

Key Changes to Japan's Whistleblower Protection Act Require Stronger Compliance

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Since its enactment in 2004, Japan's Whistleblower Protection Act has been criticized for being "toothless" and unable to adequately protect whistleblowers. On June 8, 2020, a long-awaited [amendment](#) was finally passed, providing greater legal protection for whistleblowers and strengthening corporate compliance requirements.^[1] The Whistleblower Protection Act applies to some antitrust violations (such as cartel and monopolization conducts) as well as other corporate misconduct that is subject to criminal punishment.

Limitations of existing legal protection

Japan's previous Whistleblower Protection Act offered only limited protections:

- Only current employees are eligible for retaliation protections such as dismissal, demotion, or other repercussions, and not all have been effectively protected from retaliation for reporting misconduct.
- The existing law only covers misconduct subject to criminal punishment.
- Whistleblowers can be held liable for damages to companies caused by their reports.
- There is no legal duty for companies to establish an internal reporting mechanism.

The amendment targets these deficiencies to expand legal protections under the Whistleblower Protection Act as detailed below.

Expanded scope of whistleblower protection

Although contractors and clients are still not eligible for protection, the amendment expands the scope of protection beyond current employees to also include directors, officers, auditors, and those employees who retired within the past year. The amendment also expands the application of the Act to reported misconduct that is subject to administrative punishment and not just criminal violations.

Significantly, whistleblowers are exempted from civil liability for damage to enterprises caused by their reports. However, if there is any criminal act (such as larceny) in collecting the evidence, criminal liability still attaches.

More options to report to administrative agencies and news organizations

The amendment broadens the channels through which a whistleblower may report to administrative agencies and news organs, providing more options than the previous Act does.

Under the amended law, whistleblowers reporting to administrative agencies are only required to provide their name and a description of the corporate misconduct. By contrast, the previous law required whistleblowers to also provide reasonable grounds for their belief that corporate misconduct has occurred or is about to occur. Further, a whistleblower may report to news organizations when there are reasonable grounds to believe that the company has leaked information that easily identifies the whistleblower.

Duty to establish reporting mechanisms

The amendment requires that companies of more than 300 employees establish a reporting mechanism, such as a contact office that responds to whistleblowers' reports. Companies with 300 or fewer employees do not have the same legal obligation, but must make efforts to establish such systems.

Companies that fail—or fail to make efforts—to establish a reporting system are subject to administrative action by the Consumer Affairs Agency (CAA) in Japan, which is the authority designated to enforce the Whistleblower Protection Act. The CAA will require reports, provide guidance and recommend actions for the company to take. If a company fails to follow the CAA's recommendation, the CAA can publicize that fact.

Duty to protect confidentiality

The amendment requires that a company's employees involved with the company's reporting mechanisms protect information that may identify a whistleblower. Employees who breach this duty of confidentiality without justifiable reason will be subject to a criminal fine of up to 300,000 yen (about \$2,800). The term "justifiable reason" is not currently defined, but the CAA will likely issue guidelines clarifying the term.

Takeaway

By this amendment, Japan's Whistleblower Protection Act will provide greater legal protections and make it easier for potential whistleblowers to report corporate misconduct. For advocates in favor of expanded whistleblower protections, the amendment still leaves room for improvement. For example, there is no mechanism for penalizing companies that retaliate against whistleblowers. Nevertheless, companies should prepare to comply with the new protections and consult with experienced counsel paying close attention to how the amendment will be implemented.

Indeed, given this amendment and other recent changes in connection with Japanese enforcement of antitrust law, including revisions to its antitrust leniency program and new "privilege-like" rules in connection with competition investigations, now is a good time for companies operating in Japan to take a close look at their antitrust compliance programs to ensure that they are comprehensive and up-to-date.

^[1] The amendment will take effect from a date specified by the Cabinet Order, which as required by law must be within two years of its promulgation.

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