

**Corporate Compliance System**  
**—The present status and issues of the corporate compliance mainly with the**  
**Antimonopoly Act— ( Summary )**

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Fair Trade Commission of Japan

1. Key points and objective

Recently a number of legal enforcements and revisions have taken place, with a view to enhancing corporate compliance systems. For example, the Antimonopoly Act was revised in January 2006, whose main features include the introduction of a leniency program. It is followed by the enforcement of whistleblower (public interest informant) protection system (April 2006) and the Corporate Law (May 2006) (which legally requires companies' effective internal controls), and ongoing revisions to the Securities and Exchange Law. However, as affairs now stand, a number of corporate scandals are being detected, including a series of bid-riggings, which are violations against the Antimonopoly Act. Even large companies equipped with fairly established internal compliance systems do commit and often repeat such violations.

In view of such situation, we summarized the present environment surrounding the corporate compliance and the actual status of its implementation. This report aims at assisting companies to implement corporate compliance systems, reviewing present status and appropriate measures to take.

2. Summary

(1) Recent changes of circumstances surrounding corporate compliance

To understand recent changes of circumstances surrounding corporate compliance, we have investigated into recent antimonopoly violation cases and their repetition status.

A number of large companies were legally punished for their repeated violations against the Antimonopoly Act. In order to prevent such repeated violations, it is important to raise the efficiency of the cease and desist order, as well as to improve corporate compliance systems.

As to the companies listed on the first section of the Tokyo Stock Exchange, a total of 180 companies received surcharge payment orders in 10 years from FY1995 to FY2004 and 17 companies of them (9.4%) committed violations twice or more. Among the 24 companies that received recommendations in the bid-rigging case related to the construction project ordered by the Japan Highway Public Corporation, 9 companies (37.5%) had past violation records.
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As to the cease and desist orders in the recent Antimonopoly Act violations, offenders were often ordered to take compliance measures, such as trainings on the Antimonopoly Act and creation of a code of practice.

(An example of a past decision that ordered to conduct audits and trainings on the Antimonopoly Act)

The company shall take appropriate measures to provide trainings on the Antimonopoly Act and to delegate periodical audits to legal personnel. Ensure that its executives and employees fully understand contents of the measures. (FY2003)

(An example of a past decision that ordered creation of a code of practice)

The company shall create a code of practice regarding compliance with the Antimonopoly Act. It shall take appropriate measures to provide trainings for staff in charge of purchasing, based on the code of practice, and delegate periodical audits to legal personnel. Ensure that its executives and employees fully understand contents of the measures. (FY2004)

(2) Present status of the corporate compliance system

In order to grasp actual state of measures taken by companies for the compliance, the Fair Trade Commission of Japan (JFTC) conducted a questionnaire survey in January 2006, covering approximately 1,700 companies listed on the first section of the Tokyo Stock Exchange. Key results are as follows. (Refer to the appendix for results details)

A number of companies have taken measures for the implementation of a compliance system including creation of manuals, but the practical effectiveness is yet to be secured.

(State of the implementation of compliance systems)

- 86% of the companies have created a manual.
- 77% have installed a help line.
- 72% have established a compliance committee.

(Issues of the practical effectiveness)

- About half of the companies established a manual in or after 2003.
- In 81% of such companies, a help line has never been used. (concerning the Antimonopoly Act)
- The president assumes a position of chair only in 38% of those companies, and the vice-president, 10%.

For the question that asked the most important factor of a solid compliance, the most common answer was the awareness of the top management.

- As to the most important factor of a solid compliance, common answers were as follows: the awareness of the top management (55%), creation of a manual (15%), and establishment of a monitoring organization (13%).
- As to the involvement of the top management, 71% actively emphasizes the importance of a compliance, but only 32% would directly take a measure to a violation, if occurs.

The result indicated that training programs and audits concerning the Antimonopoly Act were not sufficiently conducted. Only small percentage of companies conducted internal audits in response to the revision of the

## Antimonopoly Act.

- 44% of the companies did not provide training programs on the Antimonopoly Act; 56% did not conduct internal audits.
- Only 7% of the companies conducted internal audits in response to the revision of the Antimonopoly Act.
- 23% of the companies consider application to the leniency program.

### (3) Basic concepts based on examples of corporate compliance measures

As a result of the investigation on companies' actual compliance measures and hearings conducted toward business people and experts, we have concluded that basic concepts summarized below may be effective when companies try to improve their compliance.

#### Involvement of the top management

Involvement of the top management is indispensable for ensuring the practical effectiveness of a corporate compliance system. For this purpose, the top management should clearly and repeatedly disseminate the importance of a corporate compliance both within and outside the company

#### Effective monitoring system

An effective auditing (monitoring) system must be developed, in order to grasp actual state of each section in the company, ensuring that there are no illegal activities going on.

#### Improvement of corporate ethics

It is necessary to improve employees' ethics/compliance awareness so that laws are voluntarily complied with, since monitoring alone cannot avoid illegal activities completely.

#### Effective internal control system

It is important to implement an effective internal control system, if a company is to ensure the practical effectiveness of a corporate compliance system.

#### Countermeasures for detected violations

Response policy should be established in advance in case illegal activities are found, so that information is swiftly communicated to the top management and appropriate judgments made.

### (4) Corporate compliance and Antimonopoly Act in Europe and the U.S.

As a reference for Japanese companies in implementing a corporate compliance system, we have studied and summarized examples of Europe and the U.S. on issues regarding;

- (a) Level of fines and punishments in Europe and the U.S.,
- (b) Leniency programs of Europe and the U.S.,
- (c) Summary of the U.S. corporate reform act (Sarbanes-Oxley Act), and
- (d) The U.S. Federal Sentencing Guidelines

Based on the actual state of corporate compliance systems in Japan, and also

carefully watching their future developments, the JFTC will further promote strict enforcement of the amended Antimonopoly Act, providing appropriate assistance to companies trying to implement effective compliance systems.

**Results of the questionnaire survey on the corporate compliance with the Antimonopoly Act (Summary)**

1 Purpose of the survey

The improvement of the corporate compliance is more required than ever, due to the revision of the Antimonopoly Act and the Securities and Exchange Law, and enforcement of the Whistleblower Protection System and the Corporate Law, etc.

A number of corporate scandals are being exposed, including a series of bid-riggings, which are violations against the Antimonopoly Act. A considerable number of large companies are also committing violations.



The JFTC conducted a questionnaire survey in January 2006, toward approximately 1,700 companies listed on the first section of the Tokyo Stock Exchange, in order to grasp an actual state of corporate compliance systems.

2 Results of the survey

(1) Manuals and systems for the compliance

86% of the companies have created a compliance manual, but it became available in or after 2003 in about half of the companies.

72% have established a compliance committee, but the president assumes a position of chair only in 38% of those companies, and the vice-president, 10%.

(2) Compliance measures for the Antimonopoly Act

About half of the companies are aware of the risk that they themselves might violate the Antimonopoly Act.

44% of the companies do not provide training programs on the Antimonopoly Act and 56% do not conduct internal audits.

77% of the companies have installed a help line, but in 81% of such companies, the help line has never been used. (concerning the Antimonopoly Act)

(3) The practical effectiveness of the compliance system for the Antimonopoly Act

55% of the companies recognized the importance of the top management's awareness in seeking a thorough compliance with the Antimonopoly Act.

As to the involvement of the top management, 71% actively emphasizes the importance of a compliance, but only 32% would directly take measures for possible violations, if occur.

Only about 30% of the companies regarded their compliance system both systematically and substantially effective. The rest admitted the necessity of some improvements.

(4) Review of the compliance system in response to the revision of the Antimonopoly Act.

Only 7% of the companies conducted internal audits in response to the revision of the Antimonopoly Act.

23% of the companies consider application to the leniency program.

(5) Comparison with Europe and the U.S.

A number of companies evaluated that competition laws of Europe and the U.S. are stricter than those of Japan.



### 3 Conclusion

A compliance system including a manual, a compliance committee and a help line was implemented in 70 to 80 % of the surveyed companies listed on the first section of the Tokyo Stock Exchange. But such system is not fully utilized in many of the companies, since it was implemented rather recently, so companies will have to take some measures to improve the practical effectiveness of the regime.

For that purpose, the top management should;

- 1) reform his/her own awareness and actions, and
- 2) raise employees' awareness and thus enhance the internal control.

Despite that about half of the companies are aware of the risk they might themselves violate the Antimonopoly Act, sufficient training programs and internal audits are not being conducted. It is extremely important for companies to take appropriate measures in order to raise employee awareness and thus enhance the internal control.

Only a very small number of companies actually conducted audits in response to the introduction of the leniency program. Although only a quarter of companies are currently considering the application, the program will attract more attention when leniencies actually start to be granted.