

JAPAN: 2001 AMENDMENTS TO THE UNFAIR COMPETITION PREVENTION LAW

Entry into force: 25 December 2001

Amendments deleting the provision on the main office exception and modifying the definition of foreign public officials

1. “Main office” exception

Former Law:

Art 10 bis-(1) No person shall give, offer or promise any pecuniary or other advantage, to 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 public 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.

Art 10 bis-(3) Paragraph (1) is not applicable, when the foreign country described in Items (1) to (iii) and (v) in paragraph(2) is the same foreign country where the main office of the person who gives, offers or promises any advantage (which, in the case where a representative, an agent or an employee of a legal person or a person gives, offers or promises any advantage in relation to the business of the legal person or the person, means the main office of the legal person or the person) is located.

Amended Law:

Art 11(1) No person shall give, offer or promise any pecuniary or other advantage, to 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 public 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.

(Art 10 bis – (3) Deleted)

2. Definition of foreign public official in relation to public enterprises

Former Law:

Art 10 bis-(2) The term 'foreign public official' used In paragraph(1) shall mean any of the following persons:

(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 governments 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 of national or local foreign governments 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.

Amended Law:

Art. 11(2) The term 'foreign public official' used in paragraph (1) shall mean any of the following persons:

(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 at executives (including directors, statutory auditors, trustees, inspectors, liquidators or other persons who engage in management at its business) appointed or named by one or more of national or local foreign governments 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 ordinance as 'foreign public official'.

The government ordinance to define "such person as defined in the government ordinance as foreign public official" provided for in Article 11.2 (iii) of the Unfair Competition Prevention Law.

Cabinet shall enact this government ordinance in accordance with Article 11.2 (iii) of the Unfair Competition Prevention Law.

1. Such person as defined in the government ordinance as foreign public official provided for in Article 112(iii) of the Unfair Competition Prevention Law (hereinafter. referred to as the "Law") means any person engaging in services for any of the following enterprises (excluding the enterprises stipulated in Article 11.2(iii) of the Law) which are given special privileges by national or local foreign governments to do its business:

- i) Any enterprise of which one or more of national or local foreign governments directly own more than half of all the stock holders' rights to vote,

- ii) Any enterprise which requires permission, approval, consent of, or other similar acts by national or local foreign governments for all or part of the resolutions of general meetings of stock holders to become effective, or whose such resolutions may be invalidated by national or local foreign governments, or
- iii) Any enterprise (excluding any enterprise described in 1(i) or this government ordinance), of which one or more foreign governments, whether national or local, or public enterprises directly own more than half of (a) the total issued stocks with the right to vote, (b) the total subscribed capital, or (c) all the stock holders' rights to vote, or the majority of whose executives (including directors, statutory auditors, trustees, inspectors liquidators or other persons who engage in management of its business. "Executives" stated in the next paragraph shall mean the same) are appointed or named by one or more foreign governments, whether national or local or public enterprises.

2. "Public enterprise" stipulated in 1(iii) of this government ordinance shall mean any enterprise stipulated in Article 11.2 (iii) of the Law and those described in 1(i) and (ii) of this government ordinance. In this case, any enterprise of which one or more foreign governments, whether national or local, or public enterprises directly own more than half of (a) the total issued stocks with the right to vote, (b) total subscribed capital, or (c) all the stock holders' rights to vote, or the majority of whose executives are appointed or named by one or more foreign governments, whether national or local, or public enterprises, shall be deemed as public enterprise.

Supplementary provisions

This government ordinance shall enter into force on the day of the enforcement of the Law to amend the Unfair Competition Prevention Law (December 25, 2001).

UNFAIR COMPETITION PREVENTION LAW (extraction)

(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 the 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 in the 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 governments 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 (hereinafter, 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--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 Y3,000,000:

- (i) A person who commits, for an unfair purpose, any act of unfair competition 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) A person who violates any provision of Article 9, Article 10 or Article 11-(1).

(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 preceding article, in addition to the violator being punished, the legal person shall also be liable for a fine not exceeding Y300,000,000 and shall be liable to the same fine described in the preceding article.