance in Investigation and Other Related Matters).

Requirements regarding the content of requests for mutual legal assistance are not specified in the Act on International Assistance in Investigation and Other Related Matters, except where the request involves the examination of witnesses or the provision of articles of evidence (art. 2 (iii)). For the convenience of countries that are considering making requests, the Ministry of Justice provides guidelines on its website, including a checklist for drafting a request.

The grounds for refusing requests for mutual legal assistance are contained in article 2 of the Act on International Assistance in Investigation and Other Related Matters. Under article 2 (iii), requests for the examination of witnesses or the provision of evidence, unless otherwise provided by a treaty, will be refused if the requesting country does not clearly demonstrate in writing that the evidence is essential to the investigation. The Act does not establish bank secrecy as a ground for refusing assistance.

There are no detailed provisions in the Act addressing the requirements of article 46, paragraphs 18 to 20, 22 to 24 and 26 to 29.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Competent authorities cooperate and exchange information on countering money-laundering and the financing of terrorism, in particular the dissemination of information on suspicious transactions to foreign financial intelligence units. Japanese police cooperate with foreign law enforcement authorities, including INTERPOL, by cooperating in investigations, participating in joint meetings and seconding officers to INTERPOL.

Japan considers the Convention as the basis for mutual law enforcement cooperation.

There have been no bilateral or multilateral agreements or arrangements on joint investigations.

Special investigative techniques may be employed in accordance with the Code of Criminal Procedure (art. 197 (1)), provided that they are necessary to achieve investigative ends. However, corruption-related offences are not included in the list of offences for which communications can be intercepted. Therefore, it is not possible to intercept communications in relation to offences covered by the Convention, except in limited circumstances in which such offences are committed in conjunction with or as part of preparations for offences listed in the Act on Communications Interception for Criminal Investigation. Any coercive measures can be executed only when there

are laws that allow their use. The use of controlled delivery is permitted by law in cases involving drug-related offences, and it can be used in non-coercive investigations to the extent permitted under the Code of Criminal Procedure without the need for special provisions (art. 197 (1)). Evidence derived from special investigative techniques is routinely admitted in the same way as ordinary evidence in criminal cases.

3.2. Successes and good practices

- For the convenience of countries that are considering making mutual legal assistance requests to Japan, the Ministry of Justice provides detailed, user-friendly guidelines on its website, including a checklist for drafting a request (art. 46).
- Japan has legal attachés at several embassies whose role is to facilitate coordination between central authorities, strengthen relationships between prosecutorial agencies and promote mutual understanding (art. 48).

3.3. Challenges in implementation

The following could further strengthen existing anti-corruption measures:

- Enhance data-collection systems to enable more detailed tracking and reporting of data on international cooperation requests (e.g., on underlying offences, the time frame for responding to requests and any grounds for refusal) (arts. 44 and 46).
- Adopt measures to ensure that dual criminality does not present impediments to extradition (art. 44, para. 1).
- Adopt measures to ensure implementation of the *aut dedere aut judicare* principle with regard to all Convention offences committed outside the country, where extradition is refused on the ground of nationality (art. 44, para. 11).
- Adopt measures to ensure that dual criminality does not present impediments to the provision of mutual legal assistance and to provide for non-coercive assistance in the absence of dual criminality; consider specifying a threshold for matters to be considered *de minimis* (art. 46, para. 9).
- Continue to fully implement article 46, paragraphs 19, 22 to 24 and 26 to 28.

It is further recommended that Japan:

- As is the case with the Treaty on Extradition Between Japan and the Republic of Korea, consider recognizing accessory extradition in treaties with other States parties (art. 44, para. 3).
- Consider reviewing the statutory minimum “long” term of imprisonment of three years or more for offences to be extraditable under the Extradition Act, so that all the offences established in accordance with the Convention are included, and include Convention offences as extraditable offences in future extradition treaties to the extent required by the Convention (art. 44, paras. 4, 7 and 8).
- Consider adopting measures to enforce a sentence imposed by the requesting State or the remainder thereof, in cases where the extradition of nationals is refused (art. 44, para. 13).
- Consider adding specific provisions to its domestic legislation in line with article 44, paragraph 15.
- Consider adding specific provisions to its domestic legislation to implement article 46, paragraphs 18 and 20.