

## Client Alert

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## Publication of Interim Report on Review of Japanese Whistleblower Protection Act

The Consumer Affairs Agency's blue-ribbon Whistleblower Protection System Review Committee (Committee) released its interim report (Report) on the revision of the Whistleblower Protection Act (Act) on 2 September 2024. The Committee has continued discussing revisions to the Act based on the Report since its publication.

This client alert summarizes the Report and offers practical guidance on how to respond to potential revisions to the Act. For an overview of the Act, which went into effect on 1 June 2022, please refer to our [previous client alert](#).

### Overview of the Report

The Report points out several operational issues based on the results of surveys conducted on responses by private businesses to whistleblowing reports and an analysis of the effectiveness of whistleblowing systems in bringing corporate misconduct to light. The issues include a failure by business operators to develop whistleblowing systems and limited use of the systems where they do exist. Also, many of the experts on the Committee noted that whistleblower protection in Japan is inadequate when compared to the protections enjoyed in other countries and argued in favor of further amendments to the Act.

The Report offers the following opinions and proposals on topics currently being discussed with regard to revising the current whistleblowing system.

- **Promoting implementation and improving effectiveness of whistleblowing systems**
  - 1) **Responding to a failure to designate personnel to respond to whistleblowing reports (“Jujisha”):** The Report suggests introducing a system that would order business operators to designate *Jujisha* and impose criminal penalties on those that fail to do so.
  - 2) **Improving whistleblowing system effectiveness:** The Report advocates obligating business operators to ensure that their employees are given an overview of the Act (e.g., requirements for protection for each reporting method, prohibition of adverse treatment of reporters, business operators' obligation to establish an internal whistleblowing system and *Jujisha* confidentiality obligations).
  - 3) **Expanding the application of the Act to more business operators:** The Report suggests extending the obligation to implement whistleblowing systems to business operators that regularly employ between 101 and 300 workers.
- **Removing factors that discourage whistleblowing reports**
  - 1) **Prohibiting witch hunts:** The Report states that a provision should be added that expressly prohibits searching for



whistleblowers and imposes administrative sanctions or criminal penalties where it is violated.

- 2) **Prohibiting obstruction of whistleblowing reports:** Other jurisdictions already prohibit obstruction of whistleblowing reports, (e.g., the US, the UK, France, Germany and South Korea). The Report advocates introducing a similar provision in Japan along with administrative sanctions or criminal penalties where it is violated.
  - 3) **Immunity from liability for the collection and removal of materials needed to support a whistleblowing report:** The Report advocates establishing a provision that expressly provides civil and criminal immunity for the collection and removal of materials needed to support a whistleblowing report. It further states that this provision should specify the requirements for immunity and be appropriate under prevailing social standards.
  - 4) **Immunity from criminal prosecution for submitting a whistleblowing report:** Currently, the Act only provides immunity from civil liability. The Report advocates extending this to immunity from criminal prosecution.
  - 5) **Preventing abusive reporting:** The Report suggests establishing criminal penalties for false and abusive reporting. However, it goes on to state that it is essential to consider the potential chilling effect this could have on whistleblowing and to clarify the relationship between any such measure and other criminal offenses, such as the bringing of false charges, defamation and fraudulent obstruction of business.
- **Preventing adverse treatment of / retaliation against whistleblowers and remedies for such adverse treatment / retaliation**
- 1) **Preventing adverse treatment:** The Report recommends establishing criminal penalties for adverse treatment of whistleblowers.
  - 2) **Remedies for adverse treatment:** Shift the burden of proving that "adverse treatment" is not for making a whistleblowing report to business operators, and thereby reduce the burden of whistleblowers. The Report also advocates establishing a system capable of swiftly providing legal remedies through mediation and increasing the amount of damages that can be awarded when a court finds that a whistleblower has been treated adversely.
  - 3) **Clarifying the definition of prohibited adverse treatment:** Currently, dismissal, demotion, pay reduction and withholding of retirement benefits are listed as examples of adverse treatment. The Report advocates adding reassignment (i.e., changing a person's job title, job duties or work location) to the list.
- **Other issues**
- 1) **Expanding the scope of whistleblower protections:** The Report advocates lifting the time limit on whistleblower protection for former employees, extending protections to freelancers and subcontractors and providing protection to all whistleblowers who jointly submit a single whistleblowing report.



- 2) **Reviewing the scope of reportable facts:** The Report supports changing from specifically listing facts that may be reported in a whistleblowing report (i.e. the positive list method) to listing only the specific laws with respect to which a whistleblowing report cannot be submitted (i.e. the negative list method). It also supports providing protection to whistleblowing reports regardless of whether the facts reported are subject to criminal penalties or administrative fines.
- 3) **Relaxing requirements for the submission of whistleblowing reports:** The Report supports providing protection to whistleblowers who wish to remain anonymous if the whistleblower provides an email address or other contact information to enable ongoing communication, or who retains a lawyer.

### **Recommended practical responses**

The Committee is still examining the issues raised in the Report. Companies should therefore monitor the Committee's ongoing deliberations on potential further revisions to the Act. In the meantime, they may wish to take the following practical measures.

- **Review the whistleblowing system:** Business operators should ensure their compliance with their obligations to designate *Jujisha* and provide their employees with an overview of the Act. Businesses with 100 to 299 employees should evaluate their current whistleblowing systems due to the possible expansion of the scope of regulated businesses operators and in light of their own plans to hire more than 300 employees in the future.
- **Eliminate obstructions to whistleblowing:** In addition to the possible future explicit illegality of witch hunts and obstructing whistleblowing reports, business operators should consider whether they are currently impairing the effectiveness of whistleblowing. If so, they should proactively change their internal policies to remove these impairments and provide training on the changes to their employees, etc.
- **Strictly prohibit adverse treatment:** To ensure effective internal reporting, business operators should ensure that their employees, etc., are aware of what constitutes adverse treatment of whistleblowers and that it is prohibited.

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If you have any questions regarding this client alert or need advice on how to improve your compliance program, please feel free to contact us.