

# Cartels

## Enforcement, Appeals & Damages Actions

Third Edition

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# Japan

Catherine E. Palmer, Daisuke Yoshida & Hiroki Kobayashi  
Latham & Watkins

## Overview of the law and enforcement regime relating to cartels

The “Act on Prohibition of Private Monopolization and Maintenance of Fair Trade” (Law No. 54 of 1947), commonly known as the “Antimonopoly Act” (the “AMA”) governs cartel enforcement in Japan. The AMA prohibits businesses from engaging in “unreasonable restraint of trade,” which is defined as business activities by which a business, “in concert with other enterprises, mutually restrict[ing] or conduct[ing] their business activities in such a manner as to fix, maintain or increase prices, or to limit production, technology, products, facilities or counterparties, thereby causing... a substantial restraint of competition in any particular field of trade” (AMA art. 2, para. 6). This covers price fixing cartels (*kakaku karuteru*), bid rigging in public projects (*nyusatsu dango*), and bid rigging in private industry (*juchu chosei*). The AMA also prohibits businesses from engaging in “unfair trade practices,” including concerted refusals to deal (AMA art. 2, para. 9(i)). Additionally, the AMA prohibits businesses from entering into an international agreement or contract that constitutes an unreasonable restraint of trade or unfair trade practice (AMA art. 6).

The Japan Fair Trade Commission (the “JFTC”) is the government agency responsible for enforcing the AMA, and may impose cease-and-desist orders and administrative fines (called “surcharges”) on firms that it finds to have engaged in cartel conduct. Surcharges are calculated pursuant to a complex but rigid formula set forth in the AMA. Appeals from JFTC orders are considered in the first instance by the JFTC, but under an amendment to the AMA which was promulgated on 13 December 2013 and will become effective on a date to be specified by a Cabinet Order within 18 months from that date, the Tokyo District Court will have exclusive jurisdiction over such appeals.

In addition to administrative sanctions, firms and individuals face criminal exposure for cartel violations. The filing by the JFTC of a criminal accusation to the Prosecutor General is the exclusive means by which a criminal prosecution may be brought against firms and individuals for cartel violation of the AMA (AMA art. 96.1). If the JFTC determines through its investigation that a case is particularly egregious and has a significant effect on people’s lives, or that the administrative remedies are not sufficient, it may file a criminal accusation with the Prosecutor General, which may result in a fine of up to JPY 500m (approximately US\$ 5m) for firms, or imprisonment of up to five years and a fine of up to JPY 5m (approximately US\$ 50,000) for individuals. Such criminal penalties are in addition to the JFTC’s administrative sanctions.

Firms may face civil damages claims from customers, but Japan does not have enhanced damages or class actions for antitrust claims. Firms may also be debarred from government

contracts. In addition, directors of firms that have been found to have engaged in cartel conduct may be sued by shareholders for breach of fiduciary duty.

The government sometimes exempts certain types of concerted behaviour. For example, in connection with an upcoming increase in the consumption tax in 2014, a law was passed to permit specific types of businesses to apply to the JFTC to set up “pass-on cartels” and “price representation cartels,” which would allow for uniform behaviour and fairness among competitors in responding to the tax increase.

## **Overview of investigative powers in Japan**

### Administrative investigation

Under article 47 of the AMA, the JFTC may conduct an investigation using the following measures: (1) ordering persons to be interrogated, and gathering their opinions or reports; (2) ordering expert witnesses to give opinions; (3) ordering persons to submit books and documents, and to keep such documents at the JFTC; and (4) entering and inspecting the firm’s premises or any other necessary sites.

In practice, the JFTC typically starts a cartel investigation with simultaneous surprise inspections (called “on-site inspections”) on all suspected cartel members, including any leniency applicants. During the on-site inspection, the JFTC may seize any documents it considers to be relevant, and will make copies of electronic files. Such inspections can take place at a firm’s headquarters, as well as any offices, facilities or employee residences that may have relevant materials. The JFTC will seize and keep original documents through the duration of the investigation, including any appeals. Firms may request to make copies of materials that are needed for business, either during the inspection or at the JFTC’s premises. Also, the JFTC usually requires firms to submit detailed reports about the business operations and sales data. The JFTC may interview witnesses during the on-site inspection.

As discussed further below, the JFTC does not recognise the concept of attorney-client privilege or legal privilege as it exists in American or English law, and potentially may seize documents that contain attorney-client communications as part of its on-site inspection.

In addition to seizing documents and materials, the JFTC may request individuals to submit to voluntary interviews after the on-site inspection. If an individual refuses, the JFTC can issue an order for a compulsory interview. In both voluntary and compulsory interviews, the interviewee does not have the right to have counsel present. At the end of an interview session, the JFTC may require the interviewee to sign a statement that it has prepared. The interviewee may be given an opportunity to correct mistakes, such as typographical errors, but typically will not be permitted to make substantive changes, and will not be given an opportunity to consult with counsel before signing. (As discussed below, a government advisory panel has recommended the JFTC to issue guidelines clarifying that witnesses are permitted to consult with counsel during breaks, and that the record should reflect any corrections suggested by witnesses.) The interviewee and the firm will also not receive a copy of the signed statement. An individual may be interviewed multiple times. Employees of leniency applicants are subject to the same procedure.

Article 39 of the AMA requires the JFTC to keep confidential any information it has seized, been provided, or created, including witness statements. However, prosecutors may use such signed statements as evidence during a criminal trial, and a firm may obtain copies of its employees’ statements in order to challenge or appeal an administrative order. In addition, “interested parties”, such as injured parties, may seek to review and obtain copies of any trial records.

## Criminal investigation

Criminal investigations in Japan are governed by the Code of Criminal Procedure (Law No. 131 of 1948). The Prosecutor General may refer cases to a regional public prosecutor's office to commence a criminal prosecution based on the filing of an accusation by the JFTC. Prior to commencing the prosecution, prosecutors will try to obtain information from witnesses on a voluntary basis as much as possible, including obtaining signed statements. This process may occur in tandem with the JFTC's investigation. Prosecutors may also use written statements obtained by the JFTC as evidence.

The prosecutors or policemen may arrest a suspect, typically with an arrest warrant. If it becomes necessary to detain a suspect, the prosecutor must obtain a pre-indictment detention order from a court within 48 hours following the arrest. The initial detention period is ten days, subject to extension by another ten days if necessary. The prosecutor must initiate the prosecution of the suspect within that period, or release the suspect. The prosecutor therefore will try to extract a confession from the suspect within the first 20 days, but may immediately re-arrest the suspect on a different charge, to begin the interrogation process anew. Once a suspect has been arrested, he or she has the right to consult privately with counsel, and may assert the right against self-incrimination. However, counsel is usually not permitted to be present during the interrogation. Prosecutors may use signed statements obtained through interrogation as evidence at trial.

## **Overview of cartel enforcement activity during the last 12 months**

### 2013 Amendments to the AMA

On 7 December 2013, the Diet passed an amendment to the AMA. The amendment was promulgated on 13 December 2013, and will be effective on a date to be specified by a Cabinet Order within 18 months of that day. As of the end of 2014, the amendments have not yet been implemented. The amendment substantially changes the procedures for appeal and the issuance of administrative order.

- Appeals from JFTC administrative orders will be heard by the Tokyo District Court, acting as the court of first instance, rather than the JFTC itself. The Tokyo District Court will have exclusive jurisdiction over such appeals, in order to ensure consistency in judgment and to accumulate expertise in antitrust law at the court. Further appeals may be heard by the Tokyo High Court, and the Supreme Court.
- The "substantial evidence rule", under which the JFTC's findings of fact were binding on the appellate court if supported by substantial evidence, has been abolished.
- The rule prohibiting appellants from submitting new evidence during the appeal proceeding has also been abolished.
- In order to ensure careful examination, appeals will be considered by a panel of three or five judges at the Tokyo District Court (whereas a single judge is possible in a regular case), and by a panel of five judges at the Tokyo High Court (whereas a panel consists of three judges in a regular case).
- The process for issuing administrative orders has also become more formalised. Before an administrative order is formally issued, the JFTC will designate an officer to preside over a hearing, where investigators will explain the expected content of the order to the parties, and parties may present arguments and evidence, and question the investigators. The parties may do so in person, in writing, or through a representative. A report of the hearing will be prepared, and will be considered by the JFTC in making its final decision.

- Between the notice of the hearing and its conclusion, a party may request to inspect the evidence, and may also request a copy of the materials it has submitted, and written statements of its employees.

#### Advisory panel report

Pursuant to one of the provisions of the 2013 Amendments to the AMA, the Cabinet Office organised an advisory panel to consider the JFTC's administrative investigation procedures, considering procedures in other countries. The advisory panel, comprised primarily of academics, convened more than a dozen times through 2014, and issued a report on 24 December 2014. The advisory panel considered various issues, including procedures during on-site inspections; whether to recognise attorney-client privilege; and issues relating to witness interviews. The advisory panel recommended that the JFTC issue guidelines to clarify procedures during the on-site inspections and the witness interviews, but it did not recommend any significant changes to the investigation procedures themselves. Regarding on-site inspections, the panel recommended that the JFTC issue guidelines clarifying that attorneys may be present at witness interviews conducted during on-site inspections, but that inspections can proceed without waiting for the attorneys to arrive. On the attorney-client privilege, the panel acknowledged the value of considering such a system, but concluded that such a system should not be introduced at this stage because it may impede the JFTC's fact-finding ability. On witness interviews, the panel did not recommend permitting attorneys to be present, or to permit audio/video recordings, but recommended that the JFTC issue guidelines clarifying that witnesses may consult with attorneys during breaks, and that if witnesses request corrections to the interview record, such requests be included in the record. Several panelists issued written objections to the panel's recommendations included in the final report, such as its refusal to recognise the attorney-client privilege or the right to counsel during interviews.

#### Criminal prosecutions

In 2012 and 2013, the JFTC sought criminal charges against three major Japanese bearing manufacturers and seven senior executives in a private industry bid rigging case, involving industrial and automotive bearings. The trial of the first and second firms resulted in a total of JPY 560m (approximately US\$ 4.7m) in fines on the firms, and suspended sentences with no actual jail time for five executives. The decision in the trial of the third firm and its two executives is expected in February 2015. In addition to the criminal penalties, in March 2013 the JFTC issued surcharge orders totalling approximately JPY 13.37bn (approximately US\$ 111.4m) against the three firms. A fourth firm was the leniency applicant in Japan, but because it did not obtain amnesty in the U.S., it had to agree to pay a fine of US\$ 103.27m, and one of its executives was indicted.

In March 2014, the JFTC filed a criminal accusation with the Prosecutor General against eight Japanese companies and eight employees in connection with a bid rigging case involving snow-melting equipment for the Hokuriku Shinkansen (bullet train). The trials, conducted during 2014, resulted in criminal fines against the companies and suspended jail sentences for the employees.

#### Enforcement data

According to the JFTC's official statistics for fiscal year 2013 (April 2013 through March 2014), the JFTC imposed administrative orders against a total of 210 firms in 18 separate cases, including surcharges totalling approximately JPY 30.2bn (approximately US\$ 252m). This marked an increase from fiscal year 2012, when there were administrative orders against a total of 126 firms in 20 separate cases, including surcharges totalling approximately JPY

25.07bn (approximately US\$ 209m). The JFTC also reported that it received a total of 50 leniency applications in fiscal 2012, compared with 102 in fiscal 2011. This represents an all-time low since the leniency system was introduced. The average surcharge per firm in fiscal 2013 was approximately JPY 167bn (approximately US\$ 1.39m), compared with approximately JPY 222bn (approximately US\$ 1.85m) in fiscal 2012.

There have only been a few administrative orders announced between April and December 2014. In June 2014, the JFTC announced administrative orders against more than 60 firms for fixing prices of various cardboard products, imposing a total surcharge of approximately JPY 13.3bn (approximately US\$ 110.8m). In September 2014, the JFTC imposed a surcharge of approximately JPY 1.32bn (approximately US\$ 11m) against a single firm for a two-firm price-fixing agreement relating to steel balls.

During 2014, the JFTC conducted several on-site inspections that were reported by the media including, in March and May, of firms in connection with a public bid for agricultural refrigeration equipment; in April, of chemical manufacturers in connection with a public bid for flocculants; in June, of semiconductor manufacturers in connection with resistors; in July, of agricultural equipment manufacturers in connection with a public bid for country elevator construction; and in November, of electronics manufacturers in connection with a public bid for a digital wireless communication system for firefighters. With the exception of the resistors case, all of the investigations related to Japanese public procurement.

### **Key issues in relation to investigation and decision-making procedures**

JFTC investigations are fairly quick, typically resulting in an issuance of an administrative order within 12 to 18 months after the first on-site inspection. This speed imposes a great burden on firms and their lawyers, who are required to deal with a large volume of information in a compressed time period, often with limited access to documents because they have been seized. The situation is made even more difficult if the JFTC has interviewed employees during the on-site inspection, without any opportunity for such employees to consult with counsel before or during the interview. Although the JFTC permits counsel to be present at interviews conducted during on-site inspections, it will not wait for counsel to arrive. For voluntary interviews after the on-site inspections, the JFTC does not permit counsel to be present. If the interviews result in signed statements by employees acknowledging the cartel conduct, it obviously impacts the firm's ability to defend itself.

The challenge is multiplied if the conduct is international in scope, requiring firms and their counsel to consider strategy in other jurisdictions. Under the Japanese leniency system, firms up to the fifth leniency applicant may obtain a reduction to the surcharge, even if they seek leniency after the on-site inspection. If the cartel was purely domestic, with no effect on other countries, then it may seem sensible for a firm that is subject to an on-site inspection to apply for leniency, provided that there are facts supporting such an application. However, if the client has operations in other countries and it is uncertain whether the cartel may have affected other countries, it is essential to consult with foreign counsel and carefully consider the effect such a leniency application could have in other jurisdictions. In some cases, even if the client has relatively small operations in other countries or it is possible but not certain that the cartel had an impact in those other countries, it may be advisable for the client to consider seeking leniency in some or all of these other countries because the exposure could be greater to the client company and its employees. On the other hand, in some cases, it may be better to not submit a leniency application in Japan, in order to mitigate exposure elsewhere.

Another significant issue is the limit on how firms may interact with counsel. Because the JFTC is not prohibited from seizing attorney-client communications, there is some risk for attorneys in sending advice to clients in writing. Not permitting attorneys to participate in witness interviews also creates risk, not only for the firms but also for the individuals, who may not fully understand that they face criminal exposure in Japan or elsewhere based on their statements.

Such systemic disadvantages to firms that are subject to investigation may be somewhat alleviated by the recent amendments to the AMA, especially giving an opportunity for parties to be heard before orders are issued; giving parties an opportunity to review the evidence before the hearing; changing the forum for administrative appeals from the JFTC to the Tokyo District Court; and permitting the submission of new evidence in the appeal. Also, the 2014 Advisory Panel's recommendations that the JFTC issue guidelines clarifying its investigation procedures may also lead to firms being better prepared to deal with investigations. However, it remains to be seen how the amendments will work in practice.

### **Leniency/amnesty regime**

The JFTC instituted a leniency system in January 2006. There has been a total of 775 leniency applications filed between its inception and March 2014, with a sharp increase in applications since 2010, when the JFTC increased the maximum number of leniency applicants per case, and permitted joint applications by firms in the same corporate group. Ninety-eight cases have resulted from leniency applications. However, there were only 50 leniency applications in fiscal 2013, which represents a sharp drop from 102 in fiscal 2012, and is an all-time low since the leniency system was introduced.

Under Japan's system, a total of five firms may obtain leniency from administrative fines on a given product. The first firm to apply for leniency before the JFTC investigation begins is entitled to receive full immunity, and the second applicant receives a 50% reduction to the surcharge. The third, fourth and fifth applicants will receive a 30% reduction. After a case has been initiated, a maximum of three firms may apply (up to a maximum of five including applicants before the start of the case), and the amount of the leniency would be 30% for all of them.

Leniency only applies to administrative sanctions, not to criminal or civil claims. However, the Ministry of Justice has stated that it would give due deference to the JFTC and not prosecute the first leniency applicant.

If a JFTC investigation has not yet started, before applying for leniency, an applicant may anonymously ask the JFTC by telephone whether leniency is available for a particular product, and how many other applicants have already applied, if any. To obtain a marker, the applicant must fax to the JFTC a copy of "Form 1", a one-page form that requires the identification of the applicant, the relevant product, the type of conduct being reported, and the period that the conduct took place. Once a marker has been obtained, the applicant must submit "Form 2" within a period designated by the JFTC (usually two to three weeks), which requires more detailed information about the conduct and submission of supporting evidence. In certain cases, for example if there is concern about the potential discoverability of the submission in other jurisdictions, the JFTC may permit the applicant to submit certain information orally.

If the JFTC investigation has started, an applicant may apply for leniency by submitting "Form 3" within 20 days after the start of the investigation. Form 3 requires the submission of information similar to Form 2.



Leniency may be denied if, for example, the applicant submitted false information, failed to provide requested information, dismissed others from leaving the cartel, or continued to participate in the cartel after the investigation started.

During the investigation, the JFTC does not publicly disclose the identity of the leniency applicants, and leniency applicants will be subjected to on-site inspections. The JFTC identifies the leniency applicants when it issues the administrative orders, including the percentage reduction received by each applicant.

The JFTC is required to maintain the confidentiality of documents relating to its investigation, including leniency submissions.

### **Administrative settlement of cases**

The JFTC does not have a settlement process. There is also no “amnesty plus”.

### **Third party complaints**

Article 45 of the AMA permits third parties to report suspected violations to the JFTC, which the JFTC is required to duly consider. If the third party’s report was sufficiently detailed and in writing, the JFTC must inform the third party whether it has taken steps in response to the report. The third party is not entitled to receive any reward for making a report.

### **Civil penalties and sanctions**

The surcharge imposed by the JFTC is calculated by applying certain rates to the sales of the relevant product over the period of the violation, up to a maximum of three years. The applicable rates are set by article 7-2 of the AMA, and vary depending on the type and size of the firm. For unreasonable restraint of trade, the rates are 10% for large manufacturers; 4% for small and medium manufacturers; 3% for large retailers; 1.2% for small and medium retailers; 2% for large wholesalers; and 1% for small and medium wholesalers. These rates may be adjusted upwards or downwards based on certain factors. If the firm ceased the conduct early and did not take a leading role, then the applicable rate is reduced by 20%. If the firm repeatedly engaged in the conduct, or took a leading role, the applicable rate is increased by 50%; and if the firm both repeatedly engaged in the conduct *and* took a leading role, the applicable rate is doubled. If the resulting amount is less than JPY 1m (approximately US\$ 8,333), a surcharge will not be imposed.

In addition to the surcharge, firms may be subject to cease-and-desist orders or administrative guidance.

### **Right of appeal against civil liability and penalties**

A party may appeal a JFTC administrative order, either based on the liability findings or the amount of the surcharge. Currently, appeals are heard by a JFTC tribunal, and have rarely resulted in reversals. Further appeals may be filed with the Tokyo High Court, and then the Supreme Court of Japan.

As a result of the recent amendment to the AMA, future appeals will be considered by the Tokyo District Court in the first instance rather than the JFTC. The court will no longer be bound by the JFTC’s factual findings, and parties will be permitted to submit new evidence.

## Criminal sanctions

Firms face a maximum criminal fine of JPY 500m (approximately US\$4.16m), and individuals face up to five years' imprisonment and a maximum fine of JPY 5m (approximately US\$41,667). If the term of imprisonment is no more than three years, the court may impose a suspended sentence (i.e., probation). In most white-collar criminal cases in Japan, a first-time offender will receive a suspended sentence without any actual jail time. To date, no Japanese court has sentenced an individual to actual jail time for a cartel offence.

Firms that are subject to both an administrative surcharge and a criminal fine will receive a reduction in the amount of the administrative surcharge, equivalent to one-half of the amount of the criminal fine.

## Cross-border issues

On rare occasions, the JFTC has issued administrative sanctions against foreign firms for cartel conduct affecting the Japanese market. The most recent examples are a cease-and-desist order against European firms in the *Marine Hose* case in 2008, and a cease-and-desist order and surcharge orders against Asian firms in the *CRT* case in 2009. However, it is not clear whether the JFTC has the practical ability to enforce such orders extraterritorially. In the *Marine Hose* case, four European firms and one Japanese firm were found to have violated the AMA, but the Japanese firm was the only party that the JFTC decided to fine. In the *CRT* case, a surcharge payment order was issued against Korean, Malaysian and Indonesian firms, but the order itself acknowledged that the firms had no presence and no authorised representatives in Japan, so the JFTC could serve notice of the orders only by publication in Japan. Since then, the JFTC has not issued any administrative orders against purely foreign firms.

The JFTC has cooperation agreements with foreign antitrust enforcers, and coordinates investigations with them, for example to conduct simultaneous dawn raids. In connection with the *Marine Hose* and *CRT* cases mentioned above, as well as in certain automotive parts cases, the JFTC has publicly stated that it coordinated the investigations with the U.S. DOJ and the European Commission. In multijurisdictional leniency applications, the JFTC will ask the applicant for a waiver to permit it to discuss the case with other competition authorities. In addition, Japan has mutual legal assistance treaties ("MLAT") with various countries, pursuant to which Japanese prosecutors may cooperate with foreign authorities to obtain evidence in criminal investigations. An area of concern in this context is whether the lack of attorney-client privilege and the inability of witnesses to consult with counsel during interrogations in Japan can result in foreign authorities obtaining information that they would not otherwise be able to obtain.

In October 2014, the Ministry of Economy, Trade and Industry ("METI") of Japan submitted an *amicus curiae* brief to the Seventh Circuit Court of Appeals in *Motorola Mobility LLC v. AU Optronics Corp.*, expressing its concern regarding the extraterritorial application of U.S. antitrust law. In particular, METI argued that excessive extraterritorial application of U.S. antitrust law may result in the expanded application of treble or punitive damages, which are not recognised in Japan, and that private U.S. plaintiffs should not have the right to interfere with the Japanese government's regulation of its own market. METI had also filed an *amicus* brief in the district court in the same case, in October 2013. The Seventh Circuit affirmed the district court's dismissal of claims based on overseas purchases by foreign firms, apparently acknowledging the concerns raised by METI (as well as other foreign government agencies, including those of South Korea, Taiwan and Belgium).

## Developments in private enforcement of antitrust laws

Japanese law permits private antitrust actions, but there have been few cases in this area. Japan is not a litigious society in general, and the lack of a class action system, limited discovery and limited damages, all tend to dissuade private actions.

One basis for a private action is article 25 of the AMA, which provides that firms that have violated the AMA shall indemnify injured parties. Such cases can only be brought in the Tokyo High Court, and only after the JFTC has instructed that its decision is final. In such cases, liability is usually not an issue, because there is a rebuttable presumption that the JFTC's factual findings are correct. Instead, the litigation is over the scope of damages, for which the court may seek the JFTC's opinion. Alternatively, an injured party may bring a general tort claim under article 709 of the Civil Code in any district court in Japan. To establish a claim under article 709, the plaintiff must prove the defendant's intent or negligence, the amount of the damages, and causation.

Any party that was injured by a violation of the AMA, including both direct and indirect purchasers, can bring a claim under either statute. But any incentive to pursue a private action in Japan is probably even smaller for indirect purchasers, because there is no class action system for antitrust violations, and the possible recovery may be too small for a single plaintiff to pursue. There is no "pass on" defence as such, but it may be taken into account in assessing the damages amount. There are no punitive damages in Japan.

In addition, although not a "private enforcement" action as such, there is an increasing number of derivative claims filed by shareholders of firms that have been found to be violating the AMA. Such claimants seek to collect damages from the firm's directors on behalf of the firm, and improvements to the firm's antitrust compliance.

Discovery is limited in Japan, but a private plaintiff may seek the court's permission to obtain evidence from litigants and third parties by making specific disclosure requests for relevant documents that are known to exist. It remains to be seen whether any court will permit such requests for documents considered by the JFTC in reaching its decision, such as leniency submissions and witness statements. Also, an "interested party", including injured parties, may review and copy filings from appeal proceedings and criminal trials, subject to redaction of sensitive information.

## Reform proposals

As discussed above, the Diet passed an amendment to the AMA in 2013 that made significant changes to the appeal procedure and the procedure for issuing administrative orders. The amendment also provided that, within one year after the promulgation of the amendment, the government will consider whether the AMA provides for adequate rights of defence. However, as discussed above, the advisory panel's final report did not recommend substantive changes to the AMA, and limited itself to recommending that the JFTC issue guidelines clarifying its procedures. While the report left open the possibility of further consideration of issues like attorney-client privilege and participation of counsel in witness interviews, the advisory panel's decision to recommend against such ideas indicates that there will be no reforms in the JFTC's investigation processes in the near future.

**Catherine E. Palmer****Tel: +85 2 2912 2626 / Email: [catherine.palmer@lw.com](mailto:catherine.palmer@lw.com)**

Catherine E. Palmer is a partner in the White Collar Defense and Government Investigations Practice and the Antitrust and Competition Practice. Ms. Palmer relocated from New York to Hong Kong in March 2014.

Ms. Palmer focuses her practice on the representation of multinational companies involved in criminal or regulatory investigations throughout the world, with an emphasis on global antitrust cartel investigations and global corruption/bribery investigations. Ms. Palmer has interacted with regulators throughout the world on behalf of clients, including regulators in the US, the EU, the UK, Singapore, Japan, Korea, Taiwan and Australia.

Prior to joining Latham & Watkins, Ms. Palmer served in the US Department of Justice between 1985 and 1997. During that time Ms. Palmer held various roles, including Special Assistant to the US Attorney General, and also Chief of the Criminal Division, as well as Assistant United States Attorney, in the US Attorney's Office, Eastern District of New York.

**Daiske Yoshida****Tel: +81 3 6212 7800 / Email: [daiske.yoshida@lw.com](mailto:daiske.yoshida@lw.com)**

Daiske Yoshida is a partner in the Tokyo office of Latham & Watkins. He has extensive experience in cross-border litigation, arbitration and investigations in a wide range of subject areas, including intellectual property, antitrust, securities, accountant liability, and general commercial disputes. Mr. Yoshida represents clients in US federal and state courts as well as international arbitrations, and leads large-scale internal investigations in Japan, US and Europe involving antitrust, anticorruption and securities law issues. His experience includes cases both at the trial and appellate levels, including appeals before the US Supreme Court and the Second, Ninth and Federal Circuit Court of Appeals.

Mr. Yoshida's recent experience leading from the Tokyo office includes advising within the Latham team which acted as global coordinating counsel in seven global cartel investigations. Each simultaneously involved multiple jurisdictions across the US, Europe, Asia and elsewhere.

Mr. Yoshida is qualified to practise before the New York bar and in Japan as *Gaikokuho-Jimu-Bengoshi* (registered foreign lawyer, New York law). He is fluent in Japanese and English.

**Hiroki Kobayashi****Tel: +81 3 6212 7800 / Email: [hiroki.kobayashi@lw.com](mailto:hiroki.kobayashi@lw.com)**

Hiroki Kobayashi is a partner of Latham & Watkins Gaikokuho Joint Enterprise in Tokyo. His practice focuses on general corporate matters, including cross-border mergers, as well as project development and finance.

Mr. Kobayashi advises on Japanese legal issues relating to a variety of areas within our transactional practice, including corporate law, employment, antitrust, bankruptcy and various government regulatory matters.

Mr. Kobayashi is admitted to practice in Japan and New York and is a member of the Daiichi Tokyo Bar Association in Japan and the New York State Bar Association.

## Latham & Watkins

Marunouchi Building, 32nd Floor, 2-4-1 Marunouchi, Chiyoda-ku, Tokyo 100-6332, Japan

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