

Anti-Corruption Guidance

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Japan International
Cooperation Agency (JICA)

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I Introduction

Official Development Assistance (ODA) provided by the government of Japan is an important aspect of Japan's foreign policy. The objectives of Japan's ODA are to contribute to the peace and development of the international community and thereby to help Japan secure its own security and prosperity. Therefore, ODA needs to be used in ways that will be appreciated by the people of Japan as well as the international community. Considering that funding for ODA projects is derived from taxes paid by Japanese citizens, it is particularly important to secure public trust in the way ODA is implemented.

JICA believes that assurance of compliance is a prerequisite to the appreciation of ODA, and therefore, as the executing agency for Japan's ODA, JICA places great emphasis on compliance and has always stressed that parties involved in ODA must adhere to all compliance requirements. In this regard, compliance means not only compliance with Japanese laws and regulations but also treaties, other international agreements, and the laws and regulations of relevant foreign countries. As ODA requires the international community's trust in it, attention must be paid to those treaties with, and the laws and regulations of, foreign countries.

Unfortunately, however, incidents involving fraud and corruption, i.e., bribery, were discovered in relation to Japanese ODA projects this year, and these incidents have shaken the international community's trust and confidence in Japan's ODA. Taking this incident seriously, JICA will put even greater emphasis on the need to ensure compliance so that ODA will be implemented properly. Doing so allows JICA to be accountable to Japanese citizens and the international community. Among other things, JICA considers it necessary to take proactive measures to prevent another occurrence of fraud and corruption from taking place. For example, in order to prevent an incident of bribery of a foreign public official from occurring, which is a violation of the Unfair Competition Prevention Act in Japan and is subject to a criminal sanction, all of the concerned parties must take proactive preventative measures, e.g., private organizations will have to strengthen their internal controls and surveillance activities, and the government of Japan and JICA will have to pay extra attention to information received from their respective contact points (please see Section VI) established at their overseas offices.

JICA uses an array of development assistance schemes, including ODA Loans, Grant Aid and Technical Cooperation, and many private organizations and individuals, both within and outside of Japan, are involved in these projects. Therefore, in order to address fraud and corruption in ODA more effectively, JICA has established a special section within its organization and has prepared this Guidance which is intended to provide an easily understood explanation of its anti-corruption program. JICA hopes that this Guidance will serve to help eliminate incidents of fraud and corruption in the future. At the same time, JICA seeks to continually improve this Guidance and to that end welcomes any comments and opinions on this Guidance.

II Purpose and Common Principles

1. Purpose of this Guidance

This Guidance aims to provide an outline of the actions JICA expects all companies and other organizations engaging in ODA to take in order to prevent fraud and corruption. Among other things, this Guidance provides JICA's definition of fraud and corruption and explains JICA's institutional framework against fraud and corruption (e.g., the rules on measures against fraud and corruption, the Consultation Desk on Anti-Corruption, etc.), and the actions JICA expects will be taken by governments receiving ODA and their executing agencies as well as private organizations. Section VII deals with the actions JICA expects will be taken by partner governments and their executing agencies, and the assistance programs that JICA provides to those countries. Section VIII, which in turn provides guidance to private companies, refers to the matters that, considering the worldwide anti-corruption enforcement trend, JICA expects private companies to include in their compliance programs. It is expected that all parties that are involved in ODA will refer to this Guidance and review their existing anti-corruption programs or introduce new programs, as may be necessary, for anti-corruption enforcement.

2. Common Principles

The objectives of Japan's ODA are to contribute to the peace and development of the international community, and thereby to help ensure Japan's own security and prosperity. Further, funding for ODA projects is derived through taxes paid by Japanese citizens. Considering these aims of ODA and the fact that ODA projects are of high public interest, it is imperative that ODA be implemented in a manner that will be appreciated by Japanese citizens and the international community. Therefore, it is not only JICA as the executing agency, but also all companies and other organizations and individuals involved in ODA and the governments receiving ODA that must maintain high ethical standards.

There are various matters of which the parties involved in ODA need to be mindful, such as consideration of the environment and society and compliance with laws and regulations. Among such, however, elimination of fraud and corruption, such as bribery of public officials of a partner country, is the most urgent matter to be undertaken. It is recognized globally that goods and services should compete fairly based on factors such as price and quality, and unfair competition by way of bribery, etc. should be avoided.

This Guidance explains JICA's resolute stance against fraud and corruption, and the actions that JICA expects parties involved in ODA to take.

III Definitions

JICA employs the term “fraud and corruption” to refer to any act for which, when committed, measures are to be taken under *JICA Rules on Measures to Suspend Eligibility for Participation in Tenders for Contracts* and *JICA Rules on Measures against Persons Engaged in Fraudulent Practices, etc. in Projects of ODA Loan and Grant Aid*.

More specifically, each of the following actions is regarded as fraud and corruption:

- the inclusion of false statements in documents prepared in connection with any public procurement;
- the commission of any act intended to manipulate an auction or tender procedure;
- the commission of a violation of Japan’s Unfair Competition Prevention Act including bribery;
- the commission of a violation of Japan’s Antimonopoly Act; and
- the commission of any other act which is as wrongful or dishonest, similar to any of the acts indicated above.

For the purpose of explaining JICA’s stance, however, in this Guidance “fraud and corruption” primarily refers to a violation of Japan’s Unfair Competition Prevention Act, and in particular, the act of bribery.

IV Target Readers and Regulatory Framework

1. Target Readers of this Guidance

This Guidance is primarily targeted to persons who will enter into contracts with JICA and persons who will enter into contracts with executing agencies of partner countries which are recipients of ODA implemented by JICA; however, certain provisions of this Guidance are directed to the governments of those partner countries and their executing agencies.

2. Regulatory Framework for Preventing Corruption

(1) International Response to Corruption

With the globalization of corporate activities, the importance of preventing unfair competition stemming from corruption including bribery of foreign public officials is recognized all over the world. In this regard, the Organisation for Economic Co-operation and Development (OECD) adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1997. The Convention prescribes that all parties share a responsibility to combat bribery in international business transactions, and that the range of penalties and sanctions is to be comparable to that applicable in cases of bribery of one's own public officials. Furthermore, in 2003, the United Nations Convention against Corruption was adopted and has already been signed by 171 countries to date (as of October 2014). That Convention not only criminalizes bribery of foreign public officials but also requires signatory countries to reinforce their efforts to ensure transparency in the public sector (especially in relation to public procurement and the codes of conducts for public officials) and assist each other in relation to investigations and matters relating to judicial proceedings. In addition, it provides that proceeds from criminal activities in violation of the Convention are to be confiscated.

(2) Legislation in Japan

In view of the international community's stern attitude toward bribery of foreign public officials, new laws and regulations have been introduced in Japan.

The newly introduced laws in Japan include the Unfair Competition Prevention Act (Act No. 47, 1993). After signing the Convention on Combating Bribery of Foreign Public Officials, the government of Japan, in 1998, amended that Act (which amendment came into effect in February 1999) to criminalize acts of bribery of foreign public officials (Article 18 of the Act). Article 18 of the Act proscribes bribery of foreign public officials by any person, and there is no limitation on its application based on the place where the violation is committed¹. For detailed information regarding,

¹ It should be noted, however, that only Japanese citizens will be subject to criminal punishment under the Act if the subject conduct is committed outside of Japan (Article 21, Item (6) of the Act, and Article 3 of the Penal Code of Japan)

among other things, the criminalized conduct, the definition of foreign public officials, and the sanctions to be imposed, please see the *Guidelines to Prevent Bribery of Foreign Public Officials* (Ministry of Economy, Trade and Industry of Japan, revised in 2010).

In response to such legislation, JICA prescribes, in *JICA Rules on Measures against Persons Engaged in Fraudulent Practices, etc. in Projects of ODA Loan and Grant Aid* (Rules No. 43 (Proc.), 2008), that bribery of foreign public officials is subject to sanctions and other measures to be taken by JICA (for details regarding such measures, please see Section V “JICA’s Measures against Fraud and Corruption”).

In addition, JICA has established the *Guidelines for Ethics of Persons engaged in Activities of Japan International Cooperation Agency* which clarifies the matters to be observed by persons engaging in the activities of JICA.

(3) Legislation in Foreign Countries

(a) Laws and Regulations of Major Developed Countries

Some of the laws and regulations against fraud and corruption enacted in major developed countries have extraterritorial application. Some of the more well-known laws include the Foreign Corrupt Practices Act (“FCPA”) in the United States and the Bribery Act (“UKBA”) in the United Kingdom. The FCPA also applies to acts committed by non-US citizens outside of the U.S., and in fact there are many FCPA cases in which the offensive act occurred outside of the U.S. Furthermore, the FCPA recognizes guilt-by-complicity whereby a person who has not committed the actual offensive act may be criminally sanctioned. It is important, therefore, to check whether your business partners have committed violations of the FCPA. The UKBA applies to non-UK citizens who reside in the UK, and under the UKBA not only bribery of public officials, but also bribery of persons who are not public officials, may be sanctioned.

The following are some common characteristics of anti-corruption regulations of major developed countries (including the Unfair Competition Prevention Act of Japan):

- (i) indirect bribery, i.e., giving a bribe using an agent or intermediary person, may be sanctioned; and
- (ii) there is no exemption based on the amount of the payment (so-called “facilitation payments” are also subject to the sanctions; however, the FCPA does not consider “facilitation payments” to be bribery.)

(b) Laws and Regulations of Emerging Countries

ODA projects are subject to the laws and regulations of the jurisdictions where those projects are implemented. Stated below are the major legislations relevant to fraud and corruption in each of the identified countries.

Indonesia: The Corruption and Criminal Offense Prevention Act, etc. which forbids acts and omissions by a public officer that violate such public official's duties, offering any benefit to a person in connection with his/her position or power as a public official. The anti-corruption committee, the enforcement agency, is enforcing the Act proactively.

Philippines: The Amended Criminal Law, etc. The enforcement agencies are the ombudsman institutions and the Special Prosecutor's Office.

Vietnam: The Criminal Law, etc. The enforcement agencies are the National Police Agency, the Public Security Agency, and the Anti-corruption Steering Committee, etc. Under the legislation, bribery involving amounts exceeding a certain threshold amount (which is an element of this offense) will be criminally sanctioned, while bribery involving amounts below that threshold may be also sanctioned.

Thailand: The Criminal Law, the Anti-corruption Law, etc. Offering a bribe will be sanctioned if the action or omission of the public official results in a breach of his legal obligations and receiving a bribe is punishable regardless of whether the action or omission of the public official results in a breach of his legal obligations. The enforcement agency is the National Anti-corruption Committee.

Malaysia: The Anti-corruption Committee Act. Not only bribery of public officials, but also bribery of private citizens is prohibited.

Myanmar: The Criminal Law and the Anti-corruption Law (adopted in September 2013). Attempted bribery, conspiracy to commit bribery and soliciting bribes are all criminal offences.

People's Republic of China: Criminal Law and the Unfair Competition Prevention Act. Offering of a bribe to a counterparty (including a public official) to a commercial transaction is subject to criminal penalties (pursuant to Regulations on Commercial Bribery).

For companies that are actively expanding their operations overseas, it is not sufficient just to comply with the relevant laws and regulations in Japan, and there are many things they will need to do, such as understanding the relevant laws and regulations of the countries where they conduct their business as well as those of major developed countries, monitoring their business partners' activities and practices and preventing such companies from engaging in acts that violate the relevant anti-corruption laws, and establishing an internal control system that enables them to achieve the foregoing.

Fraud and corruption will entail serious consequences. Any person who has committed the offensive act (i.e., the person offering or receiving a bribe) will be punished, the organization to which such person belongs will also be sanctioned, and that organization may suffer further damage through a loss of credibility in the international community, the payment of a penalty which may impose an economic

burden on that organization, and the suspension of its eligibility to participate in tender procedures for contracts which may affect its business operations, etc. Those consequences will outweigh the gains that were intended to be obtained through the fraudulent practices, and in some cases, may result in the bankruptcy of such organization or the termination of its business operations. Therefore, all concerned parties (i.e., the involved companies and the government receiving ODA) need to understand that fraudulent practices impede fair competition and harm public interest and result in serious consequences to individuals and organizations that are involved in such fraudulent practices.

V JICA's Measures against Fraud and Corruption

1. Outline of JICA's Measures against Fraud and Corruption

As a means to respond to fraud and corruption (“Fraudulent Practices”) that occur in relation to ODA implemented by JICA, JICA has established certain measures against persons or entities who are determined to have engaged in corrupt or fraudulent practices (“Measures”). Under the Measures, in the case where a person or an entity is found to have engaged in Fraudulent Practices in relation to an ODA-related contract (in this section, an “ODA-related contract” refers to two (2) kinds of contracts: (i) contracts to which JICA is a party and (ii) contracts for the procurement of equipment, facilities and services conducted by a partner country or its executing agency as a part of an ODA project), that ODA-related contract will lose its eligibility for ODA support or funding, and the person or the entity will not be eligible to participate in any tender for ODA-related contracts for a certain period of time to be determined by JICA.

The enforcement of the Measures will cause a person or an entity to lose business opportunities in relation to ODA projects and suffer significant reputational damage as information regarding such enforcement of the Measures against such person or entity will be publicized on JICA's website. Furthermore, where the Measures are enforced, not only is the person or the entity excluded from participating in bid tender procedures for ODA-related contracts, but also the country receiving ODA may be severely affected (for example, the ODA project to benefit such country may be suspended, the country may be obliged to return any financial assistance received in relation to ODA project, etc.), and consequently it may become difficult for the country to implement the project.

JICA considers that the application of the Measures will serve to clarify JICA's stern attitude toward fraud and corruption in relation to ODA projects, which will consequently deter Fraudulent Practices.

2. Regulatory Foundation

The Act on General Rules for Independent Administrative Agency (Act No. 103 of 1999) obliges each independent administrative agency to formulate a “statement of operational procedures” which is to set forth the basic policies for its operations. The Statement of Operational Procedures of JICA (Rule No. 10 (Op.) of 2003), which was formulated in response to that statutory requirement, provides that JICA will take strict measures against Fraudulent Practices in accordance with the rules and guidelines that JICA will formulate (Article 33 of the Statement), and JICA has established the relevant rules on Measures.

Since JICA is not an administrative agency, JICA is not able to take administrative actions against the persons who engage in Fraudulent Practices (JICA may request that the prosecutor institute a criminal action against a person who commits an offensive act if JICA believes that such person should be held criminally liable for such act, and JICA may bring a civil claim against such offender for damages sustained by JICA resulting

from the commission of such offensive act). However, the Measures have a distinctive feature in that JICA, as an executing agency of ODA, can show its stern stance against Fraudulent Practices by way of excluding persons who are found to have engaged in Fraudulent Practices from participating in bid tender procedures for JICA projects and other projects JICA finances.

The Measures apply to (i) contracts to which JICA is a party and (ii) contracts for the procurement of equipment, facilities and services necessary for an ODA project (e.g., Japanese Grant Aid projects and ODA Loan projects) as entered into between JICA and country receiving ODA and its executing agency. The regulatory foundation for the application of the Measures in relation to the two types of contracts mentioned above is the *JICA Rules on Measures to Suspend Eligibility for Participation in Tenders for Contracts* (Rules No. 43 (Proc.) of 2008) with regard to (i) above, and the *JICA Rules on Measures against Persons Engaged in Fraudulent Practices, etc. in Projects of ODA Loan and Grant Aid* (Rule No. 42 (Proc.) of 2008) with regard to (ii) above (collectively, the “Rules on Measures”). The Rules on Measures can be found on the following websites:

- (i) *JICA Rules on Measures to Suspend Eligibility for Participation in Tenders for Contracts* (Rule No. 42 (Proc.) of 2008)
(Japanese) <http://association.joureikun.jp/jica/act/frame/frame110000942.htm>
(English) http://www.jica.go.jp/english/our_work/types_of_assistance/rule02.html
- (ii) *JICA Rules on Measures against Persons Engaged in Fraudulent Practices, etc. in Projects of ODA Loan and Grant Aid* (Rule No. 43 (Proc.) of 2008)
(Japanese) <http://association.joureikun.jp/jica/act/frame/frame110000943.htm>
(English) http://www.jica.go.jp/english/our_work/types_of_assistance/rule01.html

In addition, the “Guidelines for Procurement under Japanese ODA Loans” (April 2012)², which is not part of the Rules on Measures, provides that a consultant or contractor which has been debarred under a cross debarment decision by Multilateral Development Banks will be deemed ineligible for ODA projects. This means that serious consequences will result from the commission of Fraudulent Practices, whether in relation to a Japanese ODA project or otherwise. Therefore, it should be recognized that a resolute position against Fraudulent Practices needs to be taken in relation to any project (not just Japanese ODA projects).

3. Fraudulent Practices subject to JICA’s Measures

As of October 2014, each act/conduct listed below is prescribed as being subject to

² Section 1.06 (Corrupt or Fraudulent Practices)
http://www.jica.go.jp/activities/schemes/finance_co/procedure/guideline/handbook/english_2012.html

(Provisional Japanese Translation) Section 1.06 (Corrupt or Fraudulent Practices)
http://www.jica.go.jp/activities/schemes/finance_co/procedure/guideline/handbook/japanese_2012.html

the Measures, and the period of debarment for the commission of such act/conduct is also prescribed.

- Issuing a false statement
- Engaging in negligent operations
- Breach of contract
- Causing damage or injury to the public
- Causing damage or injury to a person involved in the operation
- Engaging in bribery
(including a violation of Article 18 of the Unfair Competition Prevention Act)
- Engaging in an activity that is in violation of the Antimonopoly Act
- Engaging in bid rigging
- Engaging in wrongful or dishonest acts

4. Confirmation of Fraudulent Practices

JICA will consider that allegations regarding the commission of Fraudulent Practices are true if:

- (i) a person or an entity or any officer or employee of such person or entity is arrested for, or accused of, having committed the alleged Fraudulent Practice;
- (ii) a person or an entity or any officer or employee of such person or entity admits to having committed the Fraudulent Practice; or
- (iii) JICA determines as an objective fact that the alleged Fraudulent Practice has been committed.

Furthermore, JICA may consider that allegations regarding the commission of Fraudulent Practices are true, and may deem that such facts have fulfilled the conditions for the Measures, if a judicial or administrative entity in a foreign country has rendered a definitive judgment confirming the commission of the alleged Fraudulent Practices.

5. Newly Introduced Requirements

As cases of bribery of foreign public officials were found in 2014, JICA has reinforced its Rules on Measures. Under the new Rules, JICA requires any company that has been debarred, to prepare a plan to prevent recurrence of fraud and corruption or to establish an anti-corruption compliance program, as a condition to the termination of such debarment.

JICA is committed to taking a resolute attitude toward fraud and corruption.

VI Consultation Desk on Anti-Corruption

1. Function

In April 2009, JICA established, within the General Affairs Department of JICA, a point of contact which is to receive reports of fraud and corruption in relation to ODA projects. Although the Ministry of Foreign Affairs (including overseas embassies) also has equivalent points of contact, JICA also actively and appropriately responds to information regarding potential fraud and corruption received at its point of contact.

Initially, the function of this point of contact was limited to receiving information. However, in response to increased demands, it has renamed as ‘Consultation Desk on Anti-Corruption’ and started to engage in consultations with companies suffering from unreasonable requests in relation to alleged fraud and corruption.

The contact information of the Consultation Desk is provided below.

In addition, when a company voluntarily discloses information regarding an alleged case of fraud and corruption, JICA may exempt that company from the Measures or shorten the period of debarment, after taking various factors into consideration.

2. Response to Information on Fraud and Corruption

JICA will carefully handle all information on fraud and corruption it receives and will conduct an investigation into the possible fraud and corruption reported by such information, while being mindful of not causing the discloser of such information any harm or disadvantage, in accordance with the Whistleblower Protection Act (Act No. 122 of 2004).

In the course of its investigation, JICA may conduct an interview of the discloser of such information or request that additional information be provided.

If the investigation reveals that the subject company or a party has been involved in Fraudulent Practices, JICA will impose the Measures or take such other measures against such company or party as it deems appropriate. If it is found that JICA’s monitoring practices implemented during daily operations for operational flow is insufficient to prevent Fraudulent Practices, JICA may review and improve such practices as necessary.

Contact information of JICA’s Consultation Desk on Anti-Corruption:
(Japanese HP entry website)

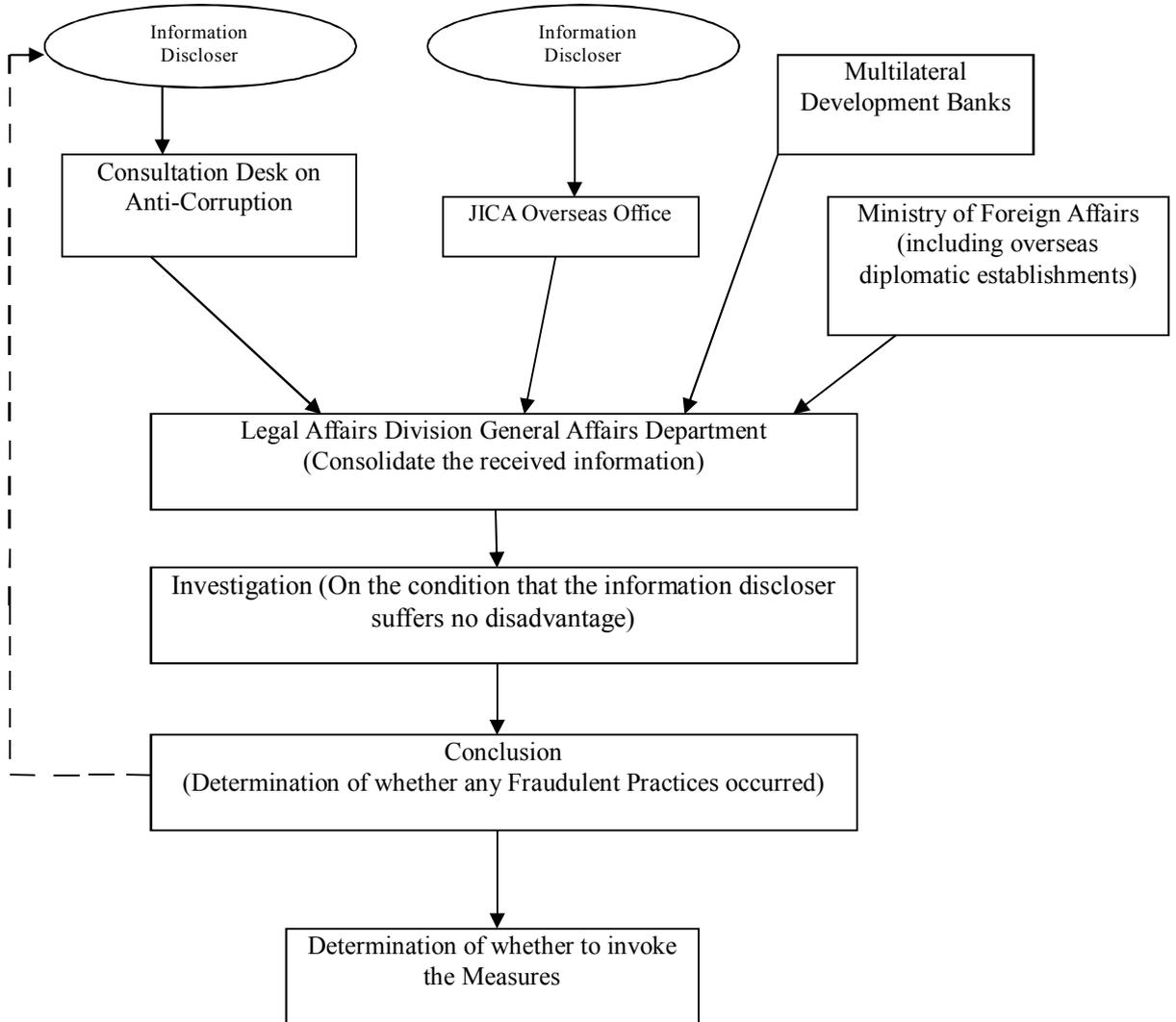
<https://www2.jica.go.jp/ja/odainfo/index.php>

(English HP entry website)

<https://www2.jica.go.jp/en/odainfo/index.php>

- (1) Legal Affairs Division of the General Affairs Department of JICA
TEL : (+81) -3-5226-8850
FAX : (+81) -3-5226-6393
- (2) JICA also provides consultations and accepts information on fraud and corruption at its overseas offices.
Information regarding JICA's overseas offices can be found on JICA's website at:
<http://www.jica.go.jp/about/structure/overseas/index.html>

<Diagram of Information Receipt, Investigation and Decision>



VII Required Actions by Governments of Partner Countries and their Executing Agencies

In order to prevent the occurrence of corruption, as well as promote companies' efforts to enhance their compliance practices, it is also important for governments of partner countries receiving ODA and their executing agencies to increase awareness of corruption. Each company that is involved in ODA projects is required to maintain the highest standards in regard to compliance. In the meantime, the governments of partner countries and their executing agencies are also encouraged to take steps to increase their officials' awareness of corruption and set up a regulatory framework for preventing corruption. In this regard, JICA asks those governments and executing agencies to take the following actions to address corruption, while JICA also provides necessary support to facilitate these proposed actions.

1. Short-term Response

(1) Review of Existing Regulatory Framework for Preventing Corruption

JICA recommends that each of the governments and their executing agencies review their existing regulatory framework for preventing corruption in order to determine whether the framework is well-structured, and whether the policies and procedures of the framework are implemented fairly and properly in line with its intended goals. Further, in order to facilitate increased awareness of the government's laws and regulations addressing corruption, it is important for officials of such governments and their executing agencies to familiarize themselves fully with such laws and regulations and the system in place to prevent and address corruption.

(2) Encouraging Awareness and Use of the Consultation Desk on Anti-Corruption

Establishing the system of points of contact is important to aid in the prevention of fraud and corruption and to allow for early detection of fraud and corruption when they exist. To encourage utilization of these contact points, the governments and their agencies should take steps to expand awareness of these contact points and similar systems among their officers and employees.

With respect to JICA's Consultation Desk on Anti-Corruption, it is important that each executing agency within the governments of countries receiving ODA be made aware of the nature of JICA's activities through means such as seminars and training sessions, so that it will be able to submit information regarding any matter that is likely to be fraud or corruption in connection with JICA's activities, to the Consultation Desk.

Additionally, JICA will insert a notice in each of its standard bidding documents to be provided to potential bidders, instructing them to report information regarding any acts, including requests that may potentially be or lead to corruption, to JICA's Consultation Desk on Anti-Corruption. JICA expects that the inclusion of such notice in documents to be provided to bidders will encourage awareness of the Consultation Desk among those who are involved in the bidding process, which in turn will contribute to the

prevention of fraud and corruption. Further, JICA also expects that the foregoing practice will encourage awareness of the Consultation Desk among companies engaged in ODA projects.

(3) Strict Protection of Whistleblowers

For the purposes of determent, prevention, and early detection of fraud and corruption, a system that promotes whistleblowing is expected to play an important role, though it will not work effectively if an appropriate whistleblower protection system is not established or properly implemented. Under Japan's Whistleblower Protection Act, entities on which information is provided are prohibited from taking retaliatory actions against whistleblowers such as dismissal, demotion, reduction in compensation or other disadvantageous treatment. Even if a whistleblower system is established, it will not likely work effectively if the threat of reprisal from the entities on which information is provided is not removed. The governments of the countries receiving ODA and their executing agencies are strongly encouraged to take necessary steps to strictly protect whistleblowers from such reprisals, and to take steps to encourage awareness regarding such protections.

In order to ensure that any person who reports a corruption case will be well protected in a country that does not have an established whistleblower protection regime, all agreements which JICA will enter into with the governments of countries receiving ODA (i.e., Loan Agreement of ODA Loan, Grant Agreement of Grant Aid, and Record of Discussions of Technical Cooperation) will contain a provision that obliges the relevant government and its executing agencies to protect whistleblowers.

(4) Sharing of Information on Corruption with JICA

When the concerned governments and their executing agencies receive information on fraud and corruption relating to ODA projects, they are required to promptly share such information with JICA, as well as conduct an investigation into the alleged violation or concern. Further, they are required to cooperate with JICA in an investigation conducted by JICA to verify the facts concerning the alleged fraud and corruption and to provide JICA with necessary information as requested by JICA. These requirements for the concerned governments and their executing agencies to provide information to JICA are set forth in all agreements JICA will enter into with those governments in relation to ODA Loans, Grant Aid and Technical Cooperation.

2. Mid-term and Long-term Responses

(1) Establishment of Internal Rules for Anti-corruption

In order to reinforce their efforts to prevent the occurrence of corruption, governments receiving ODA and their executing agencies are expected to establish guidelines, such as a code of conduct or internal regulations, promoting anti-corruption. It is important that such guideline clearly explain the meaning of fraudulent or corrupt practices and emphasize that fraudulent and corrupt practices are not permitted and any

violators will be subject to severe punishment. Further, it is recommended that the governments establish a whistleblower system in order to encourage the reporting of information on fraud and corruption. A whistleblower system should contain an effective whistleblower protection regime.

Some governments have established special offices, departments or organizations that are responsible for enforcing and administrating anti-corruption measures independently, in addition to the establishment of internal policies addressing fraud and corruption. The system that best fits a country will vary depending on the particular circumstances of such country.

(2) Enhancement of Awareness Regarding Anti-corruption Measures

In order to reinforce their efforts to prevent the occurrence of corruption, governments receiving ODA and their executing agencies need to enhance their ability to implement and properly enforce the internal rules so established. JICA supports such enhancement efforts through providing necessary technical assistance.

More concretely, as a means to enhance awareness and understanding of corruption, the governments receiving ODA and their executing agencies should consider, among other things, conducting training sessions for officials within the executing agencies, which sessions are to cover, among other things, the employee code of conduct and internal rules dealing with anti-corruption, the consultation desks and the whistleblower protection regime, which are established or to be established within their organizations. Furthermore, governments receiving ODA and their executing agencies need to reinforce the abilities of officials responsible for the proper implementation of public procurements through training sessions, etc.

VIII Required Actions by Companies

In order to prevent fraud and corruption in relation to ODA projects, all companies participating in ODA projects (“Participating Companies”) need to take affirmative steps to prevent and combat fraud and corruption.

JICA requires all Participating Companies to “observe the highest ethical standards”. (Please see Section 1.06 of the *Guidelines for the Employment of Consultants under Japanese ODA Loans*, Section 1.06 of the *Guidelines for Procurement under Japanese ODA Loans*, Sections II-1-5 and III-1-3 of *The Procurement Guidelines for the Japanese Grant Aid*, and Section 2 of the *Guideline for Ethics of Persons engaged in Activities of Japan International Cooperation Agency*.)

Each Participating Company is expected to develop its own comprehensive compliance program in order to achieve the required “highest ethical standards.”

The provisions stated below are intended to serve as guidance regarding the actions JICA expects Participating Companies to take. JICA expects that each Participating Company takes compliance seriously and will implement measures proactively in order to achieve compliance.

JICA requires any company that has been debarred, to prepare a plan to prevent recurrence of fraud and corruption or to establish an anti-corruption compliance program, as a condition to the termination of such debarment. The compliance program needs to follow the guidelines described below.

1. Compliance with Anti-corruption Legislation of Each Country

As mentioned in Section IV-2 (Regulatory Framework for Preventing Corruption), providing public officials with any benefits in relation to the carrying out of their duties is impermissible and violators are subject to punishment under the laws of each country, including Japan. Further, in light of the fact that the Convention on Combating Bribery of Foreign Public Officials requires the international community to take a united stance against corruption and that some foreign anti-corruption laws provide for extraterritorial application, each Participating Company is required to ensure that its officers and employees are fully aware of such laws, as well as the efforts taken to prevent fraudulent practices.

2. Attitude of Management towards Anti-corruption

As part of their effort to combat fraud and corruption, the management of each Participating Company is required to ensure that the company’s strict policy against fraud and corruption is clearly set out in its corporate principles, as well as to cause all of the company’s officers and employees to become fully aware of such corporate principles.

3. Organizational Structure for Preventing Corruption

Each Participating Company is expected to establish an organizational structure to efficiently prevent and react to fraud and corruption. In establishing that structure, each Participating Company is to be mindful of the following points:

- the section responsible for monitoring compliance is to be independent of the sections responsible for executing business operations, and is to be given the power to monitor the activities of those sections.
- the structure is to enable timely reporting to and opportunities to engage in consultation with the company's top management
- an internal whistleblowing system is to be established just in case the ordinary procedure for reporting fraud and corruption does not function properly.
- professional advisors, e.g., lawyers and certified public accountants, can be engaged to collect information on foreign legislations and to consider how the company should respond.

4. Risk Assessment and Periodic Review

When engaging in business, it is important for each Participating Company to investigate the risks such company may bear and to take concrete actions to address, mitigate or eliminate such risks. As a part of such risk assessment, each company needs to also analyze the probability that any of its officers or employees will be involved in fraud or corruption and take measures for prevention of fraud and corruption. Further, with respect to countries where incidents of fraud and corruption are extremely high, each company should fully review the relevant precautions that have been put into place in relation to business development in such countries.

The following resources provide useful comparative information regarding the risk of fraud and corruption when doing business in various countries:

- World Bank's Doing Business Index (<http://www.doingbusiness.org/>)
- Transparency International's Corruption Perceptions Indices (<http://www.transparency.org/research/cpi/>)

5. Training for Officers and Employees

JICA expects that training with respect to corruption prevention will be given to all officers and employees of Participating Companies. The training is expected to be customized in view of the trainee's job position as well as position in the company's corporate hierarchy. Further, the training should include practical information such as how to decline requests for a kickback or bribe from a government official of a country where the company operates.

It is also important to keep accurate records of each training program including the matters covered in such program, the number of participants and the participation ratio, in order to monitor the status of the company's efforts to prevent fraud and corruption.

6. Internal Rules, etc. for Officers and Employees and Overseas Offices

For the prevention of fraud and corruption, JICA expects each Participating Company to establish internal rules for its officers and employees and for its overseas offices, addressing the matters mentioned below. JICA also expects those internal rules to include a certain contingency plan (e.g., in regard to an approval process, the inclusion of an alternate person to exercise the approval authority in exceptional or urgent situations).

- (A) Engagement of local consultants
- (B) Whether or not former public officials may be re-employed, and if they may be re-employed, the recruitment policy in regard to such re-employment
- (C) Whether or not gifts may be given to persons associated with the executing agencies, and whether or not travelling expenses of such persons may be borne by the company.
- (D) Treatment of facilitation payment (which is legal in the US, but illegal in Japan and the UK)

As the laws of each country treat facilitation payments differently, and thus it is difficult to make determination as to its legality, it is necessary to consider it carefully, taking into consideration the particular circumstances of the relevant country.

- (E) Execution of due diligence regarding a joint venture partner company
When planning a joint venture, each Participating Company needs to collect background information regarding the potential partner company, such as general information (e.g., whether any corruption in relation to such company has ever been publicly reported), information on the company's business operations (e.g., the conditions of the company's business), its past performance, and information relating to accountability (e.g., whether financial statements are prepared).

7. Treatment of Joint Ventures

There are some cases involving, among others, the US Foreign Corrupt Practices Act, in which a company was punished based on fraud and corruption committed by its joint venture partner or its subsidiary under a theory of collusion. Therefore, it is advisable to collect information regarding the compliance system (*i.e.*, the efforts to be made to satisfy the requirements of the relevant anti-corruption laws and regulations) of a partner company when entering into a joint venture.

8. Response to Occurrences of Fraud and Corruption

If fraud or corruption occurs despite the foregoing measures having been taken, an internal investigation is to be promptly conducted and the facts regarding such incident are to be promptly reported to the relevant authorities, as well as to JICA.

It is a requirement that, under the direction of its top management, the relevant Participating Company immediately conducts an appropriate fact finding investigation

into the cause of such fraud or corruption and take measures to prevent a recurrence, as well as disclose information promptly at the time when the facts are confirmed.

In addition, because an internal investigation may possibly lack objectivity and reliability, it may be appropriate for a third-party independent committee consisting mainly of outside attorneys and public accountants to be commissioned to perform an investigation into the reported incident, depending on the severity of the alleged wrongdoing. The incident of fraud and corruption in relation to an ODA project that occurred this year was investigated and reported by an independent investigation committee.

It is advisable to put in place a contingency program in case of an occurrence of fraud and corruption. “Charter of Corporate Behavior & Its Implementation Guidance” prepared by Japan Federation of Economic Organizations will be of some help in this regard as it compiles responses, etc. to be taken in cases of misconduct.

9. Whistleblower Protection

The Whistleblower Protection Act prohibits an employer from dismissing or treating disadvantageously any employee who has reported, in the interest of the public, a possible violation of the law by such business operator.

In light of the purpose of the Whistleblower Protection Act, employees of each Participating Company should not be treated disadvantageously based on their internal reporting of a possible violation within that Participating Company, and furthermore, they should not be treated disadvantageously because they have reported a possible violation to the government or JICA’s Consultation Desk on Anti-Corruption. It may be said that protecting whistleblowers who report on fraud and corruption, including bribery, not only contributes to the public interest, but also to the interest of the company itself. Therefore, it is important that each Participating Company clearly expresses in its own compliance program that it will not treat disadvantageously any employee who has engaged in whistleblowing with respect to his/her company. Further, it is advisable for each Participating Company to ensure that the foregoing policy also be incorporated into the compliance programs of its overseas offices.

10. Establishment of Internal Control System

For the prevention of fraud and corruption, it is important that each Participating Company establishes an effective internal control system. Internal control system means the processes to be incorporated in operations and implemented within the organization to achieve the following four objectives: effectiveness and efficiency of operations, credibility of financial reporting, compliance with laws and regulations, and preservation of assets. JICA believes that the establishment of such a system within an organization will contribute to the prevention of corruption because such system will reduce the likelihood of fraud and corruption due to the fact that more than one section of the organization would be involved in such matters as entering into agreements, paying costs, and engaging in business matters. Although some large companies have

established a separate section responsible for overseeing internal controls, the type of system appropriate for a company may vary depending on its size. It is necessary that each Participating Company understands the risks that it may face and establishes a system which enables it to respond to such risks.

Although it may not be always easy for medium and small size companies to comply with all of the requirements mentioned above while devoting their efforts to expanding their businesses overseas, they are required to do so in sequence, beginning with formulating their strict corporate policy against fraud and corruption and increasing awareness among their officers and employees of the relevant laws and regulations. They may encounter some problems in relation to, among other things, obtaining overseas information, knowing how to mitigate the risk of or address fraud and corruption, and their ability to take a resolute attitude against fraud and corruption. In such cases, each Participating Company may not only engage in consultation through the Consultation Desk on Anti-Corruption, but also become a member of the relevant industry organization and deal with such problems in accordance with the policies, etc. of such organization.