

GIR KNOW HOW ANTI-MONEY LAUNDERING

Japan

Ryoko Yamaguchi, Masayuki Atsumi
and Yuta Kanai
Miura & Partners

NOVEMBER 2023

Money laundering

1. What laws in your jurisdiction prohibit money laundering?

In Japan, there are two laws at the national level that prohibit money laundering:

- the Act on Punishment of Organized Crimes and Control of Crime Proceeds (Organized Crime Punishment Act); and
- the Act concerning Special Provisions of the Narcotics and Psychotropic Substances Control Law, etc. for the Prevention of Acts Aiding Illicit Activities Relating to Controlled Substances under the International Lifting Force (Special Narcotics Act).

The Organized Crime Punishment Act broadly regulates conduct such as disguising the facts related to the acquisition and disposal of proceeds from crime, concealing proceeds from crime, and receipt of proceeds from crime, while the Special Narcotics Act regulates conduct such as disguising the facts, concealment or receipt of proceeds from drug-related crimes.

2. What must the government prove to establish a criminal violation of the money laundering laws?

The three crimes related to money laundering are as follows:

- (1) crime of controlling the business operation of a corporation;
- (2) crime of concealing proceeds from crime; and
- (3) crime of receiving proceeds from crime.

Criminal penalties for (1) controlling the business operation of a corporation, are provided in the Organized Crime Punishment Act, while (2) concealing proceeds from crime and (3) receiving proceeds from crime are provided in the Organized Crime Punishment Act and the Special Narcotics Act.

The elements that the government must prove to establish each offense are as follows.

Crime of controlling the business operation of a corporation

A person who has acquired a position to influence over a corporation, such as a shareholder or creditor, by using proceeds from crime, performs any of the following acts based on their authority and influence for the purpose of controlling the business operation of the corporation:

- appointment or dismissal of officers of the corporation; and
- change of officers in a position to represent the corporation.

Crime of concealing proceeds from crime

Disguising the acquisition or disposition of the proceeds from crime, concealing the proceeds from crime, or disguising the source of the proceeds from crime.

Receipt of proceeds from crime

Receiving proceeds from crime, with knowledge that the proceeds are derived from crime.

As for (2), it should be noted that attempts to commit the crime (ie, commencing the crime but not completing it) and preliminary acts (ie, preparations that do not reach the point of commencing the crime) are also punishable under the Penal Code.

“Proceeds from crime” includes the proceeds from crime, property derived from the proceeds from crime, or property that is a mixture of such property and other property. The meanings of proceeds from crime and property derived from the proceeds from crime are as follows:

- Proceeds from crime: property arising from or obtained through criminal activity, or property obtained as remuneration for such activity, or property provided as a result of criminal activity.

- Property derived from the proceeds from crime: property obtained as the fruit of the proceeds from crime, property obtained as consideration for the proceeds from crime, property obtained as consideration for such property, and any other property obtained based on the possession or disposition of the proceeds from crime.

3. What are the predicate offences to money laundering? Do they include foreign crimes and tax offences?

Predicate offenses for money laundering include crimes punishable by the death penalty, imprisonment for life, or imprisonment for a term of four years or more (including fraud and theft), as well as bribery and drug crimes. Tax evasion is also included.

Conduct committed outside of Japan can also be a predicate offense if it would constitute a crime if it was committed in Japan, and it would constitute a crime under the laws and regulations of the place where it was committed.

4. Is there extraterritorial jurisdiction for violations of your jurisdiction's money laundering laws?

Yes. The Organized Crime Punishment Act and the Special Narcotics Act, which regulate money laundering, have provisions regarding extraterritorial jurisdiction.

Specifically, the crimes of "controlling the business operation of a corporation" under the Organized Crime Punishment Act, "concealing proceeds from crime" and "receiving proceeds from crime" are applicable to Japanese citizens who commit these crimes outside of Japan.

While the crimes under the Organized Crime Punishment Act are only applicable to Japanese nationals who committed such crime outside of Japan, the crimes of concealing proceeds of drug crimes and receipt of proceeds of drug crimes under the Special Narcotics Act are applicable to all persons who commit the same crimes outside Japan, not limited to Japanese nationals.

5. Is there corporate criminal liability for money laundering offences, or is liability limited to individuals?

Yes.

In Japan, as a general rule, only natural persons are subject to criminal punishment. However, if a statute provides for a dual punishment clause (a provision that states that a fine may be imposed on a corporation if a representative, employee or another staff member of the corporation commits an offence), the corporation may also be subject to criminal punishment.

The Organized Crime Punishment Act and the Special Narcotics Act, which regulate money laundering, stipulate dual punishment clauses. Thus, if a representative, employee or other staff member of a corporation is involved in money laundering and violates these laws, not only the individual who committed a crime, but also the corporation will be subject to punishment (criminal fines). For example, a fine of up to ¥10 million may be imposed if a corporation is found guilty of controlling the business operation of the corporation under the Organized Crime Punishment Act.

6. Which government authorities are responsible for investigating violations of the money laundering laws?

The police and the prosecutor are responsible for the investigation.

The National Public Safety Commission and the National Police Agency consolidate, organise and analyse the information regarding the transfer of criminal proceeds, and provide this information to investigation agencies.

7. Which government agencies are responsible for the prosecution of money laundering offences?

The prosecutor is responsible for the prosecution of the case.

8. What is the statute of limitations for money laundering offences?

The statute of limitations periods for the crimes of controlling the business operation of a corporation, concealing the proceeds from crime, and receiving the proceeds from crime under the Organized Crime Punishment Act are as follows:

- crime of controlling the business operation of a corporation: five years;
- crime of concealing the proceeds from crime: five years; and
- crime of receiving proceeds from crime: three years.

The statute of limitations periods for the crimes of concealing proceeds of drug crimes and receiving proceeds of drug crimes under the Special Narcotics Act are as follows:

- crime of concealing the proceeds of a drug-related crime: five years; and
- crime of receiving proceeds from drug-related crimes: three years.

9. What are the penalties for a criminal violation of the money laundering laws?

The penalties for the crimes of controlling the business operation of a corporation, concealing the proceeds from crime and receiving the proceeds from crime under the Organized Crime Punishment Act are as follows:

- crime of controlling the business operation of a corporation: up to five years imprisonment or a fine of up to ¥10 million, or both;
- crime of concealing the proceeds from crime: Up to five years of imprisonment or a fine of up to ¥3 million, or both; and
- crime of receiving the proceeds from crime: Up to three years of imprisonment or a fine of up to ¥1 million, or both.

The penalties for the crime of concealing proceeds from drug crimes and the crime of receiving proceeds from drug crimes under the Special Narcotics Act are as follows:

- crime of concealing the proceeds from a drug-related crime: up to five years of imprisonment or a fine of up to ¥3 million, or both; and
- crime of receiving proceeds from drug-related crimes: up to three years of imprisonment or a fine of up to ¥1 million, or both.

From the viewpoint of strengthening measures against money laundering, the Legislative Council (a council established by the Ministry of Justice to study and deliberate on basic legal matters) discusses the increase of the statutory penalties for each crime under the Organized Crime Punishment Act as follows:

- crime of controlling the business operation of a corporation: Up to 10 years imprisonment or a fine of up to ¥10 million, or both; and
- crime of concealing the proceeds from crime: Up to 10 years of imprisonment or a fine of up to ¥5 million, or both.

10. Are there civil penalties for violations of the money laundering laws? What are they?

There are no civil penalties specific to money laundering violations.

However, violations of the AML rules are subject to administrative sanctions and, if a person is involved in money laundering conduct, the person may be subject to civil liability under general laws such as the Civil Code and the Companies Act.

11. Is asset forfeiture possible under the money laundering laws? Is it part of the criminal prosecution? What property is subject to forfeiture?

The Organized Crime Punishment Act and the Special Narcotics Act allow for the forfeiture of certain property as described below.

Specifically, the following property is subject to forfeiture. However, under the Organized Crime Punishment Act, property obtained from victims of crimes against property is excluded from the target of forfeiture as property of victim, even if such property falls under the following categories. Additionally, in principle, forfeiture is possible only when the property in question belongs to the perpetrator.

- property that is classified as proceeds from crime; and
- property derived from proceeds from crime.

The forfeitures described above are imposed as a part of the criminal penalty. If the above property subject to forfeiture cannot be confiscated, the value of the property may be collected from the offender.

12. Is civil or non-conviction-based asset forfeiture permitted under the money laundering laws? What property is subject to forfeiture?

No.

Anti-money laundering

13. Which laws or regulations in your jurisdiction impose anti-money laundering compliance requirements on financial institutions and other businesses?

The primary law that imposes compliance requirements for money laundering is the Prevention of Transfer of Criminal Proceeds Act.

In addition, the Act concerning Special Provisions of the Narcotics and Psychotropic Substances Control Law, etc. for the Prevention of Acts Aiding Illicit Activities Relating to Controlled Substances under the International Lifting Force regulates criminal activities related to money laundering.

Also, casino operators are separately under an obligation to comply with the Act on the Development of Specified Complex Tourist Attraction Areas. As such, compliance requirements for specific industry sectors are regulated in each regulatory law such as the Banking Act and Financial Instruments and Exchange Act.

14. What types of institutions are subject to the AML rules?

Business operators that are the target of the AML rules set forth in the Act on Prevention of Transfer of Criminal Proceeds are defined as “specified business operators”. The Act stipulates the types of business operators to which the rules apply in detail.

- financial institutions (such as banks, insurance companies, financial instruments firms);
- financial lease companies;
- credit card issuers;
- registered real-estate broker;
- precious metal dealers;
- mail-receiving service providers, telephone receptionists and call-forwarding service providers;
- professionals (such as lawyers, judicial scriveners, administrative scriveners); and
- casino operators.

15. Must payment services and money transmitters be licensed in your jurisdiction? Are payment services and money transmitters subject to the AML rules and compliance requirements?

Yes. In order to provide payment services and fund transfers, you may be required to register as a fund transfer agent under the Funds Settlement Act. Fund transfer service providers are subject to AML rules as specified business operators (under the category of “financial institutions”).

16. Are digital assets subject to the AML rules and compliance requirements?

Yes. In Japan, digital assets, including crypto assets such as bitcoin and ethereum, are subject to regulation.

Crypto assets are defined in the Funds Settlement Act as having the following characteristics:

- can be used for payment to unspecified parties and can be mutually exchanged with legal currency (such as Japanese yen or US dollars).
- electronically recorded and transferable; and
- not legal currency or assets denominated in legal currency (eg, prepaid cards).

Certain businesses that handle crypto assets (including businesses that operate crypto asset sales offices, crypto-asset exchanges and crypto-asset custody businesses) are required to register as crypto asset exchangers, which are included in specified business operators (financial institutions) and thus are subject to AML rules.

17. What are the specific AML compliance requirements for covered institutions?

For “specified business operators” subject to the AML rules, the following actions are generally required. Having said that, depending on the type of specified business operator, the following required actions are selectively applied.

Confirmation at the time of transaction

When conducting certain transactions with customers as stipulated in the AML rules, it is necessary to confirm matters that identify the customer (name, location and others), the purpose of the transaction, and the nature of the business.

There are two types of confirmation methods: ordinary confirmation at the time of transaction and strict confirmation at the time of transaction, and the required type of confirmation will be determined according to the amount of risk involved in the transaction.

Creation and retention of confirmation records

When confirmation at the time of transaction is conducted, a record pertaining to the confirmation items (confirmation record) must be created and retained for a certain period of time.

Creation and retention of transaction records

In the event of certain transactions stipulated under the AML Rules, records pertaining to such transactions must be created and retained for a certain period of time.

Notification of suspicious transactions

Certain transactions that are suspected of money laundering must be notified.

Strict confirmation at the time of signing a correspondent contract

When concluding a contract with a foreign financial institution, such as a foreign bank or electronic payment instruments transaction service provider, for continuous or repeated foreign exchange

transactions (correspondent contract), transfer of electronic payment methods, or transfer of digital assets, it is necessary to confirm such foreign institution's system for confirmation at the time of the transaction and the status of the transaction.

Notification pertaining to foreign exchange transactions

When outsourcing foreign exchange transactions, it is necessary to notify the outsourced party of the customer's identification and other relevant information.

Notification pertaining to transfer of electronic payment methods or digital assets

When transferring electronic payment methods or digital assets, it is necessary to notify the transferee of the customer's identification and other relevant information.

Establishing a system for appropriate confirmation at the time of transactions

To properly perform the confirmation at the time of the transaction, it is necessary for the business operator to establish a certain system (eg, a system for education and training, and maintenance of rules and regulations).

18. Are there different AML compliance requirements for different types of institutions?

Yes. Various regulations set forth by the AML rules are selectively applied depending on the type of specified business operator. For example, the notification requirement of suspicious transactions does not apply to certain professionals (such as attorneys and judicial scriveners), and the strict confirmation at the time of conclusion of correspondent contracts and notification regarding foreign exchange transactions apply only to financial institutions (such as banks, insurance companies and financial instruments dealers). In addition, the required actions by attorneys are not prescribed by law, but by the rules of the Japan Federation of Bar Associations.

19. Which government authorities are responsible for the examination and enforcement of compliance with the AML rules?

The supervisory authority differs depending on the type of specified business operator. For example, the Financial Services Agency supervises banks, securities companies, funds transfer agents, and crypto asset exchangers; the Minister of Economy, Trade, and Industry supervises financial lease companies and credit card companies; and the Casino Management Commission supervises casino operators.

20. Are there requirements to monitor and report suspicious activity? What are the factors that trigger the requirement to report suspicious activity? What is the process for reporting suspicious activity?

Yes. When a specified business operator, other than a certain professional, suspects that property received in transactions, such as business related to finance including accepting deposits, is proceeds from crime, or when a customer is suspected of concealing the proceeds from crime in relation to a certain transaction, it must promptly notify the competent supervisory agency (eg, the Financial Services Agency) of such suspicion.

The method of determining whether or not there is a suspicion is based on the results of the confirmation at the time of the transaction, the manner of the transaction and other circumstances, and the contents of the Criminal Proceeds Transfer Risk Investigation Report (*), and the following procedures are to be used according to the transaction category.

Transactions with new customers with whom you have not conducted transactions in the past

- Comparison with the manner in which transactions are normally conducted with other customers; and
- Consistency with the information obtained as a result of the transaction confirmation.

Transactions with existing customers with whom you have conducted transactions in the past

- The measures mentioned in 1; and
- Examination of past confirmation and transaction records, updated information on the contents of confirmation records, and other information related to the relevant transactions.

High-risk transactions

- For new customers, the measures mentioned in 1 above. For existing customers, the measures mentioned in 2 above;
- necessary investigations, such as asking questions to the customers, or collecting additional information through the Internet, to confirm the information provided by the customers at the time of confirmation at the time of transaction; and
- confirmation by the general manager or equivalent as to whether there is anything suspicious about the transaction.

* available here (Japanese version only)

21. Are there confidentiality requirements associated with the reporting of suspicious activity? What are the requirements? Who do the confidentiality requirements apply to? Are there penalties for violations of the confidentiality requirements?

Yes. Under the AML rules, specified business operators are prohibited from divulging to customers or other related parties involved in the transactions in question that they intend to notify or have notified suspicious transactions. If a specified business operator violates the above confidentiality obligation, it will be subject to a corrective order as an administrative sanction, and violation of the corrective order will result in criminal penalties.

In addition, the public official to whom the notification is made is subject to the obligation of confidentiality under the National Public Service Law, and any violation of this obligation is subject to criminal penalties.

22. Are there requirements for reporting large currency transactions? Who must file the reports, and what is the threshold?

Not under the Prevention of Transfer of Criminal Proceeds Act.

However, casino operators are required under the Act on the Development of Specified Complex Tourist Attraction Areas to notify the Casino Management Committee of cash transactions with customers exceeding Y1 million.

23. Are there reporting requirements for cross-border transactions? Who is subject to the requirements and what must be reported?

Yes. Under the Japanese Foreign Exchange Law, reporting is required for certain transactions and cross-border payments.

Reporting can be generally divided into the following three categories:

- reporting on external transactions between residents and non-residents (Reporting on Transactions;

- reports on payments between residents and non-residents or between Japan and foreign countries (Reporting on Payments); and
- reports on individual transactions and operations other than those listed above (Reporting on Individual Operations).

The reporting party is in principle the person who conducts the relevant transaction or payment.

The contents of the report are defined according to the type of transaction and payment, but mainly the date of the transaction, the counterparty to the transaction, the type of transaction and the amount of the transaction must be reported.

24. Is there a financial intelligence unit (FIU) or other government agency responsible for analysing the information reported under the AML rules?

Reports submitted to the competent supervisory agencies are registered, organized, and analyzed in a database by the National Public Safety Commission and the National Police Agency's Office for the Prevention of Transfer of Criminal Proceeds.

25. What are the penalties for failing to comply with your jurisdiction's AML rules, and are they civil or criminal?

Failure to comply with the regulations imposed on specified business operators under the Act on Prohibition of Transfer of Criminal Proceeds, including confirmation at the time of the transaction, is subject to administrative guidance, recommendation from the competent supervisory agency, as well as a corrective order. Violation of a correction order is subject to criminal penalties.

In addition to violations of corrective orders, other criminal penalties may be imposed for submitting a false report to a supervisory agency or for making a false answer during an on-site inspection by a supervisory agency.

In Japan, as a general rule, only natural persons are subject to criminal penalties. However, if there is a dual penalty clause (a provision that states that a fine may be imposed on a corporation if its representative, employee or other staff member commits an offence), the corporation is also subject to criminal penalties.

If a representative, employee or other staff member of a corporation violates the AML Rules, there is a risk that not only the individual concerned but also the corporation will be subject to criminal penalty (fines).

26. Are compliance personnel subject to the AML rules? Can an enforcement action be brought against an individual for violations?

Administrative sanctions (guidance, recommendations, and corrective orders) are targeted at businesses, not individuals, including compliance personnel.

However, criminal penalties can be imposed on individuals in charge of compliance as well as on businesses.

27. What is the statute of limitations for violations of the AML rules?

The statute of limitations for prosecution of each penalty related to AML rules is three years.

28. Does your jurisdiction have a beneficial ownership registry or an entity or office that collects information on the beneficial ownership of legal entities?

In Japan, as a beneficial ownership registry, the substantial control person list system has been in operation since 31 January 2022.

The outline of this system is as follows:

- When a company voluntarily submits a list of its beneficial owners to the commercial registry, the registrar confirms the contents of the list with an attached prescribed document and retains the list.
- The company may receive a copy of the list of beneficial owners with a certification by the registrar.
- The list of beneficial owners with certification is expected to be used for such purposes as submission by a company to a financial institution as a declaration document for the confirmation of beneficial owners.
- This list is not publicly available, and it is expected that administrative and judicial agencies can obtain it through certain procedures, while financial institutions will obtain it by receiving submissions from the company as described above.



Ryoko Yamaguchi

Miura & Partners

- Keio University (LL.B., 2004)
- Nishimura & Asahi (2005 - 2012)
- Nippon Export and Investment Insurance (2012 - 2016)
- Securities and Exchange Surveillance Commission, Financial Services Agency (2016 - 2018)
- Tokyo Regional Taxation Bureau (2018 - July 2020)

Practice Areas

Mergers and Acquisitions

- Acquisitions
- Group Restructuring
- Business Succession

Finance

- Project Finance
- Acquisition Finance
- Financial Law and Financial Technology

Crisis Management and Security

- Crisis Management and Security

Litigation and Disputes, Business Revitalization, and Bankruptcy

- Litigation and Disputes

Tax Law

- Tax Law

Government Relations

- Government Relations

International Practice and Trade Law

- Asia Practice



Masayuki Atsumi

Miura & Partners

- Kobe University School of Law (J.D., 2006)
- Japan Fair Trade Commission (2006 - 2008)
- Mori Hamada & Matsumoto (2009 - 2017)
- University of Chicago Law School (LL.M., 2015)
- Covington & Burling LLP (on secondment, 2015)
- U.S. Federal Trade Commission (on secondment, 2016)
- General Manager for Compliance, LIXIL Corporation (2017 - 2018)
- Lecturer at the Kobe University Graduate School of Law (2019 - present)
- Outside Director, Audit and Supervisory Committee Member, ARCLANDS CORPORATION (2022 - present)

Practice Areas

Competition Laws

- Competition Laws
- Subcontract Act
- False Advertisement and Unjustifiable Premiums Act

Crisis Management and Security

- Crisis Management and Security

Litigation and Disputes, Business Revitalization, and Bankruptcy

- Litigation and Disputes

Government Relations

- Government Relations



Yuta Kanai

Miura & Partners

- The University of Tokyo (LL.B., 2016)
- The University of Tokyo, School of Law (J.D., 2018)
- Nishimura & Asahi (2019 - August 2020)

Practice Areas

Mergers and Acquisitions

- Acquisitions

Startup Practice (Supporting Venture Enterprise)

- Startup Practice (Supporting Venture Enterprise)

General Corporate Practice

General Corporate Practice

Miura & Partners

Miura & Partners was founded in January 2019 by Mr. Ryota Miura, together with a team of experienced attorneys, with the goal of establishing a professional law firm where client satisfaction is the starting point. Our lawyers believe that the role of legal professionals is not just to advise on specific legal provisions, but to provide comprehensive legal advice and support to assist clients in achieving their business goals.

Our practice includes M&A, joint venture, finance, corporate and financial regulation, competition law, intellectual property law, litigation, general corporate legal matters, international trade, and domestic and cross border disputes involving China, India and other regions in Asia. Our lawyers also have in-depth knowledge of new technologies and legal practices in the evolving fields such as blockchain, startups, fintech, big data, medical and healthcare.

Collectively, we offer a one-stop legal solution to our clients.

3F East Tower Otemachi First Square 1-5-1,
Otemachi,
Chiyoda-ku,
Tokyo 100-0004,
Japan
Tel: +81-3-6270-3500

www.miura-partners.com

Ryoko Yamaguchi

ryoko.yamaguchi@miura-partners.com

Masayuki Atsumi

masayuki.atsumi@miura-partners.com

Yuta Kanai

yuta.kanai@miura-partners.com