

JAPAN: 2004 AMENDMENT TO THE UNFAIR COMPETITION PREVENTION LAW

Adopted: 26 May 2004
Entry into force: foreseen 1 January 2005

Amendment introducing nationality jurisdiction

1. Introduction of nationality jurisdiction

Article 14-(3)

The offences under Article 14(1) (vii) (limited to the part thereof which relates to Article 11-(1)) are subject to article 3 of the Criminal Code (Kei ho Law No 45 of 1907.)

Supplementary provisions

This Law will come into force on Jan 1, 2005.

2. Related provisions in the UCPL

(Purpose)

Article 1

The purpose of this Law is to provide measures for the prevention of unfair competition and for compensation for damages from unfair competition, etc, in order to ensure fair competition among business entities and the full implementation of international agreements related thereto, and thereby to contribute to the sound development of national economy.

(Prohibition of bribery of foreign public official)

Article 11-(1)

No person shall give, offer or promise any pecuniary or other advantage, to a foreign public official, in order that the official act or refrain from acting in relation to the performance of official duties, or in order that the official, using his position, exert upon another foreign official so as to cause him to act or refrain from acting in relation to the performance of official duties, in order to obtain or retain improper business advantage in the conduct of international business.

Article 11-(2)

The term “foreign public official” used in paragraph (1) shall mean any of the following persons:

- (i) Any person who engages in public services for national or local foreign governments;
- (ii) Any person who engages in services for an entity constituted under foreign special laws to carry out specific tasks public interest;
- (iii) Any person who engages in services for an enterprise of which the number of stocks with the right to vote or the amount of capital subscription directly owned by one or more of national or local foreign government exceeds one-half of that enterprise’s total issued stocks with the right to vote or total subscribed capital, or of which the number of executives (including directors, statutory auditors, trustees, inspectors, liquidators or other persons who engage in management of its business) appointed or named by one or more national or local foreign government exceeds one-half of that enterprise’s executives, and to which special privileges are given by national or local foreign governments to do its business; and such person as defined in the government ordinances as “foreign public official”;
- (iv) Any person who engages in public services for an international organization (here in after, an “international organization” means an international organization which is formed either by

- governments or by an international organization formed by governments)
- (v) Any person who exercises a public function which falls under. The authorized competence of national or local foreign governments or an international organization and is delegated by them.

(Penal Provisions)

Article 14-(1)

Any person who falls under any of the following items shall be liable for an imprisonment for a period not exceeding three years or for a fine not exceeding ¥ 3 000 000

- (i) A person who commits, for an unfair purpose, any act of unfair competitions described in Article 2 (1)(i) or (xiii);
- (ii) A person (excluding a person described in the preceding item) who indicates a falsehood on goods or for services, or in an advertisement or in a document or correspondence used for a transaction, which is likely to mislead, with respect to the place of origin, quality, contents, manufacturing method, use or quantity of such goods or the quality, contents, use or quantity of such services;

(iii),(iv),(v),(vi),... (Omission)

- (vii) A person who violated any provision of Article 9, Article 10 or Article 11-(1).

Article 14-(2) ... (Omission)

Article 14-(4) ... (Omission)

(Legal Persons)

Article 15

In the case where a representative, an agent or an employee of a legal person or a person has committed, in relation to the business of the legal person or the person, any of the violations described in the paragraph 1 of preceding article (from (iii) to (vi)), in addition to the violator being punished, the legal person shall also be liable for a fine not exceeding ¥ 300 000 000 and shall be liable to the same fine described in the preceding article.

Note:

... : The dotted underlined text entered into force on 1st January 2004 (unrelated to the bribery of foreign public officials).

3. Related provisions in the Criminal Code (Unofficial translation)

Article 3

This code shall be applied to a Japanese national who commits any of the following crimes outside the territory of Japan: ...