

Tentative Translation

Guide for the Design and Implementation of an Effective Antimonopoly Act Compliance Program:

Focusing on Responses to Cartels and Bid-rigging

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Japan Fair Trade Commission

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Introduction

In the midst of economic globalization and digitalization progressing on a worldwide scale, the economic and social conditions of Japan are undergoing major changes, with the Japanese economy facing a number of issues, such as a declining birthrate, an aging population, and a subsequent decline in population. In order for Japan's economy to continue to grow in these conditions, it is extremely important to promote even more fair and free competition in the market, and to encourage companies to engage in innovation activities.

In order to promote fair and free competition in Japan's markets, strict enforcement of the Antimonopoly Act (hereinafter referred to as the “AMA”) is needed to eliminate any violations of the AMA, and individual companies should be encouraged to comply with the AMA, to create an environment where competitive business activities can be carried out autonomously.

From the perspective of supporting companies AMA compliance efforts, the Japan Fair Trade Commission (hereinafter referred to as the “JFTC”) carries out questionnaire surveys and interviews with companies regarding their AMA compliance to understand and analyze the situation, as well as to clarify any current problems or issues, and compiles and publishes reports to suggest various policies for improving the situation even more (see table below). In addition, guides have been created and published by competition authorities in other jurisdictions, international organizations and an international network, so that companies can design and operate compliance programs in accordance with the AMA of their own country and region (see the reference materials at the end).

Based on the above-mentioned efforts by the JFTC and competition authorities in other jurisdictions, etc. and with a focus on cartels and bid rigging, the JFTC has compiled the best practices together to create and publish this “Guide for the Design and Implementation of an Effective Antimonopoly Act Compliance Program” (hereinafter referred to as “this guide”) for individual companies to refer to when designing and implementing an effective AMA compliance program.

This guide is based on the results of past fact-finding surveys conducted by the JFTC and similar guides created and published by competition authorities in other jurisdictions, etc., and it comprehensively and systematically outlines the components of an effective AMA compliance program, as well as their significance, essence, and points to keep in mind. In addition, this guide introduces examples of good practices from companies that are actively engaged in AMA compliance, as well as “real opinions”

taken from questionnaires and interviews conducted in the above-mentioned fact-finding surveys.

Please keep in mind that of all the acts prohibited by the AMA, this guide mainly deals with compliance related to joint activities that cause only anti-competitive effects, such as unreasonable restraint of trade, bid-rigging, coordination of order intake, price-fixing cartels, volume cartels, and technological restrictions cartels.¹ Although, compliance regarding other acts prohibited by the AMA (such as private monopolization and unfair trade practices) also have many points in common with compliance related to joint activities that cause only anti-competitive effects, and this guide will also refer to those compliance efforts.

In addition, in recent years, in response to economic globalization trends, laws and regulations equivalent to Japan's AMA (hereinafter referred to as "foreign competition laws," which together with Japan's AMA are generally referred to as "competition laws") are being introduced in various countries and regions, so there is an increasing need for global companies with overseas branches, subsidiaries and affiliated companies (hereinafter referred to as "overseas subsidiaries") to design and implement an effective AMA compliance program. In regards to this, the competition laws of various countries and regions are also converging, and this guide can be used as a reference for global companies' compliance with foreign competition laws, and explanations have been added to each section of this guide about what matters global companies should consider and what they should pay particular attention to when complying with foreign competition laws.

It is hoped that this guide will assist companies in designing and implementing an effective AMA compliance program.

¹ Among joint activities by business operators, etc., efforts carried out for socially and publicly desirable goals, and those expected to bring about consumer benefits, especially those joint efforts by business operators to help achieve a green society, are mostly able to be carried out without any problems from the AMA. The JFTC published the "Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society Under the Antimonopoly Act" (March 31, 2023) (<https://www.jftc.go.jp/houdou/pressrelease/2023/mar/230331/bessi1.pdf>) with the aim of supporting business operators efforts towards achieving a green society, and also actively responds to requests for advice from business operators. When business operators implement efforts to achieve a green society, it is hoped that, regardless of this guide that mainly deals with compliance related to joint activities that cause only anti-competitive effects, and proceed with specific efforts by referring to the "Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society Under the Antimonopoly Act," and consulting with the JFTC as necessary.

Table Past JFTC Survey Reports on AMA Compliance

Date Published	Title	Survey Target
May 2006	Corporate Compliance System: The present status and issues of the corporate compliance mainly with the Antimonopoly Act	Companies Listed on the First Section of the Tokyo Stock Exchange (1,696 Companies)
May 2007	Compliance Efforts in the Construction Industry: Focusing on the Antimonopoly Act	Licensed by the Minister of Land, Infrastructure, Transport and Tourism (1,700 Companies)
May 2008	Compliance Efforts of Foreign-owned Companies and Survey on Corporate Compliance from the Lawyer's Point of View: Focusing on the Antimonopoly Act	Foreign-Owned Companies (1,466 Companies)
March 2009	Survey on the Status of Compliance System Development in Enterprises: Status Since the Enforcement of the Antimonopoly Act (Revised January 2006)	Companies Listed on the First Section of the Tokyo Stock Exchange (1,738 Companies)
June 2010	Compliance Efforts of Individual Companies with the Antimonopoly Act: Measures to Enhance the Effectiveness of Compliance	Companies Listed on the First Section of the Tokyo Stock Exchange (1,684 Companies)
November 2012	Survey on Corporate Compliance Efforts with the Antimonopoly Act	Companies Listed on the First Section of the Tokyo Stock Exchange (1,681 Companies)

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March 2015	Compliance Efforts of Japanese Companies for Foreign Competition Laws: Aiming at Compliance Efforts as Global Rules	Companies Listed on the First Section of the Tokyo Stock Exchange (1,814 Companies)
December 2016	Compliance Efforts of Trade Associations for Achieve Antimonopoly Act	Trade Associations (1,041 Associations)
June 2020	Status of Measures Taken by Cooperatives, Etc. Regarding Compliance with the Antimonopoly Act	Cooperatives, etc. (1,781 Associations)
June 2023	Report on the Effectiveness of Measures to Prevent Recurrence in Cease and Desist Orders	Enterprises which Have Received a Cease and Desist Order, etc. of the Unfair Trade Restrictions in the Past (719 Enterprises)

Part I Significance of Designing and Implementing an Effective AMA Compliance Program

1. Risk of Failure to Design and Implement an Effective AMA Compliance Program

The term “AMA compliance program” as used in this guide refers to the mechanisms and efforts to appropriately avoid and reduce the risk of the AMA violations and the losses incurred in case of the AMA violations.

The AMA is a law that establishes rules that all companies participating in the market must observe, with the aim of promoting fair and free competition in the market, and allowing business operators to demonstrate their originality and creativity. In order for companies to create better products and services and to achieve sustainable growth and development, it is absolutely essential that companies face each other head-on, to inspire each other to improve in their endeavors and inventiveness. Conversely, the AMA violations, such as cartels and bid-rigging, are simply acts that disregard competition between companies and neglect endeavors to improve or be inventive, depriving their own companies of the chance for growth or development.

As the AMA is a law that forms a foundation for the economic society, strict measures are enforced against violations. For example, in Japan a surcharge system was introduced for the AMA violations (Article 7-2 of the AMA), such as cartels and bid-rigging. In this surcharge system, the amount of the surcharge is calculated by multiplying the amount of sales of products or services during the period the AMA violation occurred by a certain calculation formula, so the amount of the surcharge will increase more and more the longer it takes to detect the AMA violation. In addition, companies that are involved with AMA violations, such as cartels and bid-rigging, are also liable for strict sanctions such as no-fault liability damages (Article 25 of the AMA) and criminal liability (Article 89 1-1 of the AMA).²

It must also be remembered that violations of the AMA lead to negative attention and severe criticism from society as a whole. As stated above, as the AMA provides rules that all companies participating in the market must obey, violations lead to severe criticism from all of society including clients and customers, and of course damages the company’s reputation and brand image, as well as

² In some countries and regions, the standards for unfair trade practices may be even harsher than in Japan. In specific terms, depending on the country or region, the level of fines and sanctions expected under their system may be higher than in Japan, and in addition to fines for companies, there may be penalties for individual sales personnel, etc., who committed the act, such as non-suspended prison sentences. In addition to these, there are countries and regions that have separate damage compensation litigation systems with strong sanctions, and in some places, there may be cases where victims will actively seek compensation for damages.

considerably reducing the trust of internal and external stakeholders.³

If a company does not design and implement an AMA compliance program at all, or if it is not designed and implemented effectively, the company will not be able to appropriately manage the risk of the AMA violations. As a result, if they are engaged in the AMA violations, they will inevitably suffer a variety of direct and indirect disadvantages, as not only will they lose out on the opportunity for growth and development, but they will also suffer direct consequences such as surcharges, fines and damages,⁴ and indirect consequences such as damage to their reputation and brand image, and a loss of trust from internal and external stakeholders.

2. Benefits of Designing and Implementing an Effective AMA Compliance Program

In contrast with the above risks of Part I, 1., by designing and implementing an effective AMA compliance program, it's possible for companies to obtain the following benefits.

- As well as avoiding or reducing the risk of the AMA violations, it also avoids and reduces the direct and indirect disadvantages that they would be liable for in the case of an AMA violation (if appropriate responses are taken in the case of a suspected violation, damage to the company will be reduced (including reduction or exemption of surcharges by applying to the Leniency Program⁵), as well as enabling the company to gain a reputation as one with a high self-cleansing ability).
- It raises awareness of AMA compliance among executives and employees and fosters a culture and organizational climate that values AMA compliance.
- By executives and employees competing with other companies head-on and not engaging in acts that inhibit competition, various inventive practices and endeavors are inspired, leading to producing better products and services, an increase in competitiveness, and sustainable growth and development.

³ Unless a company quickly ascertains that a violation of the AMA has occurred within the company and takes appropriate measures, the company may suffer further damage to its reputation and brand image by becoming known as a company that cannot take self-cleansing actions, and it is conceivable that this will lead to losing the trust of internal and external stakeholders.

⁴ As well as those mentioned in the main text, other direct disadvantages that will be incurred if there is an AMA violation include the costs of responding to investigations by competition authorities, the costs of implementing cease and desist orders, and the loss of order opportunities during designated periods of suspension.

⁵ In Japan, there is a system (called the Leniency Program) that allows companies to avoid or reduce the amount of surcharges they will face if they voluntarily report details of violations related to cartels or bid-rigging to the JFTC (Article 7-4 of the AMA). Similar systems have also been set up in other countries and regions.

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- Executives and employees' pride, confidence, job satisfaction, sense of belonging, and desire to contribute to and work tirelessly for the company are all improved by carrying out ethical business activities, and it's believed that it helps retain the employment of excellent employees.
- By executives and employees, including top management, showing to the outside world that they are promoting AMA compliance through their approach and actions, the reputation and brand image of the company is improved, trust from stakeholders like clients and shareholders is increased, and corporate value is increased and maintained, which is expected to help promote the recruitment of excellent executives and employees.
- By improving executives and employees' knowledge and awareness of AMA compliance, it improves their ability to detect AMA violations in other companies, such as competitors and clients, and consequently enables them to avoid damage to their own companies.

In these ways, an AMA compliance program serves not only as a "tool for legal compliance" or a "risk management tool," but also as a "tool for maintaining and increasing corporate value." In particular, as is discussed later below, if executives and employees can be made to understand the importance of facing competition head-on without ignoring the competition in front of them, through messages from top management (Part II, 1., (1)), the code of conduct and AMA compliance manual (Part II, 1., (3)), and in-house training on the AMA (Part II, 2., (2)), it will help them develop and sell better products and services through various endeavors and their inventiveness, and lead to sustainable growth and development of the company.

Each company should clearly position the design and implementation of an effective AMA compliance program as one of its corporate strategies to maintain and improve corporate value, not only to avoid and reduce the risk of the AMA violations and the losses that would be incurred if the AMA was violated, but also because by making efforts to actively promote AMA compliance they can aim for further corporate growth and development.

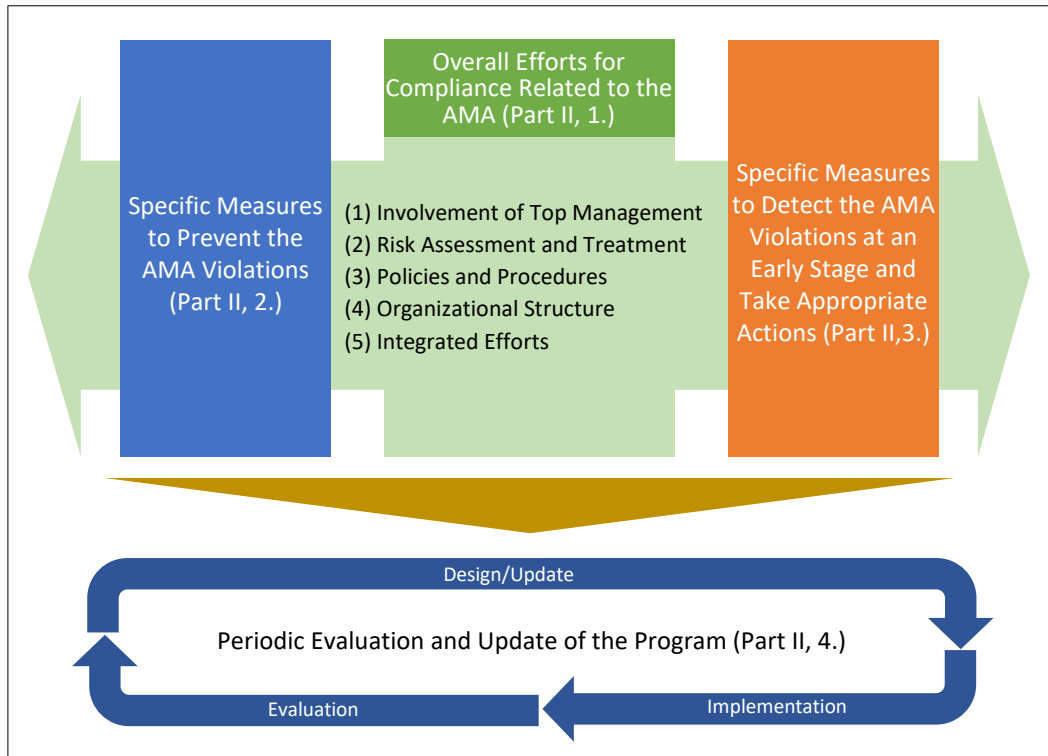
3. Overview of an Effective AMA Compliance Program

This guide classifies the components of an effective AMA compliance program into four categories, namely “Overall Efforts for Compliance Related to the AMA” (Part II, 1.), “Specific Measures to Prevent the AMA Violations” (Part II, 2.), “Specific Measures to Detect the AMA violations at an Early Stage and Take Appropriate Actions” (Part II, 3.), and “Periodic Evaluation and Update of the Program” (Part II, 4.) (see Diagram 1.).

In Diagram 1, specific measures that companies should take to promote effective AMA compliance are listed for “Specific Measures to Prevent the AMA Violations” (Part II, 2.), and “Specific Measures to Detect the AMA violations at an Early Stage and Take Appropriate Actions” (Part II, 3.). On the other hand, the components of the “Overall Efforts for Compliance Related to the AMA” (Part II, 1.) relate to all the measures of Part II, 2., and 3., and it’s important to take all of the components of “Overall Efforts for Compliance Related to the AMA” (Part II, 1.) into account when dealing with the measures of Part II, 2., and 3. In addition, it’s also important to periodically evaluate and update the program as suggested in “Periodic Evaluation and Update of the Program” (Part II, 4.).

The next sections will go on to explain the details of each component, but please bear in mind that this guide does not require that each company immediately designs and implements a full spec program. It may be especially difficult for small and medium-sized enterprises, or companies with limited management department resources, to design and implement all of the components in this guide completely. In those cases, it is important for companies to prioritize efforts that are most likely to be cost-effective, and then gradually expand the scope of their efforts, depending on their situations and their risk of AMA violations. Each company should keep this point in mind while reading this guide, and consider which efforts are most appropriate and should be prioritized in light of their own situation and their risk of AMA violations.

Diagram 1. Overview of an Effective AMA Compliance Program



Part II Components of an Effective AMA Compliance Program

1. Overall Efforts for Compliance Related to the AMA

(1) Commitment and Initiative of the Top Management

A. Check Points

- Does top management periodically and continuously share and communicate the clear message that it will not tolerate any kind of AMA violations both inside and outside of the company?
- Does top management demonstrate with its own actions that it is serious about efforts to design and implement an AMA compliance program, by allocating sufficient authority and resources (budget, personnel, equipment, etc.) to the departments or persons in charge of each effort?

B. Significance

It is generally considered that the intentions and attitudes of top management have a strong influence on the culture and organizational climate of each company, as well as the awareness of compliance of individual executives and employees.⁶ In order for each company to foster a culture and organizational climate that emphasizes compliance with the AMA, and to instill a high level of compliance awareness among individual executives and employees, top management must share and communicate with individual executives and employees the clear message that any violations of the AMA will not be tolerated. In addition, it is extremely important that top management demonstrate through their own actions that they are serious about designing and implementing an AMA compliance program by allocating sufficient authority and resources (budget, personnel, equipment, etc.) to the departments or persons in charge of efforts related to the design and implementation of the AMA compliance programs.⁷

⁶ The commitment and initiative of top management is a fundamental component of an AMA compliance program, as top management clearly demonstrating their intention and attitude (“tone at the top”) to promoting compliance with guides of competition authorities in other jurisdictions, etc. fosters an organizational climate that emphasizes compliance (“culture of compliance”). In Japan, the Business Accounting Council of the Financial Services Agency’s “On the Revision of the Standards and Practice Standards for Management Assessment and Audit Concerning Internal Control Over Financial Reporting (Council Opinions)” (hereinafter referred to as the “Opinions of the Business Accounting Council of the Financial Services Agency”) (April 7, 2023), p.39 (<https://www.fsa.go.jp/news/r4/sonota/20230407/1.pdf>), states that “the tone of the organization often reflects its top management’s intentions and attitudes,” and the Tokyo Stock Exchange, Inc.’s “Japan’s Corporate Governance Code” (June 11, 2021), p.8 (<https://www.jpx.co.jp/equities/listing/cg/tvdivq0000008jdy-att/nlsgeu000005lnul.pdf>) states in Basic Principle 2 that the management “should exercise their leadership in establishing a corporate culture where sound business ethics are ensured.”

⁷ In practice, it is considered that the commitment and initiative of management outside of top management, such as middle management including the heads of each business division, is also important, and these other layers of management are also expected to take the initiative in promoting AMA compliance under the leadership of top management, and serve as role models for their subordinates.

In fact, a fact-finding survey carried out in the past by the JFTC showed that a company's own analysis found that "the failure of top management to sufficiently communicate to employees a clear policy that we will not conduct business in a way that is socially unacceptable, was one of the reasons AMA violations were not prevented or stopped early,"⁸ and this example shows that if there is even the slightest ambiguity in top management's intentions and attitudes, it conveys to executives and employees that they are not serious about efforts to design and implement an AMA compliance program, and this suggests that the false justification that "AMA violations are a necessary evil to protect the industry and the company" may spread among executives and employees.

In addition, a survey report on compliance carried out by the ICN (International Competition Network) also found that 43% of the competition authorities, and 69% of the NGAs (Non-Governmental Advisor), who took part in the survey, stated that commitment from top management was an important component of an effective compliance program.⁹

Therefore, top management's commitment and initiative towards AMA compliance is considered to be an important key component that is at the core of an effective AMA compliance program.

In order to properly convey messages from top management to individual executives and employees, it is important to think about the messages' contents, frequency, and the best ways to convey them, etc., in accordance with the size and organizational structure of the company.

⁸ JFTC's "Survey on Corporate Compliance Efforts with the Antimonopoly Act" (hereinafter referred to as the "2012 JFTC's Survey Report") (November 2012), p.51 (<https://www.jftc.go.jp/houdou/pressrelease/cyosa/cyosa-sonota/h24/121128.html>).

Furthermore, from the perspective of aiming to ensure compliance with laws and regulations in business activities, an AMA compliance program can also be considered to be a type of internal control in the company, as if the top management can ignore or override internal controls for illegitimate objectives (Opinions of the Business Accounting Council of the Financial Services Agency (in Note 6 above) p. 55), then that will also include the AMA compliance program. No matter how detailed an AMA compliance program the company try to create, if top management ignore or override it, the AMA compliance program just becomes pie in the sky, and the efforts of all those concerned will come to nothing, so it goes without saying that top management should never show in their words or actions that they endorse or approve of violations of the AMA.

⁹ ICN (International Competition Network) "Report on Competition Compliance" (hereinafter referred to as "ICN Survey Report") (2021), p. 12 (<https://www.internationalcompetitionnetwork.org/wp-content/uploads/2022/04/AWG-Report-on-Competition-Compliance.pdf>).

Furthermore, these results were compiled from replies to the question, "In your view, what are the critical elements of an effective compliance program for a business?" where a free writing format was used in which the competition authorities and NGAs were allowed to freely write whatever answer they came up with that they thought was the most appropriate, as opposed to a multiple-choice format, where they had to select the most suitable answer from pre-prepared options. When compiling the results, the ICN classified the components from the competition authorities and NGA's answers into 19 components, and simply calculated the number of replies with that component to produce the percentages mentioned in this text. When calculating these figures, they only considered whether each component was included in the answer or not, and counted it as one, regardless of whether it was referred to repeatedly or strongly emphasized. Therefore, it should be remembered that the percentage of answers shown in the text do not indicate the ranking of importance (for example, top management's commitment had the second highest answer percentage among the 19 components, which just shows that "This was frequently mentioned" in the answers of competition authorities (ICN Survey Report, p. 12)).

Possible ways to convey messages include posting on the company's intranet, sending emails, speaking at various types of meetings or in-house training (Part II, 2., (2)), or publishing them in the code of conduct and AMA compliance manual (Part II, 1., (3)), but it might also be worth considering more inventive ways to effectively convey top management's level of commitment to executives and employees, such as using messages with portrait photos on or video messages. As for the frequency of messages, in addition to sending them at certain milestones, such as monthly, quarterly, or annually, it is also possible to set a certain period once a year as a time when compliance is focused on, such as having a so-called "compliance month" for example, where messages are conveyed intensively during that period. Regarding the contents of the messages, it's important to use clear and easy to understand language so that it is easily understandable to individual executives and employees, and it's also worth considering introducing examples of the company's own or other company's mistakes or failures (it is advisable for global companies to translate their messages into the main languages used by their overseas subsidiaries to convey the messages to the executives and employees there). As the members of a company are constantly changing, due to people joining and leaving, it's important that messages are periodically and continuously shared and communicated (if top management changes every few years, it's important to convey the message once again at the time of the change).

It's also thought that the status of the promotion of AMA compliance is a serious matter of interest for stakeholders outside of the company as well. For that reason, it's also important that top management's messages are shared outside of the company, by posting messages on websites aimed to the outside world, etc. This helps improve the company's reputation and brand image, increases the trust of external stakeholders, and also further demonstrates to executives and employees within the company the top management's level of commitment to AMA compliance.

C. Examples of Good Practices

The following examples of good practices were found from questionnaires and interviews in past fact-finding surveys carried out by the JFTC, and it's hoped that top management will use these efforts for reference while demonstrating their initiative and commitment to AMA compliance.

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[Examples of the contents of messages from top management]

- The message conveyed from top management was “if there is a conflict between profit and compliance, always prioritize compliance.”
- Top management personally conveyed the message that “we don’t need a single yen of profit generated from compliance violations,” to all the employees, which increased the awareness of compliance within the company.
- Top management announcing the strengthening of compliance to all of the employees changed awareness within the company.
- Employees’ awareness changed after top management personally sent out the message that “compliance with market rules took precedence over immediate orders and profits.”
- In the past, some business divisions had the sense that they could not survive without bid-rigging, despite publicly proclaiming that they were complying with all laws and regulations, but top management personally sent a strong message to all the employees that “if a business can’t survive without bid-rigging, then it has to be abolished,” which changed this thinking dramatically.
- Top management sent out a message with the gist of “the thinking that cartels can be permitted for the reason that they protect the company and protect the industry is mistaken,” to repudiate the notions of employees who wanted to be involved with cartels.
- Top management sent out a message with the gist of “demonstrating creativity in a fair and free competitive environment helps contribute to the development of the business. Let’s engage with the AMA proactively, rather than accepting it passively.”
- Top management communicated that they would not accept any profit gained from unlawful methods and if any unlawful acts were detected, then they would be dealt with severely and superiors would be held liable for their management.

[Examples of ways top management convey messages]

- A message from top management about the importance of compliance was published in our code of conduct and our AMA compliance manual, which was thoroughly and widely shared through groupware, making it clear that the company as a whole’s approach was to comply with the

AMA, so that awareness spread to all the employees.

- Messages about compliance in the name of top management were given out at every opportunity, such as publishing messages on corporate ethics cards and in company newsletters that were distributed to all employees, and posting messages on e-learning screens, and this led to a considerable increase in the number of compliance related consultations, and employees becoming more aware of compliance.
- Top management's stance was made well known by showing video messages at training sessions held at each location nationwide. Ever since then too, video messages have been repeatedly shown at each training session in an attempt to foster and instill an awareness of compliance.
- When top management visited branches, they held friendly gatherings open to everyone, including leadership and general employees, where they explained the importance of compliance.
- Top management personally attend training sessions for all levels of positions and share their message about the importance of compliance (there was also the view that top management appearing in front of employees and talking directly to them "in addition to conveying the top management's determination, also meant that employees from the legal and compliance department could say that 'top management's opinion is also the same as you just heard,' which made it easier for them to persuade employees there.")

[Examples of how frequently messages from top management are conveyed]

- To demonstrate top management's strong determination to comply with the AMA they always post a message about it when they post on the company's intranet (two to three times a month).
- As well as continuous declarations from top management about their determination to end big-rigging, messages about complete compliance are sent on the company's intranet to all executives and employees during compliance month, which is held every year, so top management's strong intentions are constantly demonstrated and shared.
- At the weekly executives' business meetings, top management introduces examples of AMA violations made by competitors as well as their self-admonitions, and at the section managers and above meeting held every six months, examples of compliance are always introduced and people are

reminded to pay attention to compliance.

[Examples of efforts at global companies]

- Due to the idea that direct verbal messages are more effective than written documents for conveying top management's sincere attitude to recipients, every six months a video message about compliance with competition laws is sent to all employees around the world in Japanese, English, Chinese and German. In addition, at the start of our e-learning training on competition law, which is carried out in 11 languages, there is a message from the compliance committee that is chaired by top management.

(2) Assessing the Risk of the AMA Violations in Accordance with Respective Situations of Companies and Responding to the Risk in Risk-Based Approach

A. Check Points

- Are risks of AMA violations being identified appropriately according to the actual situation of the company?
- Is the seriousness of the identified risk being appropriately analyzed and assessed from the perspectives of the likelihood of the risk occurring and the magnitude of the impact if the risk occurs?
- Are policies for dealing with risks properly considered in accordance with the results of risk analysis and assessment?
- Are limited resources allocated to areas with a high risk of AMA violations by using a risk-based approach?
- Are the processes for identifying, analyzing and assessing risks periodically re-implemented? And are policies for dealing with risks periodically reviewed?

B. Significance

The risk of AMA violations that each company faces varies widely depending on the contents of each company's business, market characteristics, market position, range of activities, whether or not they are a member of a trade association, etc. In addition, there is a limit to the amount of resources each company can devote to the promotion of AMA compliance. Therefore, when each company sets out to design and implement an AMA compliance program, they must first properly identify, analyze, and assess their risk of AMA violations according to their actual situation, and then allocate limited resources in a focused way to areas with a high risk of AMA violations, based on a risk-based approach.¹⁰ In other words, an AMA compliance program will only be really effective if it is properly customized in accordance with the risk of AMA violations that each company faces.

First, it's important that each company properly identifies the risks that they are facing, in order to use a risk-based approach to allocate and focus limited resources to areas with a high risk of AMA violations. Then it is

¹⁰ The "risk-based approach" refers to a method for allocating a company's limited resources in a focused way to areas of high risk. Although it's a guide in the field of bribery, "A Resource Guide to the U.S. Foreign Corrupt Practices Act Second Edition" (July 2020), p.60, published by the US DOJ and SEC, says, "One-size-fits-all compliance programs are generally ill-conceived and ineffective because resources inevitably are spread too thin, with too much focus on low-risk markets and transactions to the detriment of high-risk areas," which emphasizes the importance of a risk-based approach.

important to properly analyze and assess identified risks and decide on a response policy that leads to specific responses. The specific procedure for assessing AMA risks will differ according to each company's actual situation, but one example of how to proceed is given below.

Diagram 2. Image of the Process of Assessing AMA Violations



(A) Risk Identification

The scenarios in which a company may become involved in cartels or bid-rigging differ depending on the characteristics of the products or services that each company deals with. Likewise, there are various scenarios in which a company may become involved in activities other than cartels and bid-rigging that are also AMA violations (such as private monopolization and unfair trade practices). In the process of identifying risks, it's important to envision specific scenarios in which the company may become involved in AMA violations (such as the risk of contacting or meeting with competitors and agreeing on the price for products and services) to reveal the AMA violation risks that each company faces.

(B) Risk Analysis and Assessment

It's important to analyze and assess those risks identified in (A) above, when considering policies to respond to those risks. The general approach to risk assessment is to analyze and assess the risk from the perspective of how likely it is to occur and how large an impact it would have if it did

occur,¹¹ with risks that have a high likelihood of occurring, or would have a major impact if they occurred, being judged more serious and requiring a more focused and generous response.

Furthermore, as it's considered that employees on the front-line are those that most face the risk of AMA violations every day, it's important when analyzing and assessing risks to carry out questionnaires and interviews of those employees to get a true understanding of the actual situation.¹² Also, when analyzing and assessing the magnitude of an impact if a risk occurred, it is also important to consider not only the magnitude of direct costs, such as surcharges, fines and compensation, but also the magnitude of indirect and secondary costs, such as the damage to the company's reputation and brand image, and the loss of the trust of internal and external stakeholders.

(C) Risk Treatment

It is important that policies for responding to risks be considered in accordance with the seriousness of the risk as analyzed and assessed in (B) above. In specific terms, if an AMA violation risk is recognized as having a high likelihood of occurring or a major impact if it occurred, it's important to think of a policy to appropriately manage that risk, and to consider strengthening the AMA compliance program accordingly (for example, specific measures to appropriately manage the risk of contacting or meeting with competitors and agreeing on the price of products or services could be the creation and dissemination of AMA compliance manual (Part II, 1., (3)), design and implementation of internal rules for contacts with

¹¹ The ICC (International Chamber of Commerce) "THE ICC ANTITRUST COMPLIANCE TOOLKIT -Practical antitrust compliance tools for SMEs and larger companies-" (2013), p. 16 (<https://2go.iccwbo.org/icc-antitrust-compliance-toolkit-english-version.html>), Opinions of the Business Accounting Council of the Financial Services Agency (Note 6 above), p. 43. In addition, as a method for risk analysis and assessment, the ICC "THE ICC ANTITRUST COMPLIANCE TOOLKIT -Practical antitrust compliance tools for SMEs and larger companies-" (2013), p. 22, introduces a method to measure the seriousness of a risk by multiplying the score for the likelihood of a risk occurring with the score for the magnitude of the impact if the risk occurs. In specific terms, the likelihood of a risk occurring and the magnitude of the impact of the risk are graded into the four ranks of NEGLIGIBLE, MARGINAL, MATERIAL, and CRITICAL, with a score from 1 to 4 being applied from left to right (NEGLIGIBLE is 1, MARGINAL is 2, MATERIAL is 3, CRITICAL is 4), and by multiplying the scores together, the company can get a measure of the seriousness of the risk (for example, if the likelihood of the risk occurring and the magnitude of the impact are both CRITICAL, then the multiplied score will be 16, which makes it one of the most serious high risks). This enables the creation of a matrix table, where the horizontal axes refer to the likelihood of the risk, and the vertical axes refer to the magnitude of the impact, which can be used to map out and effectively visualize the seriousness of the risk of each item in accordance with their scores (see p. 18 of same reference).

¹² From an economics perspective, as there is a tendency for cartels and bid-rigging to occur in situations where there are few competitors and a high concentration of products and services, when there is little differentiation between products and services of a very similar quality, or when there are few fluctuations in demand and prices and quantities are highly transparent, it is thought that those departments that deal with those kind of products and services need to have a more focused response.

competitors (Part II, 2., (1)), providing in-house trainings on the AMA (Part II, 2., (2)), design and operation of a consultation system on the AMA (Part II, 2. (3)) and design and implementation of internal disciplinary rules for the AMA violations (Part II, 2., (4)).¹³

Furthermore, as the risk of AMA violations that each company is facing continues to be constantly changing due to changes in each company's business contents, industry practices, competitors, regulatory environment, etc., it's important that each company periodically re-assesses its risks of AMA violations and reviews its policies for responding to risks.

C. Examples of Good Practices

The following examples of good practices were found from questionnaires and interviews in past fact-finding surveys carried out by the JFTC, and it's hoped that companies will use these efforts for reference while assessing their risk of AMA violations in accordance with their own actual situation and taking measures to respond to those risks.

[Examples of assessing the risk of AMA violations in accordance with the actual situation of the company]

- As part of our risk management activities, we have designated the risk of AMA violations as a priority risk.
- When we have training, we always conduct a questionnaire with open questions about whether they have had any contact with competitors and, if so, what the nature of that contact was, and from those answers we get an understanding of what the actual risks are on the job.
- As we thought that if executives and employees wanted to it would be possible to do a cartel with general purpose goods, we judged that there was a high risk of AMA violations in the business division that dealt with general purpose goods, and when we carried out a focused internal

¹³ The Opinions of the Business Accounting Council of the Financial Services Agency (Note 6 above), p. 41, states that it is important to consider the three factors of incentives and pressures, opportunities, and attitudes and rationalizations, when assessing risks related to fraud. In addition, based on the research of the American criminologist, Donald R. Cressey (Cressey, D. R. (1973). *Other people's money: a study in the social psychology of embezzlement*. Patterson Smith reprint series in criminology, law enforcement, and social problems, Publication no. 202.), the "fraud triangle" theory asserts that fraud activities are more likely to occur when the three factors of incentives, opportunities, and rationalizations are all present. Based on this, it is advisable to properly consider those three factors, when considering policies for responding to the risk of the AMA violations (for example, a possible response to the "risk of contacting or meeting with competitors and agreeing on the price of products or services" could be strengthening the internal rules regarding contact with competitors, from the perspective of strengthening the management of "opportunity" for contacting or meeting with competitors).

investigation we detected AMA violations, and then we were able to use the Leniency Program.

[Examples of responses to the risk of AMA violations in accordance with the actual situation of the company]

- Based on top management's judgement that we should withdraw from certain businesses as the nature of those markets made cartels and bid-rigging unavoidable, we decided to withdraw from those businesses.
- Considering the risk of price-rising cartels in oligopolistic markets, a procedure has been introduced so that when raising prices, the reason for the price rise, the situation with competitors' price rises, the nature of any contact with other company's executives, etc., are all written down in a document requesting approval, which is examined by the legal and compliance departments.
- Based on the high risk of cartels with general purpose products, sales representatives are prohibited from attending meetings with competitors.
- Decisions on bid amounts could in principle be done by the sales department alone unless it was a deficit order, but based on the fact that bid-rigging could be carried out in advance and the possibility that the sales department could conceal that, sales activities like bidding have been set up so that they are decided at a meeting with executives from the management and technology departments, as well as the sales department.
- As joint development projects with competitors increase, the opportunity for other employees not in sales, such as factory employees, to come into contact with competitors has also increased, so we are providing training on the AMA for employees who previously did not receive such training.

[Examples of efforts at global companies]

- As it is an industry where a small number of companies of the main business line have control over the global market, a policy has been established as a global rule that contact with competitors is forbidden in principle.
- As there are many oligopolistic markets in related industries and, in addition to Japanese company competitors, there are companies from countries and regions that are thought to have a low awareness of

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compliance, prevention of cartels is a priority issue, and rules have been established in regards to contact with competitors.

(3) Design and Implementation of Policies and Procedures for Promoting the AMA Compliance

A. Check Points

- Has a code of conduct been formulated that clearly states the basic policy of “not becoming involved in any way in activities that are AMA violations, such as cartels and bid-rigging”?
- Have AMA compliance basic rules been formulated that comprehensively prescribe basic policies and procedures related to the design and implementation of an AMA compliance program?
- Has an AMA compliance manual been created that sets out information and points for consideration about the AMA in an easily understandable way?
- Have the code of conduct, AMA compliance basic rules, and the AMA compliance manual been properly made well-known to each individual executive and employee, and are their contents understood (have they properly permeated to each individual executive and employee)?
- Are the contents of the code of conduct, AMA compliance basic rules, and the AMA compliance manual periodically reviewed and updated?

B. Significance

In order for each company to promote its efforts to the whole company in accordance with its own situation and risk of AMA violations, it's important that basic policies and procedures regarding the promotion of AMA compliance are clarified as internal rules and manuals, etc., and that these are shared widely to each individual executive and employee. It's considered that each company will design and implement their internal rules and manuals with various names and contents in accordance with their own particular situation, but it's important from the perspective of AMA compliance that the following internal rules and manuals are designed and implemented.¹⁴

<Examples of internal rules and manuals related to AMA compliance>

- Specific and clear guidelines for ethical behavior and attitudes that

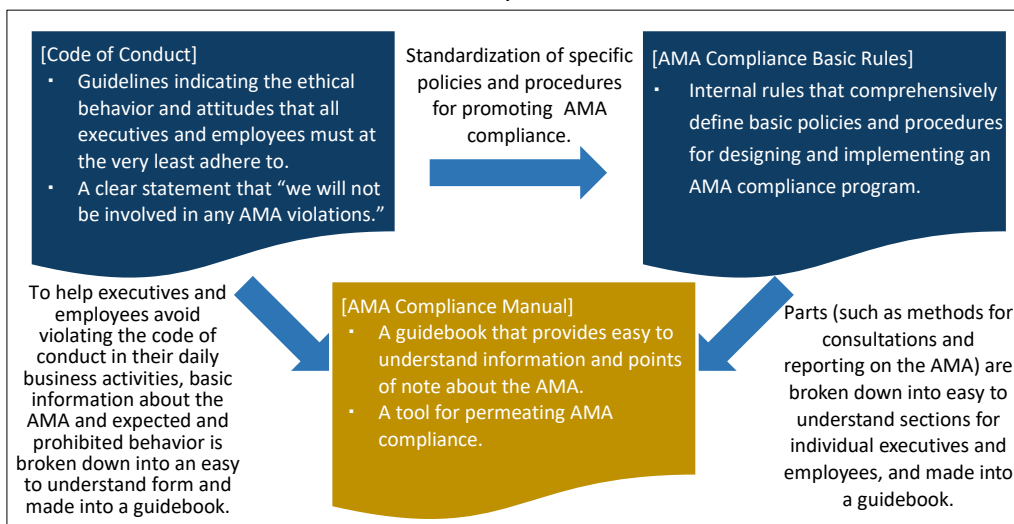
¹⁴ As mentioned in the text, the actual names and contents of internal rules and manuals will vary from company to company. This guide provides the main components that are considered to be important from the perspective of designing and implementing an effective AMA compliance program, and it is hoped that each company will refer to this guide while designing and implementing internal rules and manuals in a form that corresponds with their own actual situation and risk of AMA violations.

individual executives and employees should adopt in their daily business activities (for example, not engaging in any activities that are AMA violations such as cartels or bid-rigging) to realize the company’s ideals and values (hereinafter referred to as a “code of conduct”).¹⁵

- Internal rules that comprehensively define basic policies and procedures for designing and implementing an AMA compliance program (hereinafter referred to as “AMA compliance basic rules”).¹⁶
- A guidebook that provides an easy to understand overview of information and points for consideration about AMA compliance (hereinafter referred to as an “AMA compliance manual”).

It’s important that these internal rules, manuals, etc., are designed and implemented in accordance with the actual situation of each company. Below is a more detailed explanation of specific details and points to note for these internal rules and manuals (in addition, please see Diagram 3. below to understand the relationship between the code of conduct, AMA compliance basic rules and AMA compliance manual in this guide).

Diagram 3. The Relationship Between the Code of Conduct, AMA Compliance Basic Rules, and AMA Compliance Manual in this Guide



¹⁵ Basic Principle 2-2 of “Japan’s Corporate Governance Code”, p.9, (Note 6 above) states that, “Companies should draft and implement a code of conduct for employees in order to express their values with respect to appropriate cooperation with and serving the interests of stakeholders and carrying out sound and ethical business activities,” and these conduct standards can also be considered to be a kind of code of conduct.

¹⁶ It is considered that there are some companies that have already formulated “Compliance Basic Rules” to comprehensively define basic policies and procedures for compliance in general. In those cases, it may be possible to incorporate matters related to AMA compliance into those same rules, as well as entrusting responses and common policies and procedures for other compliance risks to them, but it may also be necessary to formulate separate and specialized internal rules for AMA compliance.

(A) Code of Conduct

A code of conduct defines the minimum requirements that all executives and employees belonging to a company must observe in order to carry out their business duties in an ethical and honest way. By including a clear statement in this code of conduct stating that “we will not be involved in any AMA violations, such as cartels and bid-rigging” it fosters a culture and organizational climate that emphasizes AMA compliance, as well as contributing to an increased awareness of compliance among individual executives and employees, which leads to front-line employees knowing that when they are faced with a dilemma in their daily business activities between observing the AMA or making profits through illegal or underhand methods, they should always decide to prioritize compliance with the AMA in their actions and approaches. In addition, by posting the code of conduct on a website aimed to the outside world, it advertises that the company is proactively engaging with compliance, which helps improve its reputation and brand image, and contributes to gaining trust from external stakeholders.

It's considered that a company's ethical and honest business activities are achieved from an accumulation of ethical actions and attitudes from its executives and employees. Therefore, it's important that this code of conduct, that defines the ethical actions and approaches that executives and employees should take, is made well known to each individual executive and employee, and that its contents are understood, by using the following ideas.¹⁷

- Write in clear and easily understandable sentences, so that executives and employees of all ranks and occupations can understand it.
- Global companies should translate the code of conduct into the main languages used at its overseas subsidiaries, so that it can become well-known by all the executives and employees there.
- Use the company's intranet, etc., so that each executive and employee

¹⁷ Basic Principle 2-2 of “Japan's Corporate Governance Code”, p.9, (Note 6 above) states that “the board should be responsible for drafting and revising the code of conduct, and should ensure its compliance broadly across the organization, including the front line of domestic and global operations,” and, in addition, 2-2 ① of the same principle says that “the board should review regularly (or where appropriate) whether or not the code of conduct is being widely implemented. The review should focus on the substantive assessment of whether the company's corporate culture truly embraces the intent and spirit of the code of conduct, and not solely on the form of implementation and compliance.” It is advisable to bear this in mind when carrying out activities to make it common knowledge.

has easy access to the code of conduct.

- In addition to highlighting the contents and importance of the code of conduct in messages from top management (Part II, 1., (1)) and the AMA compliance manual ((C) below), explain its contents and importance in in-house training (Part II, 2., (2)).
- Periodically obtain written pledges from each individual executive and employee stating that they understand and intend to comply with the code of conduct.
- Check executives and employees' level of awareness and understanding of the code of conduct through questionnaires, and use this to improve awareness activities.

In addition, as the compliance risks that each company is facing are constantly changing due to various changes in the environment both inside and outside of the company, it's also important to periodically review and update the contents of the code of conduct.

(B) AMA Compliance Basic Rules

In order to ensure that the design and implementation of the AMA compliance program is sustainable even if there are changes in top management or the organizational structure for promoting AMA compliance (Part II, 1., (4)), it's important that AMA compliance basic rules are formulated that comprehensively define the basic policies and procedures related to the design and implementation of the AMA compliance program.

It's important that the AMA compliance basic rules define, for example, the purpose and scope of the AMA compliance program, as well as matters related to the design and implementation of each item in this guide, and it's also advisable that, when necessary, it provides specific details on carrying out each item in the detailed rules, manuals, etc.

In order to properly implement an effective AMA compliance program, it is important to use the company's intranet, etc., so that each executive and employee can easily access the AMA compliance basic rules, and to use a variety of ideas in the AMA compliance manual ((C) below) and in-house training (Part II, 2., (2)) to explain certain parts (for example, methods for consultations and reporting related to the AMA) to individual

executives and employees in an easy to understand way,¹⁸ so that each executive and employee is properly informed and understands those details. It's also important to periodically review and update the contents of the AMA compliance basic rules, in accordance with the periodic evaluation and update of the program (Part II, 4.).

(C) AMA Compliance Manual

It's necessary for individual executives and employees to properly understand what acts constitute a violation of the AMA to ensure that they don't engage in activities that are AMA violations. However, many front-line employees who face the risk of AMA violations will not have very sophisticated knowledge of the AMA. Therefore, it's important to create an AMA compliance manual that organizes knowledge and points of note regarding AMA compliance in an easily understandable way so that front-line employees can properly understand what kinds of acts constitute a violation of the AMA. With this kind of a manual, front-line employees can vigorously tackle their daily business activities while avoiding the risk of AMA violations.

Also, it will not matter how impressive the AMA compliance manual is if the front-line employees don't fully understand its contents. Therefore, it's important to make the AMA compliance manual well-known among all the executives and employees, and its contents properly understood, by using ideas like the ones below.¹⁹

- Write in clear and easily understandable sentences, so that executives and employees of all ranks and occupations can understand it.
- In addition to a general explanation of the AMA, incorporate specific points of concern based on the nature of each company's business activities and their risks of AMA violations.
- In order to promote a proper understanding among front-line employees, each company should create a list of prohibited behaviors and a list of expected behaviors based on scenarios that employees are likely to encounter in their actual business activities, as well as a Q&A based on real examples, and incorporate a list of disadvantageous

¹⁸ In addition to ideas mentioned in the main text, it's also possible that companies may carry out similar ideas mentioned in the code of conduct section, depending on their actual situation.

¹⁹ Same as Note 18 above.

consequences that the company and individual would face if they actually violated the AMA.

- Incorporate descriptions and explanations of the code of conduct ((A) above) and the AMA compliance basic rules ((B) above) from the perspective of aiming to help them permeate.
- In order to prevent AMA violations or detect them at an early stage, include contact information of who to consult and who to report to if executives and employees encounter a possible violation.
- Include a clear message from top management emphasizing the importance of AMA compliance (Part II, 1., (1)) in the manual, in order to help the manual permeate more effectively among executives and employees.
- Global companies should translate the manual into the main languages used at its overseas subsidiaries, so that it can become well-known by all the executives and employees there.
- Use the company's intranet, etc., so that each executive and employee has easy access to the manual.
- Explain the contents of the manual in detail in in-house training (Part II, 2., (2)).

Furthermore, as the risk of AMA violations that front-line employees are facing is constantly changing due to changes in the law and the law enforcement environment, it's also important to periodically review and update the contents of the AMA compliance manual.

C. Examples of Good Practices

The following examples of good practices were found from questionnaires and interviews in past fact-finding surveys carried out by the JFTC, and it's hoped that companies will use these efforts for reference while designing and implementing their own code of conduct, AMA compliance basic rules, and AMA compliance manual in accordance with their own actual situation and risks of AMA violations.

[Examples of code of conduct that clearly advocate compliance with the AMA being formulated and disseminated]

- At the time of the AMA violation incident, no guidelines for behavior in

relation to the AMA had been established, but the incident was used as an opportunity to add a section on the AMA to the code of conduct, and it was posted on the company's intranet so that all employees could read it.

- We are proactively sharing our management philosophy and management policy by declaring our commitment to the "observing fairness rules" and "making best effort for compliance" on our company's website and in external public relations magazines, and are working on putting this into practice.
- Strict adherence to the AMA was added to the code of conduct, and top management published an "anti-collusion declaration" in the AMA compliance manual, which made clear our stance on AMA compliance, and that attitude permeated to all our employees.
- Our code of conduct clearly states that "we will observe all relevant laws, trade appropriately and compete in a fair, transparent and free market, and conduct responsible procurement," and this code of conduct is printed out on cards that all executives and employees always carry around with themselves.
- In an attempt to increase awareness of the AMA, we published our code of conduct with sections on "fair market transactions" in a booklet and distributed it to all our employees. They carry it around at all times and read through it together at work meetings.
- A message from top management along with the code of conduct are printed in the employees' handbook, in an attempt to get full awareness and compliance.
- We gave a questionnaire to all of our employees to measure their level of awareness of the code of conduct, and carried out awareness activities within the company. The code of conduct is also used in in-house training in an attempt to raise awareness of AMA compliance.
- Every year all executives and employees are required to sign a pledge related to the code of conduct stating, "I will not conduct bid-rigging. I will not be involved in bid-rigging."
- In order to promote self-awareness about compliance, all management employees are required to sign a pledge that demands that they comply with laws while citing specific examples of unfair practices, including AMA violations, and states they will be subject to disciplinary measures if they

commit any violations.

- The code of conduct is reaffirmed every year during compliance month.

[Examples of AMA compliance basic rules being formulated and disseminated]

- A system for AMA compliance was constructed by formulating basic rules related to the observance of the AMA and internal rules for standards to prevent cartels and bid-rigging. A series of training, audit, awareness and enlightenment activities based on these internal rules contributed to improvements in employees' awareness and understanding of AMA compliance.

[Examples of AMA compliance manual being created and disseminated]

- The manual's explanations are written in simple terms and diagrams are used to make the content easy to understand. The manual also includes a collection of case studies in a Q&A format, making it a manual that can be used as a guidebook in daily work.
- The manual was created in consultation with our legal advisor to ensure that it fully satisfies the requirements of the AMA. The manual specifies specific acts that are considered to be bid-rigging, and also includes a checklist in it to check whether or not an act would be considered bid-rigging.
- Our company created an AMA compliance manual based on the reality of our business, and it was devised so that it would be easy for our sales people to understand. As sales people can refer to this manual and consult with the legal department in advance about any high-risk activities, it is very useful in preventing the recurrence of AMA violations.
- In addition to the code of conduct, we created an AMA compliance manual that includes an overview of the AMA, the responsibilities in the case of a violation, a Q&A section, a consultation desk contact information, etc., and distributed it as a booklet to the executives and employees.
- The manual introduces AMA violations that the company has committed in the past, as well as focused explanations of points that employees should be particularly careful about due to the nature of our company's business, and as the whole thing is written in easy to understand language, it has heightened our sales people understanding of the AMA and enabled them to go about their work more carefully.

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- We created an AMA compliance manual that summarized all the points we needed to be careful about in our business in an easy to understand way and distributed it to our employees as a booklet, which improved their awareness and understanding of the AMA.
- We distributed a manual into the hands of all executives and employees, which clearly stated what things should be done, what should not be done, and points to be careful of based on past examples and likely situations, so they can now quickly refer to it and check the details.
- A guidebook on compliance that uses all sorts of cases that really occurred in our group as themes was posted on the intranet and the mobile devices that all employees have for business, so that they can view it at any time. As a result, employees who have lots of opportunities to interact with competitors are proceeding in their jobs more carefully.

[Examples of efforts at global companies]

- We established a group code of conduct (including compliance with competition laws) and group competition law policies that were adopted by the whole group including the overseas subsidiaries. Executives and employees' awareness of regulatory compliance increased due to this documentation of our code of conduct and policies.
- The code of conduct was produced in multiple languages, and distributed and deployed globally.
- We created an AMA compliance manual in accordance with the strictest laws in the world, so that it could be used for competition laws in all the countries and regions around the world.
- As the business is becoming global, we need to understand and adhere to the competition laws of not just the country where we are located, but also the competition laws of each country and region we operate in, so we have created an AMA compliance manual that corresponds to the competition laws of each country and region, and distributed it to all the employees of the group. As a result of this, the legal staff and business staff in each country have a shared awareness and understanding, and it has become easier to share information and have discussions about compliance with competition laws.
- In response to the automobile parts cartel case involving Japanese companies, we have made it well known that even stricter and more

thorough compliance with competition laws is required, we have strengthened our existing AMA compliance manuals for Europe and the US, and introduced an AMA compliance manual to China, which previously didn't have one.

- We consulted with an American lawyer and created an English version of our AMA compliance manual, which was distributed and deployed globally.

(4) Design of Organizational Structure and Allocation of Adequate Resources and Authority

A. Check Points

- Are responsibilities (segregation of duties) related to efforts to promote compliance of the AMA systematically and clearly defined in accordance with the actual situation of the company and the risk of AMA violations? For example, has the following organizational structure been put in place?
 - Compliance officer or person in charge of compliance (second line*)
 - Compliance committee (second line)
 - Department or person in charge of compliance (first line, second line)
 - Specialized department or person in charge of AMA compliance (first line, second line)
 - Department or person in charge of internal audits (third line)
- Have adequate authority and resources (budget, personnel, equipment, etc.) been allocated to the department or person in charge of efforts related to promoting AMA compliance, in accordance with the company's actual situation?
- Has appropriate consideration been given in the design of the organization to issues like independence, autonomy, expertise, and whether or not there is a direct reporting line to monitoring or supervisory bodies like top management, the board of directors or the auditors?
- Are the responsibilities (segregation of duties) related to efforts to promote AMA compliance clearly defined in the AMA compliance basic rules?

* Please see the description below regarding the concept of the first line, second line and third line.

B. Significance

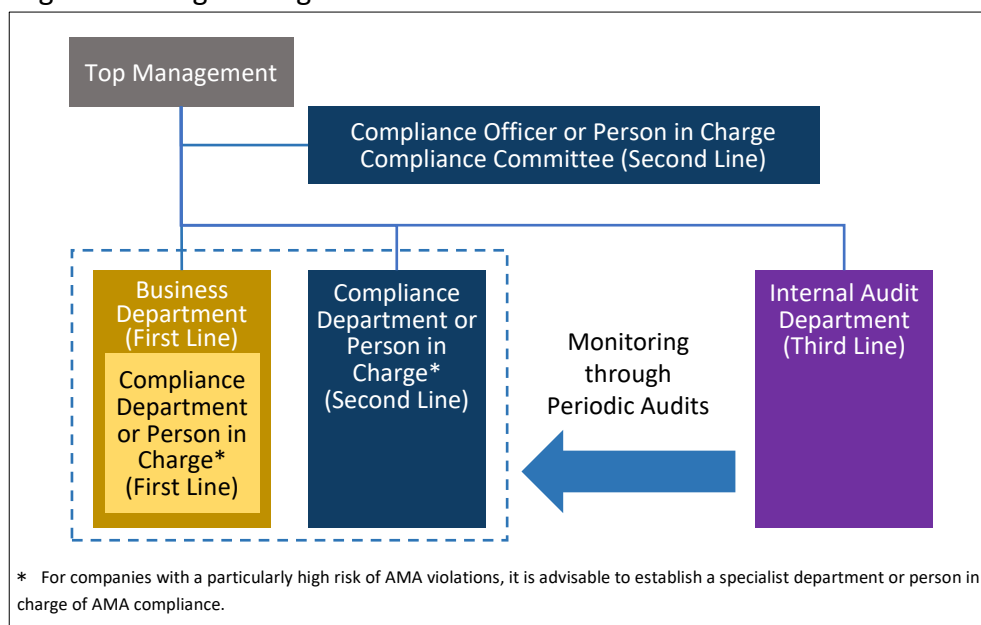
In the promotion of AMA compliance, it is assumed that each company will need flexible efforts that are company-wide and across all departments, the allocation of the necessary authority and resources (budget, personnel, equipment, etc.) to promote all the efforts, and decision-making at the management level for certain situations. Also, that the efforts to promote AMA compliance will be wide-ranging. Therefore, in order for each company to promote all of their efforts in an effective and efficient way, it's important that the responsibility for each effort (segregation of duties) is clearly and systematically organized, and adequate authority and resources are allocated

to the department or person in charge of those efforts.

The Three Lines Model advocated by the IIA (the Institute of Internal Auditors) is useful theory when designing an organizational structure.²⁰ In the Three Lines Model, the first line is the business department that manages risk through daily monitoring, the second line is the risk-management department that manages risk across all departments, and the third line is the internal audit department, which is responsible for independent evaluation, and it's important that their authority and responsibilities are clearly defined within the organization while their functions are supervised, monitored and appropriately coordinated by the board of directors or auditors, etc.²¹

The following is an example of an organizational structure for promoting effective and efficient AMA compliance, based on this Three Line model and the results of questionnaires in past fact-finding surveys carried out by the JFTC.

Diagram 4. Image of Organizational Structure Based on the Three Line Model



²⁰ IIA (The Institute of Internal Auditors) "THE IIA'S THREE LINES MODEL (An update of the Three Lines of Defense)" (July 2020) (<https://www.theiia.org/globalassets/documents/resources/the-iias-three-lines-model-an-update-of-the-three-lines-of-defense-july-2020/three-lines-model-updated-english.pdf>). In Japan, the Opinions of the Business Accounting Council of the Financial Services Agency, p.60, (Note 6 above) lists this Three Line Model as an idea for designing internal controls, governance and organization wide risk management systems, and the Ministry of Economy, Trade and Industry also introduces this Three Line Model in its "Guidelines for the Prevention of Bribery of Foreign Public Officials" (May 2021), p. 16, Note 43 (https://www.meti.go.jp/policy/external_economy/zouwai/pdf/GaikokukoumuinzouwaiBoushiShishin20210512.pdf).

²¹ Opinions of the Business Accounting Council of the Financial Services Agency (Note 6 above), p. 60.

(A) Appointment of a Compliance Officer or Person in Charge of Compliance (Second Line)

In order for companies to carry out flexible, company-wide efforts across all departments, it's important to appoint a compliance officer who can also be involved in top management's decision making. It's also important that the compliance officer is independent of other departments and can act autonomously. Furthermore, as the compliance officer will be responsible for the design, implementation and monitoring of the AMA compliance program, it is advisable to appoint someone from among the personnel who has adequate knowledge and experience of AMA compliance (results from past JFTC's questionnaires found examples of the heads of compliance departments being appointed as the compliance officer). In addition, it's also important that they have a direct line to supervisory and monitoring bodies like top management, the board of directors and auditors, in order to speed up the decision-making process.²² It is also considered that by giving the compliance officer a title like Chief Compliance Officer (CCO), it helps promote the prestige of the position both inside and outside of the company.

Even if it is not possible to appoint a compliance officer because of budget or personnel constraints, it's advisable to clearly define who is responsible for the overall promotion of AMA compliance, by appointing a person to be in charge of compliance, like the head of the compliance department or someone with a high-ranking position in the company like an executive.

(B) Establishment of a Compliance Committee (Second Line)

Top management has the ultimate responsibility for the promotion of AMA compliance. In addition, outside of top management, directors, board members and auditors have a responsibility for monitoring and supervising the status of top management's efforts. For those reasons, it is advisable to establish a compliance committee comprised of members from top management, the directors, the auditors, etc., which periodically holds meetings to hear reports and share information regarding matters

²² If top management is the one instructing or conducting the activity that is a violation of the AMA (it will be the case of ignoring or overriding the AMA compliance program by top management as mentioned in Note 8 above), the compliance officer is required to respond while coordinating with monitoring and supervisory bodies like the board of directors and auditors, so it is considered especially important that there is a direct reporting line between the compliance officer and these monitoring and supervisory bodies.

such as the state of progress of efforts to design and implement an AMA compliance program, evaluation results of the program, and internal audit results from the internal audit department, as well as to discuss and determine response guidelines if there is a matter that requires dealing with as a company, such as the detection of an AMA violation.

(C) Establishment of a Department or Person in Charge of Compliance (Second Line)

In addition to the above, it is also important to establish a department or person in charge of compliance to work as a specialized unit that is responsible for carrying out the actual work related to the design and implementation of an AMA compliance program, and who operates under the authority of the compliance officer or person in charge and the compliance committee.

Furthermore, while in practice the department or person in charge of compliance is considered to be mainly responsible as the second line for the efforts to promote AMA compliance, in companies with a particularly high risk of AMA violations it is advisable to establish a specialized compliance department or person in charge and to centralize second line duties to them.

(D) Establishment of a Department or Person in Charge of Compliance (First Line)

In the Three Line model, risk management is not just carried out by the second line department or person in charge of compliance, but also by the first line business departments who carry out risk management autonomously through routine monitoring. Therefore, it is advisable to appoint a department or person to be in charge of compliance to integrate all these first line autonomous risk management activities in the business departments.

In regards to this point, as each business department faces the risk of AMA violations in their daily business activities, in companies with a particularly high risk of AMA violations it may also be advisable to establish a specialized department or person in charge of compliance within each department so that risk management, such as AMA compliance awareness activities and monitoring of contact with competitors, can take place

autonomously.

(E) Establishment of an Internal Audit Department or Person in Charge of Internal Audits (Third Line)

In addition to the above, it is also important to establish an internal audit department or person in charge to be responsible for the third line of independent assessment. It's important that this internal audit department or person in charge is independent of the first line and second line as their role is responsible for monitoring the state of the first line's and second line's activities from an objective perspective. The audits that are expected to be carried out by the internal audit department or person in charge will be discussed later below in Part II, 3., (1).

However, in practice, it's thought that there are many companies where it's difficult or impossible to establish all of the above organizational structures due to budget or personnel constraints. In this regard, what is important is not simply establishing a formalized organizational structure like the organizational chart above, but to clearly and systematically establish who is responsible (segregation of duties) for efforts to promote AMA compliance, and to allocate adequate authority and resources to the department or person in charge of each effort. Even if the company can't entirely establish the above organizational structure, it is advisable to establish an organizational structure on a scale that is appropriate for responding to the actual situation and risk of AMA violations in the company (it is advisable to at least appoint a compliance officer or person in charge for the promotion of AMA compliance), based on the principles above.

It is also important to clearly define who is responsible for each effort in the AMA compliance basic rules (Part II, 1. (3)).

C. Examples of Good Practices

The following examples of good practices were found from questionnaires and interviews in past fact-finding surveys carried out by the JFTC, and it's hoped that companies will use these efforts for reference while designing an appropriate organizational structure in accordance with their own actual situation and risks of AMA violations.

Tentative Translation

[Examples of appointing a compliance officer or person in charge]

- Putting in place an officer in charge of compliance efforts made flexible and cross-departmental efforts possible.
- We appointed another new representative director as a compliance officer, creating a system with two-representatives.
- We have strengthened our monitoring system by appointing a compliance officer and establishing a compliance committee, which has contributed to increasing our employees' compliance awareness by improving the effectiveness of each measure.
- Previously, as the legal and compliance department was a part of the general affairs department, it was difficult for the head of the legal and compliance department to consult directly with top management about compliance matters but, after the AMA violation incident, top management decided to place the legal and compliance department under the direct supervision of top management, and made the head of the department an officer so that they could report directly to top management, and this had the effect of increasing their influence within the company.

[Examples of a compliance committee being established]

- We established a compliance committee to further strengthen our AMA compliance system within our company group, and this enabled us to give more effective instructions to our business departments.
- Every six months, the compliance committee holds a meeting chaired by top management, where annual plans and results of AMA compliance activities (including the status of training, internal audit results, the situation with preliminary applications for contact with competitors, and usage results of the whistleblowing system) are reported and discussed, and the results of this committee are also reported to the board of directors. This enables top management to constantly monitor the state of compliance with a high level of awareness, as well as allowing the management group to get a proper understanding of the contents of AMA compliance activities.
- When we formulated compliance committee rules and clearly defined the authority and role of the compliance committee, it helped enable us to carry out organizational activities within the company.

Tentative Translation

- By getting external auditors to participate in the compliance committee, we created a system that also incorporates outside opinions.

[Examples of establishing a department or person in charge of compliance as a second line]

- Through the establishment of a legal department, we were able to hold regular compliance training sessions and consider the need to revise our compliance manual, which we couldn't do before.
- When an AMA violation was detected, each department had to deal with it themselves as there was no dedicated legal/compliance department, and all the measures in response to the cease and desist order were mainly complied and implemented by the sales department, general affairs and human resources department, and internal audit department. After that, a legal department was established, which led to an improvement in the consultation system and a cooperative system for all departments to implement various efforts.
- We established a compliance department, which carries out the role of the actual working unit for compliance observance activities and secretariat of the compliance committee.
- In order to strengthen our system for AMA compliance, we established both an internal control department to strengthen our internal control functions, and a legal department to strengthen our legal response capabilities.
- The department that promoted CSR activities promoted compliance at the same level as it carried out its other (environmental, BCP, social contribution, etc.) activities, but the launch of a legal and compliance department meant that it could dedicate itself to AMA compliance activities, including training, across the whole group, including subsidiaries.
- We established a department with a full-time staff that specializes in AMA compliance, which collects information related to the AMA, provides consultation, checks sales activities, and so on.
- Before we established a department in charge of AMA compliance, we hadn't centralized the collection and management of related knowledge and information, but this was improved by establishing one and, by clarifying who was in charge and responsible, it has enabled regular

consultations.

- Several members of the legal staff have been designated as the people in charge of work related to the AMA, and they deal with in-house training and consultations from the workplace, etc.
- The number of personnel in the compliance department was increased and the range of their activities was expanded. Strengthening the organizational structure of the compliance department has increased the effectiveness of internal checks, and contributed to preventing the recurrence of AMA violations.

[Examples of establishing a department or person in charge of compliance in the first line]

- A department and person in charge of compliance has been established in each business division and branch, so that employees can easily consult with them. The person in charge of compliance in each division and branch also carries out checks during the preliminary application process stage for contact with competitors.
- Due to an awareness that in practice problems occur on the front-line in the workplace, we established a person in charge of compliance in each department who was outside of the legal and compliance department, and through the monitoring of the state of legal compliance in the daily business activities of each department, we are working to ensure that the compliance system functions across the whole organization.
- By establishing a person in charge of compliance in the sales department, who works in collaboration with the legal department, it has enabled us to carry out practical and effective management to prevent any violations of the law.
- Due to an awareness of the potential problem that even if the person in charge of a business department knows about an AMA violation, the person in charge of the legal and compliance department might not, a person who also works in the legal and compliance department is posted in each department to pick up any inside information about legal violations.

[Examples of establishing an internal audit department or person in charge of internal audits as a third line]

- After the JFTC came in (before a cease and desist order), we established a compliance department, and then we established an independent internal audit department to improve monitoring functions in the organization. The establishment of a compliance department and an internal audit department that are separate from the business departments enables them to give the business department effective instructions.

[Examples of efforts at global companies]

- Compliance committees that have been established in Asia, Europe, and North America, each plan, draft, implement and monitor compliance programs under the supervision of a global compliance leader (an executive officer in charge) who oversees each committee, and formulates policies at global compliance meetings. In addition, the legal department have also constructed a global legal management system similar to the one described above, that is set up to receive reports about the state of education on competition laws, etc., in each of the three continents, and share information between the three regions.
- As the person in charge of competition law is mainly responsible for everything from setting and introducing domestic and international internal standards to training and auditing, it enables systematic and highly efficient implementation of set standards. In addition, as the same person is also primarily in charge of gathering and sharing information, the latest information is always being collected, and efficiently shared and taught.
- By constructing a system where information is centralized in the legal department in Japan through the appointment of specialists in competition law, preliminary consultations about acts that may be problematic under competition law have increased, and this has contributed to preventing violations.

(5) Integrated Efforts by Corporate Group

A. Check Points

- Does the corporate group design and implement an integrated AMA compliance program on a group basis?
- Do domestic and overseas companies that belong to a corporate group appropriately customize their group's AMA compliance program in accordance with the actual situation of the regulatory environment and market environment of the country and region that they are located in, to design and implement a separate individual AMA compliance program?

B. Significance

In recent years, there has been an increase in the number of companies who have formed corporate groups through company spin-offs and business integration, and are promoting group management. Furthermore, the globalization of the economy has also meant that there has been an increase in companies who have expanded into overseas markets or brought companies from various countries and regions into their corporate group as subsidiaries or affiliates. These types of corporate groups seem to be in the form of a collection of separate individual companies, but in practice they are all working together in the pursuit of a unified management objective. Therefore, they also need to design and implement an integrated AMA compliance program for the whole group.²³

In addition, there is a need for individual companies that belong to a corporate group to design and implement a customized individual AMA compliance program, which is based on the corporate group's program but also considers the actual regulatory environment and market environment of

²³ As this guide is also aimed at companies who have not formed a corporate group but are operating as a solo entity, we simply use the term "company" to refer to the entity designing and implementing a program. Therefore, when designing and implementing a program for a corporate group, please read the word "company" in this guide as "corporate group" where appropriate.

In addition, the term "corporate group" in this guide is assumed to refer to at least an entity with a parent company, a subsidiary, and an affiliated company as defined under the Companies Act and the Regulation on Company Accounting. Still, even for companies not included in this definition but whose risks of AMA violations will be risks of the corporate group, it's advisable to take the integrated measures described in the main text.

Furthermore, if there is a risk of AMA violations by third parties associated with the company such as subcontractors, trading partners or consultants, which may also be a risk for one's own company, it's advisable to appropriately manage those third parties. In specific terms, a company should design and implement internal rules that establish standards for hiring third parties and a system for the requests and approvals involved in hiring them, conduct due diligence when hiring third parties to check the state of the design and implementation of their AMA compliance program, enter into contracts that allow the company to immediately take measures, such as terminating the contract and the right to demand damages if the third party commits an AMA violation, distribute the company's code of conduct and require a pledge to obey it, distribute the company's AMA compliance manual and carry out training sessions, conduct regular audits to check whether AMA violations are conducted or not, and include executives and employees of third parties such as trading partners as people who are eligible to use the whistleblowing system.

the country and region that they are located in. In regards to this, please keep in mind that even if it is not explicitly stated in the text of this guide, individual domestic and overseas companies that belong to a corporate group can be a main entity when talking about designing and implementing a program. For example, in regards to the previous Part II, 1., (1), “Commitment and Initiative of Top Management,” as well as the group’s top management²⁴ demonstrating commitment to AMA compliance and displaying initiative, the top management of domestic and overseas companies²⁵ that belong to the corporate group also need to emulate those intentions and approaches, and demonstrate commitment and initiative towards AMA compliance too.

Based on the above, it is advisable that global companies also take compliance with foreign competition laws into consideration from the following perspectives, which are also described in the JFTC’s 2015 survey report on compliance with foreign competition laws.²⁶

(A) An Integrated Response Including Overseas Subsidiaries (Integration)

Due to the problems of geographical distance, language and time differences, it is thought that there is tendency for there to be a lack of communication between the head office in Japan and overseas subsidiaries, and efforts for AMA compliance can become black boxed. Therefore, it’s advisable to design and implement an information sharing system (for reporting, communicating, consulting) during normal times between the people in charge of AMA compliance at the parent company and the subsidiary company, to increase the awareness of a unified risk management approach being carried out across the whole group.

(B) An Extensive Response with an Awareness of the Competition Laws of all the Countries and Regions Related to the Companies Business Activities (Extensiveness)

²⁴ It is often the case that the top management of the group is also the top management of the parent company.

²⁵ The top management of an individual domestic or overseas company may well be the head of a business department of the parent company, while overseas a locally hired executive may well be appointed as the top management of an overseas subsidiary. As the top management of these individual domestic or overseas companies are only middle management in terms of the group entity, they may have little self-awareness that they are top management. However, as they are required to carry out their role as top management for the promotion of AMA compliance in their companies, it is hoped that the group’s top management displays an appropriate amount of initiative and educates the domestic and overseas top management on this matter.

²⁶ JFTC “Compliance Efforts of Japanese Companies for Foreign Competition Laws: Aiming at Compliance Efforts as Global Rules” (March 2015), p. 68 (https://www.jftc.go.jp/houdou/pressrelease/h27/mar/150327_1_files/150327houkokusyo.pdf).

With the globalization of the economy, global companies carry out business activities that span multiple countries and regions, so are subject to be the target of law enforcement of multiple overseas competition authorities for violations of competition laws, which could lead to cases involving huge financial penalties. Therefore, it's advisable for companies to respond extensively with measures that have an awareness of the competition laws of all the countries and regions related to their business activities.

(C) A Flexible Response Based on the Characteristics of the Legal System of foreign Competition Laws That Differ from the Japanese Legal System (Flexibility)

As mentioned before at the beginning of this guide, the competition laws of different countries and regions are converging, and this guide can be used as a reference for global companies' compliance efforts in regards to foreign competition laws, but there are some parts of the specific legal system of foreign competition laws that differ from Japan's AMA, so it is advisable to respond flexibly based on the characteristics of foreign legal systems that differ from the AMA.

C. Examples of Good Practices

The following examples of good practices were found from questionnaires and interviews in past fact-finding surveys carried out by the JFTC, and it's hoped that these efforts will be used for reference while promoting integrated efforts as a corporate group.

[Examples of integrated efforts as a corporate group]

- The legal and compliance department of the head office is involved in and supports the training and auditing of subsidiaries.

[Examples of efforts at global companies]

- We have designed a compliance system for the whole group, including the subsidiaries, and established global rules for the prevention of cartels. This has enabled the whole group to work with a sense of unity and has helped in our attempts to raise awareness.
- The whole group, including overseas subsidiaries, decided on response

guidelines for emergencies, and designed a system so that in the unlikely case of an occurrence the whole group can respond quickly and simultaneously consider applying to the leniency systems of countries and regions' competition authorities.

- We are carrying out training about competition laws for all employees, with a particular focus on subsidiaries located in Europe and the U.S. where competition laws are especially actively enforced, while bearing in mind the risks of extraterritorial applications. The training introduces cases from overseas in which large penalties and fines were imposed on Japanese companies, with the aim of giving employees an understanding of the importance of observing competition laws.
- The head office's competition law compliance program was deployed globally as a "core policies." The overseas subsidiaries customize the head office's program in accordance with local competition laws and business models to design their own original competition law manual. In addition, in response to the actions of the competition authorities of major countries, the head office reviews internal audit matters included in the competition compliance program. The introduction of the program has enabled the formation of a shared understanding about the importance of observing global competition laws and the response guidelines for competition law violations, while taking local conditions into account, and is promoting the sharing of information related to competition law compliance.
- We have appointed people to be in charge of compliance at all our corporate group companies around the world, and deployed various measures (training, self-monitoring activities, rules for contact with competitors, etc.) to emphasize the importance of observing foreign competition law. We also hold compliance meetings in Japan and overseas, in which the people in charge of compliance share group policies, and the latest information, and have discussions about compliance activities. Thanks to these efforts, inquiries about foreign competition laws have increased, including requests for consultations and training with the legal department.

2. Specific Measures to Prevent the AMA Violations

(1) Design and Implementation of Internal Rules for Contacts with Competitors

A. Check Points

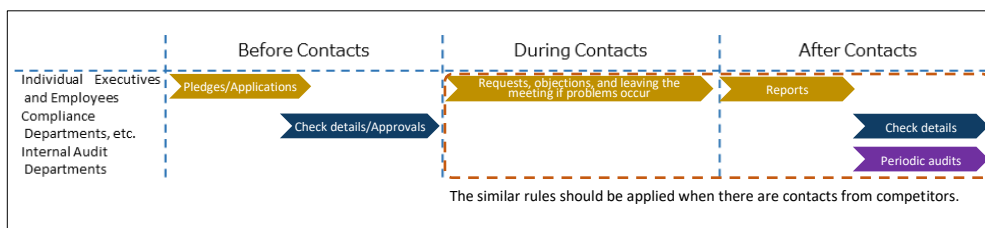
- Are the internal rules regarding contact with competitors appropriately designed and implemented in accordance with the actual situation of the company and its risk of AMA violations?
- Is the evidence of the applications, approvals and reports involved in the above rules properly recorded, stored, and managed?

B. Significance

If a company can reduce the opportunities for executives and employees to engage in acts that could lead to AMA violations in their daily business activities, or properly grasp those situations and manage them, it can lead to the prevention or early detection of AMA violations. For example, cartels or bid-rigging come about through competitors contacting each other and sharing their intentions, so if executives and employees are prohibited from contacting competitors, and it is effectively enforced, at the very least it becomes difficult for the company to communicate its intentions with competitors, and greatly reduces the risk of the company being accused of violating the AMA due to participating in cartels or bid-rigging. Therefore, it's important to establish rules in advance, such as absolutely prohibiting the company's executives and employees from any contact with competitors, in order to prevent the company becoming involved in cartels or bid-rigging.

However, it's understood that there may be cases where it is unrealistic to absolutely prohibit executives and employees from any contact with their competitors in the course of their business activities. In those cases, where contact with competitors is prohibited but it is unavoidable as it's necessary for business, it's important to establish rules in advance like the ones below.

Diagram 5. Image of Rules for Applications, Approval, Reports, etc., in Regards to Contact with Competitors



- After confirming to be careful about acts that are potential infringements of the AMA, executives and employees must pledge not to conduct those acts and to observe the internal rules established by the company.
- Executives and employees must apply in advance and get approval from their supervisor or the person in charge of the compliance department, regarding the time, place and purpose of the contact, including the name, position and department of the other party.
- If the other party broaches a topic that could be problematic under the AMA, executives and employees must request that they refrain from talking about that topic, then object and leave the meeting if they do not accept this request.
- After the contact, executives and employees must report the details of the exchanges and all of the facts about what developed to their supervisor or the person in charge of the compliance department.

In regards to the above rules, applying stricter rules to front-line employees who have a higher risk of AMA violations than other executives and employees could also be considered, such as in the form of absolutely prohibiting front-line employees from any contact with competitors, and these stricter rules may also be considered for countries and regions where just the fact of having had contact with a competitor can lead to suspicions of being in a cartel.

Furthermore, even if the company’s executives and employees do not initiate contact with competitors, it’s possible that competitors may contact the company’s executives and employees, and during that contact encourage information sharing about prices and quantities that could lead to cartels and bid-rigging. To prepare for such cases, it’s important to establish rules in advance like the ones above (rules for how to respond if the other party

broaches a topic that could be problematic under the AMA, and rules for reporting after the event).

Rules like the ones above about contact with competitors not only help companies properly manage the risk of their company's executives and employees becoming involved in cartels and bid-rigging, but also leads to increasing executives and employees' awareness in regards to AMA compliance. Therefore, it's important that they become properly well-known among individual executives and employees through the AMA compliance manual (Part II, 1., (3)) and in-house training (Part II, 2., (2)). In addition, for effective prevention and early detection of cartels and bid-rigging, it's important to periodically check the level of compliance regarding rules for contact with competitors by conducting audits on the AMA (Part II, 3., (1)), and it's also important to appropriately store and manage records of evidence of applications, approvals and reports as in the rule mentioned above.

C. Examples of Good Practices

The following examples of good practices were found from questionnaires and interviews in past fact-finding surveys carried out by the JFTC, and it's hoped that these efforts will be used for reference by companies for designing and implementing appropriate internal rules in accordance with their own actual situation and risks of AMA violations.

[Examples of internal rules for contact with competitors being designed and implemented]

- Contact with competitors is prohibited as a general rule, but it will be permitted when it's unavoidable for work reasons and the compliance department approves it in advance, and then reporting that there were no exchanges that would be problematic in terms of the AMA after the contact is obliged, and this has led to us being more careful in our work in regards to contact with competitors.
- When contact with a competitor is unavoidable due to work reasons, we follow internal rules and consult with the legal department and the person in charge of compliance in the business department, and then act in accordance with their guidance.
- We have formulated rules that require executives and employees attending meetings with competitors to submit an application in advance

for permission to attend the meeting (including a report on the details of the meeting, and a pledge not to commit any infringements of the AMA), which is then scrutinized by the legal/internal audit department and the general affairs/human resources department, who give approval that is limited just to attending the meeting, and after the meeting the executive or employee concerned is required to write a report about the contents of the meeting.

- We have formulated rules so that if employees are going to participate in a meeting where a competitor is in attendance, they are required to establish the topics for discussion in advance and not deviate from these topics during the meeting, then after the meeting they must create accurate minutes of the meeting and share them with the other participants, and make a report to their superior. If a topic is brought up that may be problematical in terms of the AMA, they are required to request that they stop talking about this topic, and if this request is not met, to protest, then leave the meeting, and ask that the fact they have left the meeting is recorded in the minutes. The rules stipulate that if they receive any invitations to have an inappropriate discussion they must immediately report it to the legal department.
- We established a new rule that written applications to attend meetings must be submitted in advance, as a policy to help avoid the risk of attending meetings where our competitors are in attendance, and made the risks of attending meetings with competitors well known in compliance training, and as a result the number of meetings we attended where our competitors were in attendance decreased.
- By requiring a report for all types of contact with competitors (for example, even if they were just exhibiting at the same exhibition), we were able to make employees fully aware of just how big of a risk contact with competitors is.
- By establishing rules for contact with competitors for employees who have a lot of contact with competitors, including the president and executives, and departments with a high chance of AMA violations recurring, such as departments where they have occurred before and similar departments, we have now come to proceed with our work more carefully.
- We have established a rule to resolutely block any communications from competitors that are thought to involve information gathering, and to

report it to the compliance department.

- If contact with a competitor is unavoidable, we have rules about advance applications, making a report, and keeping written records of this within the company.

[Examples of efforts at global companies]

- We have established global rules about contact with competitors with EU competition laws in mind, as their sanctions are very severe and even information sharing with competitors can be judged as illegal (we have not just focused on cartels themselves, but also acts that can be suspected of being related to cartels).
- We have designed a notification system that is used in the case of contact with competitors for applications in advance and reports after the event, which are then checked by the legal department. Overseas subsidiaries are also required to submit these notifications, which are collected together and managed by the head office's legal department.

(2) Providing In-House Trainings on the AMA

A. Check Points

- Does the in-house training on the AMA effectively arouse the interest of executives and employees, and is it carried out in a format and with contents that make it memorable for executives and employees?
- Are the targets, contents, formats, methods, timings and frequency of the training properly customized in accordance with the company's actual situation and its risk of AMA violations?
- Is the in-house training described above conducted and taught by personnel who have adequate knowledge and experience of AMA compliance?
- Is there a test at the end of the training to check the executives and employees' level of understanding of the contents of the in-house training described above?
- Are records of the above-mentioned in-house training's operational guidelines, training materials, attendance records, etc., properly stored and managed?
- Is the in-house training described above designed so that it's possible to ask relevant questions to the person in charge about any points that executives and employees are unclear or uncertain about?
- Does the in-house training described above conduct questionnaires after it has finished so that executives and employees can give feedback on its content and format?
- Are the contents and format of the in-house training described above periodically reviewed and updated?

B. Significance

The people who commit or are involved in AMA violations, or are in a position to know about them, are individual executives and employees, and they also bear responsibility for the AMA compliance program. Therefore, in order to have a properly functioning AMA compliance program, it's important that each individual executive and employee properly understands the importance of AMA compliance, and truly accepts that it is their own responsibility.

It's important to properly disseminate an overview of the AMA compliance program to individual executives and employees through messages from top

management (Part II, 1., (1)), the code of conduct, the AMA compliance basic rules, and the AMA compliance manual (Part II, 1., (3)), in order for them to properly understand the importance of AMA compliance. However, if understanding these matters is simply left to the voluntary efforts of individual executives and employees, this will produce different levels of understanding due to different degrees of effort by the individual executives and employees, and this will make the efficient promotion of an AMA compliance program impossible. Therefore, it's important to conduct in-house training on the AMA as a means of making all executives and employees understand the importance of AMA compliance in the most uniform and efficient way possible.

A survey report on compliance carried out by the ICN also found that 46% of the competition authorities, and 54% of the NGAs, who took part in the survey, stated that in-house training was an important component of an effective compliance program.²⁷

However, this doesn't mean that just carrying out any type of in-house training will be good enough as, in order to make executives and employees properly understand the importance of AMA compliance, it's important that the content and format of the training arouses their interest and is memorable to them. For example, training that involves a one-way lecture involving explanations about general information related to the AMA is likely to be boring to executives and employees, and there is a danger that the contents of the lecture will be ignored and forgotten, so it could not be considered as an effective type of training. It's believed that executives and employees are most interested and concerned about what are the hidden risks of AMA violations in their daily business activities, or how they should act in order to avoid the risks of AMA violations. Therefore, in order to provide training that effectively arouses the interest of executives and employees, it's important to use examples of situations that are familiar to them, and explain what actions are prohibited and what actions are expected in a format that is based on their actual business activities. Also, in order to make the training more memorable, the company could, for example, make a drama based on a past violation of the AMA committed by the company or a competitor, or describe in vivid detail the situation when the company was subject to a JFTC inspection in the past, or what events would occur and what losses the company or individuals would face if they were involved in an AMA violation, to give the executives

²⁷ ICN Survey Report (Note 9 above), p. 13.

and employees a vicarious experience, as it is effective if the company can make an impression. In addition, incorporating discussions, role-playing and workshops,²⁸ as well as a message from top management at the beginning and the end of the training, are effective ways of encouraging the active participation of executives and employees. As well as the above, it's also important to include a contact point to consult with or report to if executives and employees come across a situation that could potentially be a violation of the AMA.

It is also important that the targets, contents, formats, methods, timings and frequency of the in-house training is properly customized in accordance with the company's actual situation and its risk of AMA violations. Specifically, it is thought to be advisable to repeatedly carry out in-house training for all executives and employees, including top management, on a regular basis, although the risk of AMA violations that individual executives and employees face will vary greatly depending on their department, years of experience, position, rank, etc. Therefore, it's advisable to utilize limited resources effectively by, for example, carrying out intensive, face-to-face training for new employees and employees on the front-line who face a high risk of AMA violations on a daily basis, while carrying out on-line training (using an e-learning and web conference system), that doesn't involve much cost or time for executives and employees who are thought to face a low risk of AMA violations.

In addition to the above, it's important that the training is conducted by instructors who have adequate knowledge and experience in regards to AMA compliance, that there is a test at the end of the training to check the executives and employees' level of understanding of the training's contents (it may be worth considering making obtaining a certain score a requirement of completing the course, as an idea to ensure that executives and employees acquire a proper understanding), that records of the training's operational

²⁸ Training with a discussion format involves participants discussing amongst themselves possible AMA problems that may arise during their actual business activities, and what actions executives and employees should take if an AMA problem occurred, which is hoped to help foster a common awareness and understanding about these matters among the executives and employees who take part in the training. In addition, training with role playing enables participants to have a simulated experience of being involved in AMA violations by getting them to act out the actions of people involved in real or fictional cases of AMA violations, which is thought to help lead them to thinking about AMA compliance as a personal matter that they are responsible for, as well as giving them a deeper awareness and understanding of their company's risk of AMA violations from the perspective of different people, such as JFTC employees or those people in charge of their competitors. It is also believed that by using a format where participants are divided up into small group whose members tackle issues together (workshop format), that the executives and employees will take an even more proactive approach towards the training.

guidelines, training materials, attendance records, etc., are properly stored and managed, that it's possible for participants to ask relevant questions to the person in charge about any points of the training that they are unclear or uncertain about, that there is a questionnaire after the training about its content and format so that feedback can be received, and that the contents and format of the training are periodically reviewed and updated. It is also advisable for global companies to make training available in at least the main languages used in the companies concerned.

C. Examples of Good Practices

The following examples of good practices were found from questionnaires and interviews in past fact-finding surveys carried out by the JFTC, and it's hoped that these efforts will be used for reference by companies for providing effective in-house training in accordance with their own actual situation and risk of AMA violations.

[Examples of ideas for the contents and formats of in-house training]

- We provide training with specific and original content, that includes not only cases from our company but also recent serious cases from other companies and cases that became big talking points in society, so employees participate with great interest.
- We use a live-action dramatization to depict people being involved in a series of events, from the coordination of order intake to an inspection and a cease and desist order, stopping at important points to ask, "What would you do?" to shake the participants up and make them see it as their own problem.
- We conducted training so that participants learned specifically what they should not do, which resulted in creating a serious sense of social responsibility and, by conveying the enormous impact it would have on the company, they become conscious about not repeating the same mistakes again.
- The training content was centered around creating example problems based on real sales activities, picking up points of concern in regards to the AMA, and getting people to think about how they should act through discussions.
- We aim to make our in-person group training interactive by talking about

real cases from other companies and examples where our own company had a close call, with the instructor leading the discussion by nominating participants to share their answers.

- We incorporated a part at the beginning of our in-person training for the sales department in which the head of the department appeared on the stage and made a speech in their own words, after receiving feedback from people involved with the coordination of order intake saying that “it wouldn’t have really affected me if I was told by the compliance department, but I would have probably stopped if my boss told me to.”

[Examples of ideas for ways to implement in-house training]

- Training about AMA compliance is included in the curriculum for all the levels of training in the company, from training for new employees to training for management level positions, so we are repeatedly teaching all the employees about the importance of AMA compliance.
- All employees receive training about the AMA at least once a year.
- As bidding is concentrated around the end of the fiscal year, in-house training concerning the prevention of bid-rigging is carried out at the end and beginning of the year to maximize its effectiveness.
- We are carrying out focused training for the management of the sales department who have a particularly high risk of being involved in AMA violations.
- While we entrust certain parts to e-learning, like a thorough understanding of the basics matters, we narrow down the target departments for in-person group training, so we can work on content based on their actual business practices.
- We have made it possible for people to undergo training at any time by posting e-learning materials on our in-house training website. We have also posted educational materials (videos) on our intranet so that they can be viewed at any time.
- We got the lawyer who represented us in the case where we received a cease and desist order to explain in specific terms what the exact problems were, and to explain the circumstances of an inspection in the form of a story.
- We invite lawyers who are experts in regards to the AMA to be lecturers, and carry out training for not only sales personnel in charge of receiving

Tentative Translation

orders from public agencies, but also other sales personnel, executives and management as well. We think that awareness of the AMA is becoming firmly established through repeatedly carrying out this training.

[Examples of ideas to check and improve the level of understanding of in-house training]

- We set confirmation questions for the end of the e-learning to measure their level of understanding, and they can't complete the course unless they achieve a certain score. We also have a system for recording the score of the results.
- For departments that have had AMA violations in the past, we carry out training with original contents based on their past violations, then give tests to check the level of understanding and store the results as a record of the training.
- We make the participants submit a report after the training is completed to assess their level of understanding.
- We set aside 30 minutes for a question and answer session after a one-hour lecture, which becomes quite lively with the questions that we receive.
- After an e-learning course, we accept questions in a discussion format.
- We use questions that come up in training as themes for discussion in the next training, which has resulted in more practical training that has contributed to improving the participants' level of understanding.

[Examples of reviewing and updating the in-house training]

- Questionnaires are given after the course, and are used as reference for the next training.
- We update the lecture materials and contents of the training every year based on the latest legal amendments to the AMA and examples of recent violations, to prevent the participants becoming bored, and to deepen the employees understanding of the AMA.

[Examples of efforts at global companies]

- The people in charge of legal compliance at our 5 locations around the world each take on the responsibility of visiting the group companies within their locations, and conducting training on competition law

compliance.

- The materials for AMA compliance training in Japan were translated into English and distributed to the people in charge of legal compliance at our five locations around the world, and these materials were used as a basis and arranged for training contents in accordance with the actual situation of each country and region, with an additional explanation about the competition law of the country that they were located in included as well.
- Management from our overseas subsidiaries periodically gather together at our head office, and we use that opportunity to carry out training about competition laws. The training employs a discussion format, where they are divided into smaller teams, and shows publicly available videos of sting operations in the U.S., etc., to make them very aware of the relationship competition laws have to their business.
- Legal personnel are dispatched from Japan to our subsidiaries in the Asian region to carry out training on competition laws. This includes explanations of local competition laws, as well as an explanation that European and American laws and penalties are very severe, and that extraterritorial applications are possible, to make the risks of violations understood, and to increase the awareness of compliance.

(3) Design and Operation of a Consultation System on the AMA

A. Check Points

- Is there a system that has been designed and put into operation in which individual executives and employees can consult with the department or person in charge of compliance, in good time and without hesitation, if they are unsure and worrying about whether or not their actions are potentially a violation of the AMA?
- Has a culture and organizational climate been developed that makes it easy for people to consult with other people about their worries and concerns regarding the AMA?
- Is the consultation system easy for executives and employees to use due to devising a wide range of ways to consult?
- Is information about the system, such as the name of the department and person in charge of the consultation desk, how to use the consultation desk, how a consultation is dealt with and the response process, the standard period of time required for an answer, etc., easy to find and well-known among executives and employees?
- Is confidentiality guaranteed when necessary in accordance with the consulter's wishes and the details of the consultation?
- Has the person in charge of dealing with consultations been able to build an appropriate relationship of trust with the people in the business departments?
- Does the person in charge of dealing with consultations have an adequate amount of expertise on the AMA, and independence from the consulters?
- Has a system been created that allows people to consult with a legal advisor or the JFTC, for cases where professional judgement is required?
- Is the usage record of the consultation system periodically analyzed, and is the analysis utilized to improve the system?

B. Significance

Even if an AMA compliance manual (Part II, 1., (3)) is created and disseminated, and in-house training (Part II, 2., (2)) is properly carried out, it's thought that there still may be many cases where front-line employees find it difficult to judge whether or not their actions may potentially constitute a violation of the AMA. If those employees are unable to make those judgements correctly, it increases their risk of being involved in AMA violations,

as well as possibly leading to excessively curtailing their business activities due to fears of AMA violations. Therefore, it's important to design and operate a consultation system in which front-line employees can consult with the department or person in charge of AMA compliance, in good time and without hesitation, while also following the ideas below.

<Ideas to help develop a culture and organizational climate that makes it easy to consult with other people>

In order to develop a company-wide culture and organizational climate that makes it easy for people to consult with other people about their worries and concerns regarding the AMA, it's important that messages from top management (Part II, 1., (1)) and the code of conduct (Part II, 1., (3)) encourages people to always consult with superiors and colleagues, or the department or person in charge of AMA compliance if they have any worries or concerns about the AMA, rather than try to solve things by themselves.

<Ideas to improve the user-friendliness of the consultation desk>

In order to improve the user-friendliness of the consultation desk, it's important to provide a wide range of ways for the consulter to easily make a consultation, such as by telephone, FAX, email, consultation forms on the company's intranet, in person, a web conferencing system, etc.

In addition, it may be worth global companies considering setting up a shared consultation desk at the parent company that can also be used by executives and employees from overseas subsidiaries.²⁹

<Ideas to improve people's knowledge and awareness of the consultation desk>

In order to improve people's awareness and knowledge of the consultation desk, it's important to include information about the name of the department and person in charge of the consultation desk, ways of using the consultation desk (including the telephone/FAX number, email address, company's intranet URL, etc.), how a consultation is dealt with and the

²⁹ If it is difficult to deal with consultations from executives and employees of overseas subsidiaries due to problems with time differences and language, possible solutions include setting up a consultation desk at each regional headquarters and receiving reports from them about the details of the consultations, or limiting the ways executives and employees of overseas subsidiaries can consult to just emails but, at the very least, it is advisable to properly share information among the departments in charge of the overseas subsidiaries, etc., during normal times.

response process, the standard period of time required for an answer, etc., in the AMA compliance manual (Part II, 1., (3)), in a way that is easy to find and understand, and to use occasions like in-house training (Part II, 2., (2)) to disseminate that information to executives and employees.

<Ideas to improve trust in the consultation desk>

As it's possible that consultations about whether individual cases are potential violations of the AMA may lead to whistleblowing (Part II, 3., (2)), depending on the situation at the time of the consultation or developments in the situation after the consultation, it's important that the consultation desk pay proper attention to ensuring confidentiality in accordance with the consulter's wishes and the contents of the consultation.

Also, people in charge of dealing with the consultation should not just give out a stock answer like "there's a danger it might be an AMA violation so you should refrain from doing that activity," but instead search as much as possible for measures to carry out the activity so that it complies with the AMA or, if it's not possible to take those measures, explain thoughtfully and scrupulously the reasons why they should refrain from that activity, as it's also important that the person in charge of consultations builds up a proper relationship of trust with people on the front-line from the business departments.³⁰

Furthermore, it's important to reply to consultations as quickly as possible so that business departments can respond swiftly.

<Ideas for the system in order to make appropriate decisions regarding the consultation>

It's important that the person in charge of dealing with the consultation has sufficient independence from the business department concerned, as if adequate independence cannot be ensured there's a chance that their judgement will underestimate the risk involved when dealing with the consultation.

In addition, it's also important to create a system that allows employees to quickly consult with experts, with the person in charge of dealing with consultations having adequate expertise in regards to the AMA, as well as an available list of legal advisors and outside lawyers who have more specialized

³⁰ If the person in charge of dealing with consultations gives a stock answer like the one described in the main text, people on the front-line of business departments have to immediately stop working on their business activity and, in the worst case, it's possible that they may intentionally avoid consulting afterwards as they prioritize achieving their work.

knowledge and experience of the AMA for cases where a more specialized judgement is needed regarding interpretations and applications of the AMA.

Also, as the JFTC also accepts consultations about specific acts that business people are planning to carry out, it's also important to create a system that allows people to consult with the JFTC when they are unsure about a decision.

In addition to all of the above, it is also important to periodically analyze the usage record of the consultation system, and utilize this analysis to improve the system.

C. Examples of Good Practices

The following examples of good practices were found from questionnaires and interviews in past fact-finding surveys carried out by the JFTC, and it's hoped that these efforts will be used for reference by companies for designing and operating an appropriate consultation system in accordance with their own actual situation and risk of AMA violations.

[Examples of designing and operating consultation systems on the AMA]

- We have enhanced our legal and compliance department's consultation system so that people can check whether or not individual acts are in danger of violating the AMA.
- We have created an environment where it easy have a consultation about the AMA, by setting up a consultation desk in our company's general affairs/human resources department and legal/internal audit department.
- Before conducting or considering a meeting or business with a competitor, we consult with the legal department in advance. We have introduced a work flow system to help visualize the details of consultations with the legal department and their responses, so we can check it at any time after the consultation.
- We have established a consultation desk concerning corporate ethics in the company, which we consult in advance if there is a chance of coming into contact with our competitors, and it also accepts questions and inquiries about laws and regulations.
- We have established a support department in each business department as a contact point, with the aim of helping company employees, as

employees regularly come into contact with it and can freely consult with it on anything, be it about violations of laws and regulations, or breeches of etiquette.

- We have entered into a contract with the legal advisor in the business department for them to accept consultations so that employees can check whether or not individual acts are in danger of violating the AMA.
- The effectiveness of the consultation system is monitored at the executive level through reports on its usage records, which are given every six months at the Executive Committee and the Board of Directors Meeting.
- When the sales department comes to consult with us, our approach as the legal department is to try as much as possible to work together to find solutions, as even though just saying “it’s dangerous so you can’t do it,” would be easier, then the sales department would stop coming to consult with us, so not only do we determine what is legal and illegal, but we also think together about ways to increase profits.

(4) Design and Implementation of Internal Disciplinary Rules for the AMA Violations

A. Check Points

- Is it clearly established in the work regulations and the disciplinary regulations that being involved in AMA violations, or failing to take reasonable measures to prevent or detect AMA violations at an early stage, are reasons for discipline and will be subject to disciplinary measures?
- In addition to the grounds for discipline above, are the people with disciplinary authority, the disciplinary procedures, the standards for deciding the contents of the disciplinary measures, etc., clearly established in advance in the work regulations and the disciplinary regulations, and is this widely known among executives and employees to the extent that there is no hindrance to the operation of internal disciplinary rules?
- Are the above standards and regulations applied fairly and equally to all executives and employees, including top management?
- Is the company considering introducing an incentive system that leads to benefits for executives and employees who cooperate in efforts to prevent or detect AMA violations at an early stage?

B. Significance

In order to induce individual executives and employees not to become involved in AMA violations or fail to take reasonable measures to prevent or detect AMA violations at an early stage, it's important to make it clear to executives and employees the possible disadvantages that they will face if they do become involved in AMA violations or fail to take reasonable measures to prevent or detect AMA violations at an early stage. In particular, it's important to make it clear to individual executives and employees that being involved in AMA violations, or failing to take reasonable measures to prevent or detect AMA violations at an early stage (for example, not following the internal rules for contacts with competitors (Part II, 2., (1)) without a justifiable reason), will be subject to disciplinary measures, as this directly reduces executives and employees motivation to get involved with AMA violations, and also increases their awareness regarding compliance.

In order to make it clear to executives and employees that being involved

in AMA violations, or failing to take reasonable measures to prevent or detect AMA violations at an early stage, will be subject to disciplinary measures, it's important to specify those are the grounds for discipline in work regulations and disciplinary regulations, and to utilize the code of conduct, AMA compliance manual (Part II, 1., (3)), and in-house training (Part II, 2., (2)) to disseminate this information to executives and employees.

It's also important to ensure transparency, objectivity and fairness when designing and operating internal disciplinary rules. In specific terms, it's important that the grounds for discipline and the discipline authority, the disciplinary procedures, the standards for deciding the contents of the disciplinary measures,³¹ etc., are clearly established in advance in the work regulations and the disciplinary regulations, and that these are widely known among executives and employees to the extent that there is no hindrance to the operation of internal disciplinary rules. In addition, in order to ensure the effectiveness of internal rules, it's also important that the above standards are fairly applied in internal investigations (Part II, 3., (4)), which are discussed below, not only to front-line employees, but that the responsibilities of top management and upper executives are also made sufficiently clear, and that they are all subject to disciplinary measures in accordance with the weight of their responsibility for the AMA violation. Furthermore, if disciplinary measures are actually taken, the grounds for discipline should be told to the executive or employee concerned and, to help deter similar AMA violations, it may also be worth considering making an announcement within the company regarding an outline of the disciplinary measures taken, while keeping the protection of personal information in mind, and only releasing the minimum amount of information required.

In addition to the above, in order to induce executives and employees to cooperate in efforts to prevent or detect AMA violations at an early stage, it may also be worth considering introducing an incentive system that makes it beneficial for executives and employees to cooperate with those efforts.

In specific terms, incentive system could include ones where top management give awards or commendations to executives and employees or

³¹ Disciplinary measures may include disciplinary dismissal, dismissal under instruction, suspension, demotion, wage reduction, reprimand, etc., but it is advisable to have an internal leniency system (Part II, 3., (3)), which is discussed later, that allows executives and employees to reduce or be exempt from disciplinary measures if they voluntarily report their involvement in AMA violations, as it creates an incentive for them to voluntarily report their involvement in AMA violations.

departments who have made outstanding efforts to prevent or detect AMA violations at an early stage, or where monetary rewards are given to executives and employees who have made outstanding efforts to prevent or detect AMA violations at an early stage, or a personnel evaluation system (involved in promotion/advancement) where points are given or deducted in accordance with the individual's degree of cooperation in efforts to prevent or detect AMA violations at an early stage.

In regards to these incentive systems, there are some who think that cooperating in efforts to prevent or detect AMA violations at an early stage is a natural part of executives and employees duties, so should not be subject to rewards, or that evaluating levels of cooperation in these efforts would be difficult or impossible in practice, or are concerned that creating a system of awards or rewards if no AMA violations are found would conversely encourage people to conceal information about AMA violations, so it is advisable for each company to carefully consider the details of an incentive system and whether or not they should introduce one.

In addition, when designing and operating internal rules and incentive systems, it's necessary to bear in mind that they must comply with domestic and international labor laws.

C. Examples of Good Practices

The following examples of good practices were found from questionnaires and interviews in past fact-finding surveys carried out by the JFTC, and it's hoped that these efforts will be used for reference by companies while designing and implementing appropriate internal disciplinary rules in accordance with their own actual situation and risk of AMA violations.

[Examples of internal disciplinary rules for AMA violations being designed and implemented]

- We revised internal rules to clearly state that AMA violations would be subject to disciplinary measures, which had an extremely big impact on our employees. Establishing new disciplinary provisions for executives in the board of directors' rules and the executives' rules was particularly effective.
- We have existing rules that state disciplinary measures are possible if

there are violations of laws and regulations, but the company was able to make an explicit statement about its strict approach to the AMA by adding a separate rule about disciplinary measures for AMA violations.

- Clearly stating that, as a general rule, AMA violations would result in disciplinary dismissal or dismissal under instruction, enabled the company to show its strict approach to AMA violations, and contributed to increasing employees' awareness of compliance.
- When we made it clear that people who violated the AMA, caused violations, overlooked violations, or violated the code of conduct, would face disciplinary measures, it made superiors communicate better with their subordinates and led to checks that violations of the AMA or code of conduct were not occurring.
- We were able to make our executives and employees fully understand that they would face disciplinary measures if they violated the AMA by getting them to sign a pledge that they would comply with the code of conduct, which includes complying with the AMA.

[Examples of efforts at global companies]

- We clearly stated to our employees that they may be subject to disciplinary measures for not only violations of the AMA, but also for violations of foreign competition laws, so that they are well aware of the dangers of violating foreign competition laws even if they are doing business in Japan.

3. Specific Measures to Detect the AMA Violations at an Early Stage and Take Appropriate Actions

(1) Conducting Audits on the AMA

A. Check Points

- Are audits on the AMA conducted periodically?
- Are audits conducted by an internal audit department that is independent of the business departments on the first line and the department or person in charge of compliance on the second line?
- Are both audits with advance notice and unannounced audits properly employed and utilized when carrying out audits?
- Does the department conducting the audit compile the results of the audit into a report, and present that report to relevant people such as top management, the compliance officer, and the compliance committee?
- Does the department conducting the audit properly store and manage the report described above and other materials used in the audit as records?

B. Significance

No matter how thoroughly specific measures to prevent violations (Part II, 2.) before they happen are designed and implemented, it's conceivable that top management or upper executives may ignore or override these measures, or direct or carry out AMA violations, or that front-line employees may commit unseen AMA violations in their daily business activities, so it is difficult to completely prevent all AMA violations. In these cases, it's important from the perspective of minimizing the losses associated with AMA violations, to detect the AMA violations as quickly as possible and take appropriate measures.

For example, surcharges imposed on companies for AMA violations, such as cartels or bid-rigging, are calculated based on the amount of sales or purchases of goods and services during the period the AMA violation was being committed. Therefore, the amount of the surcharge can be reduced by shortening the violation period by quickly detecting and stopping the AMA violation. In addition, the faster the company detect the AMA violation for cartels and bid-rigging, the faster the company can apply to the JFTC for the Leniency Program, and a higher application position increases the likelihood that the company will receive a reduction or exemption.

In order to detect AMA violations that are directed by top management or upper executives, or those going on unseen in daily business activities, it's

important to periodically conduct audits on the AMA.

An ICN Survey Report on compliance found that 50% of the competition authorities, and 69% of NGAs, who took part in the survey, stated that detecting, reporting, auditing and monitoring were important components of an effective AMA compliance program.³² Furthermore, according to a 2012 survey carried out by the JFTC, of the companies who responded that they had conducted audits in regards to the AMA, 14% said that they had detected cases that could potentially lead to violations of the AMA through these audits.³³

It's believed that carrying out these audits is an effective way to prevent AMA violations, as it's expected that they will make executives refrain from directing or carrying out actions that are violations of the AMA due to fear of them being detected in the future.

It's possible to use audits on the AMA, involving the inspection of written agreements and memos with competitors, and minutes, memos, report materials, etc., related to meetings with competitors, evidential sample inspections of applications, approvals and reports related to contact with competitors, as well as invoices and receipts for travel expenses and entertainment expenses, keyword searches³⁴ of the history of message applications such as email, chat and social media, and questionnaires and interviews with executives and employees, to check the state of compliance with internal rules on contact with competitors and whether or not there are any AMA violations, as well as to check to see if there are circumstances that are indicative of the possibility of AMA violations taking place, by analyzing accounting data on travel expenses, entertainment expenses, etc., and data on the company's successful bid rate in public tenders.

Furthermore, in order to prevent anything hindering the detection of AMA violations like acts of collusion, etc., it's advisable that the internal audit department of the third line conducts the audit from a position of

³² ICN Survey Report (Note 9 above), p. 11.

³³ 2012 JFTC's Survey Report (Note 8 above), p. 37.

³⁴ Great care is needed when conducting audits of executives' and employees' PCs, smartphones, etc. and internal investigations (Part II, 3., (4)) to ensure that there are no infringements on their privacy or violations of the Personal Information Protection Act. Therefore, it is advisable to take measures during normal times in order to ensure against this during audits and internal investigations (Part II, 3., (4)) by, for example, clearly stating the company's audit and investigation authority in the internal rules, and obtaining executives and employees written agreement to abide by these internal rules.

Furthermore, in recent years, due to the spread of remote work, the use of personally owned PCs and smartphones for work has increased, and it's possible that these personally owned devices are used for information sharing that leads to cartels and bid-rigging. Therefore, it's advisable that each company designs and implements appropriate internal rules during normal times in relation to the use of these devices for work, and establishes the principles for examining personally owned PCs and smartphones during audits and internal investigations (Part II, 3., (4)).

independence from the business departments of the first line and the department or person in charge of compliance of the second line (in addition to audits by the internal audit department, audits may also be carried out by the business departments of the first line and the department or person in charge of compliance of the second line, as part of their own independent risk-management activities).

In addition, as some opposition and resistance from executives and employees may be expected when conducting audits, it's advisable to give advance notice of an audit to the department in question, and for top management to show some initiative if necessary and ask the executives and employees concerned for their understanding and cooperation. On the other hand, if there is a concrete suspicion of an AMA violation and there is a danger of obstruction by executives and employees, such as the destruction, concealment or manipulation of evidence, or the coordination of their stories beforehand, it's advisable to carry out unannounced audits as well.

As well as all of the above, it's also advisable that the department conducting the audit compiles the results of the audit into a report and presents this report to all relevant parties such as top management, the compliance officer and the compliance committee, and properly stores and manages this report and the materials used in the audit as records.

C. Examples of Good Practices

The following examples of good practices were found from questionnaires and interviews in past fact-finding surveys carried out by the JFTC, and it's hoped that these efforts will be used for reference by companies for appropriately conducting audits on the AMA in accordance with their own actual situation and risk of AMA violations.

[Examples of auditing bodies and the frequency of audits]

- In addition to the audit conducted once a year by the internal audit department, the sales department conducts a self-audit twice a year. These self-audits by the sales department have further increased awareness within the sales department, and improved the management situation of evidentiary materials.
- An internal audit department that is independent of the direct control of the company president has been established, which conducts regular

audits from the perspective of internal controls and observance of compliance, and reports its findings to the compliance committee.

[Examples of the details of conducted audits]

- We attempt to ensure thorough compliance with our rules by conducting audits regarding the state of compliance with those rules, such as the internal approval procedures for attending an industry group meeting or contact with a competitor. Without these audits there is a chance that we would return to our previous ways in regards to contact with competitors.
- In audits, we check on the state of affairs regarding a variety of matters including compliance with internal rules related to the AMA, contact with our competitors, the implementation of training on the AMA, the implementation of self-checks regarding AMA compliance, and the utilization of entertainment expenses.
- In audits, a specialist AMA lawyer carries out interviews with the heads of each department and gives questionnaires to all the employees, to carefully check that AMA violations, or the exchange of information that could lead to AMA violations, are not taking place.
- As well as conducting interviews with audit targets, we also carry out checks on things like emails, travel expenses, and entertainment expenses, to confirm the details of contact with other companies.
- Every month we check the success rate of our company's bids for public work projects, and if the success rate is 90% or over we investigate the decision-making process for the price of our bid, and confirm that there were no AMA violations.
- As the audit department inspects our transactions data, we have created an environment where it is difficult for improprieties to take place.

[Examples of ways to conduct audits]

- Top management explains to the employees about the importance and necessity of audits when we conduct them, which makes it possible to conduct effective audits due to the harmonious cooperation of the target employees.
- As well as conducting audits in which we give advance notice to the targeted departments, we also use unannounced audits for cases in which suspicions have arisen about the bidding.

[Examples of efforts at global companies]

- We have a system in which the global leader for internal audits, who is under the direct supervision of the Group CEO, supervises the regional leaders of Asia, Europe and North America, and the audit department of each region conducts an audit of the group companies in their respective regions. For the audits, we have established key audit categories that are the same all around the world.
- We selected products that were in oligopolistic markets, even internationally, and the legal department carried out verification. In order to look for points of contact with competitors, we checked the usage of food and drink expenses, and we carried out work to investigate the decision-making process for bids and estimates to check that information sharing about prices was not occurring.

(2) Design and Operation of a Whistleblowing System

A. Check Points

- Has a person been designated who performs the business of dealing with whistleblowing disclosures as a person engaged in the business, and has a system been established necessary for appropriately dealing with whistleblowing disclosures from the inside of the enterprise, in accordance with Article 11, Items 1 and 2 of the 2020 Revised the Whistleblower Protection Act, and have all necessary measures been put in place?
- Has a culture and organizational climate been developed in which it is easy to speak up if executives and employees see or hear about violations of the AMA?
- Is the whistleblowing system easy for executives and employees to use, due to ideas like establishing contact points for receiving whistleblowing outside the company, expanding the ways for reporting, and allowing anonymous reporting?
- Are the ways to use the whistleblowing system, and the processes for how reports are dealt with after they are received, easy to understand and well known among executives and employees?
- Are the names of whistleblowers and the details of their reports kept strictly confidential?
- Are whistleblowers subjected to retaliation or any other unfavorable treatment?
- Is whistleblowing dealt with appropriately in accordance with pre-established processes, and are the results fed back to executives and employees in good time?
- Is the usage record of the whistleblowing system periodically analyzed, and is this analysis used to improve the system?

B. Significance

If an executive or employee sees or hears about an AMA violation in their surroundings, it's thought that first they should consider using the normal reporting line in their department or organization and report to or consult with their superior. However, if their superior is the one directing the AMA violation, or if the AMA violation is an organizational problem involving upper management higher than their own superior, then nothing will happen even

if they report it to or consult with their superior, and they have the worry that they may be harassed or receive unfavorable treatment, so it is difficult for those executives and employees to use the above reporting line and report it to their superior.

In cases like this, if the company has another appropriate contact to report to or consult with outside of the normal reporting line, it's possible that the company will be able to find out about the AMA violation at the point of time that the executive or employee sees or hears about it. However, if the company doesn't have an appropriate contact, the AMA violation may be left unaddressed and the damage and losses the company may face from the AMA violation are likely to increase. Therefore, it's important to design and operate an appropriate whistleblowing system that enables employees to go outside of the normal reporting line and report to or consult with relevant departments such as the compliance department, so that the company can get to grips with AMA violations as quickly as possible.

An ICN Survey Report on compliance found that 50% of the competition authorities, and 69% of NGAs, who took part in the survey, stated that detecting, reporting, auditing and monitoring were important components of an effective AMA compliance program.³⁵ Furthermore, in a 2016 fact-finding survey carried out by the Consumer Affairs Agency, the percentage of respondents among enterprises that had introduced a whistleblowing system who cited "whistleblowing from employees, etc. (reports to contact points and managements)" as the most common first step for detecting improprieties was 58.8%, which was the highest and far exceeded "internal audits (audits inside the organization by the internal audit department)," which was in second place with 37.6%.³⁶

In addition to the above, it's thought that designing and operating an effective whistleblowing system is also an effective way of preventing AMA violations, as it's expected that executives and employees will refrain from becoming involved in AMA violations due to the fear of other executives and employee's whistleblowing on them.

In regards to the design of a whistleblowing system, Article 11, Items 1 and 2 of the 2020 Revised Whistleblower Protection Act imposes an obligation on

³⁵ ICN Survey Report (Note 9 above), p. 11.

³⁶ The Consumer Affairs Agency "2016 FY Survey Report of Whistleblowing Systems in Private Businesses" (2017), p. 58 (https://www.caa.go.jp/policies/policy/consumer_system/whistleblower_protection_system/research/pdf/research_190909_0002.pdf).

enterprises to designate a person who performs the business of dealing with whistleblowing disclosure as a person engaged in the business and establish a system necessary for appropriately dealing with whistleblowing disclosures from the inside of the enterprise³⁷ and to take all other necessary measures (for enterprises who usually employ 300 workers or less there is an obligation to make a sincere effort). In regards to these “necessary measures,” the Consumer Affairs Agency published guidelines based on Article 11, Item 4 of the same Act, and the first thing companies need to do as a minimum effort is to design a system based on these guidelines in accordance with the company’s actual situation.³⁸

On top of that, as it would be meaningless to design a whistleblowing system if executives and employees do not think about using it when they see or hear about real violations of the AMA, it’s important to not only formally design a system in accordance with the above guidelines, but also that the existence and details of the whistleblowing system is well-known among executives and employees, and that the system is utilized, and this can be achieved with the following ideas.

<Ideas to develop a culture and organizational climate in which it is easy to speak up>

To develop a culture and organizational climate in which it is easy to speak up when executives and employees see or hear about an AMA violation, it’s important that people are encouraged to appropriately report it to or consult with the normal reporting line in their department or organization or contact points for receiving whistleblowing by messages from top management (Part

³⁷ The Whistleblower Protection Act, as a law related to the protection of citizens’ lives, health and property, provides protection for people who report the truth about acts that are subject to criminal penalties or administrative fines under laws stipulated in an attached table of the Whistleblower Protection Act and other governance ordinance (Article 2, Item 3 of the same Act), which also includes the AMA. Therefore, it should be noted that reports regarding real violations of the AMA may also be protected as “whistleblowing” (Article 2, Item 1 of the same Act) under this Whistleblower Protection Act.

³⁸ In the guidelines, (Guidelines Based on the Whistleblower Protection Act (2021 Notification of the cabinet Office No. 118) (https://www.caa.go.jp/policies/policy/consumer_system/whistleblower_protection_system/overview/assets/overview_210820_0001.pdf)) it states that business must take a number of measures including measures to establish a contact point for receiving whistleblowing, measures to ensure independence from the head of the organization and other executives, measures related to the implementation of operations to respond to whistleblowing, measures related to eliminating conflicts of interest in operations to respond to whistleblowing, measures to prevent unfavorable treatment, measures to prevent outside sharing, measures for educating workers, executives, employees and retirees, measures related to the notification of corrective actions, measures related to the retention of records, measures related to the release of information about reviews, improvements, and operational achievements to executives, workers, etc., and measures about formulating and implementing internal rules. The Consumer Affairs Agency has also published an explanation of the guidelines (https://www.caa.go.jp/policies/policy/consumer_partnerships/whistleblower_protection_system/overview/assets/overview_211013_0001.pdf) and it is advisable to also refer to this explanation when designing a system in accordance with the guidelines.

II, 1., (1)), and the code of conduct (Part II, 1., (3)).

<Ideas to improve the user-friendliness of the whistleblowing system>

In order to improve the user-friendliness of the whistleblowing system, it's advisable to allow people to report anonymously by telephone, FAX, email, reporting forms on the company's intranet, mail, and even by setting up contact points for receiving whistleblowing outside the company such as law firms, etc.

Furthermore, global companies should consider introducing a global whistleblowing system that can deal with all the main languages that are used within their companies.³⁹

<Ideas to improve people's knowledge and awareness of the whistleblowing system>

In order to improve people's awareness and knowledge of the whistleblowing system it's important to include information about the name of the department and person in charge of the contact point for receiving whistleblowing, ways of using the whistleblowing system (including the telephone/FAX number, email address, company's intranet URL, address, etc.), how a whistleblowing is dealt with and the response process, etc., in the code of conduct and AMA compliance manual (Part II, 1., (3)), in a way that is easy to find and understand, and to use occasions like in-house training (Part II, 2., (2)) to disseminate that information to executives and employees.

<Ideas to improve trust in the whistleblowing system>

In order to improve trust in the whistleblowing system, it's important that the names of the whistleblowers and the details of their reports are kept strictly confidential, that the whistleblowers are not subjected to any retaliation or unfavorable treatment, and that all the reports received are dealt with appropriately in accordance with processes that have been established in advance, and that the results are fed back to executives and

³⁹ If a global whistleblowing system is going to be introduced, it might be worth considering outsourcing the contact point to an outside company that can provide multilingual support, however this might require large costs due to language issues and time differences. If it is difficult to introduce a global whistleblowing system due to these language and time difference issues, possible solutions may include setting up a whistleblowing system at each regional headquarters and receiving reports from them about these whistleblowing systems, or limiting the ways executives and employees of overseas subsidiaries can report issues to just emails, but at the very least, it is advisable to properly share information among the departments in charge of the overseas subsidiaries, etc., during normal times.

employees in a reasonable time.

In addition to all of the above, it is also important to periodically analyze the usage records of the whistleblowing system and use this analysis to improve the system.

C. Examples of Good Practices

The following examples of good practices were found from questionnaires and interviews in past fact-finding surveys carried out by the JFTC, and it's hoped that these efforts will be used for reference by companies while designing and operating a whistleblowing system in accordance with their own actual situation and risks of AMA violations.

[Examples of revising the whistleblowing system in response to revisions of the Whistleblower Protection Act]

- We are revising the whistleblowing system in accordance with changes in social conditions and the law, such as the revision of the Whistleblower Protection Act in 2020. We are incorporating the opinions of legal advisors into our revision of the whistleblowing system, and are striving to create a system that reflects the true intent of the law.

[Examples of efforts to develop a culture and organizational climate in which it's easy to speak up]

- As a result of the CEO and the top management in each region continually disseminating a message globally about the importance of speaking up and using the whistleblowing system, the level of awareness and the number of cases of using the whistleblowing system have greatly increased.
- We encourage our employees to promptly report to or consult with their immediate superior or the relevant department, without hesitation, if they think that the company's actions are deviating from, or may deviate from, the law or our code of conduct, and they can report or consult safe in the knowledge that their privacy will be properly protected, and it is well known that if there is any retaliation against the report or consultation then all the facts will be investigated and the matter will be put right.

Tentative Translation

[Examples of efforts to improve the user-friendliness of the whistleblowing system]

- We set up a contact point at a law firm as reporting was difficult when it was only through our company's whistleblowing system, and this resulted in a big increase in the number of reports.
- We have established a whistleblowing system in our compliance department, and made it so that people can report anonymously, as well as by telephone, FAX, email, in writing, and in-person.
- If the whistleblower discloses their name and contact details, we always contact them and try our best to resolve the issue. If the report is made anonymously, we investigate it as much as possible and try and take all necessary measures.
- We have set up a helpline at each of the group's companies in Japan, which provides multilingual support by telephone or email 24 hours a day, 365 days a year.

[Examples of efforts to improve understanding and awareness of the whistleblowing system]

- We use the code of conduct, messages from top management on the company's intranet, company newsletters, posters, all sorts of meetings, e-learning, etc., to disseminate information about the details of the whistleblowing system, and the situation regarding its use and improvements to it.
- In our AMA compliance manual, we emphasize that AMA violations should be subject to reporting, as well as clearly explaining who to contact for reports and the reporting process, to make sure that it is common knowledge.
- We distribute a card to all of our employees with the telephone number, email address, and postal address of the contact for reports or whistleblowing.

[Examples of efforts to improve trust in the whistleblowing system]

- Our internal rules stipulate that the whistleblower's information must be kept strictly confidential, prohibits searching for the whistleblower, and prohibits the dismissal or unfavorable treatment of the whistleblower, as well as stipulating remedies if any of these rules are violated. By conveying

this to the whistleblower, they know that their ideas will be properly listened to while we deal with their report.

- When a contact point receives whistleblowing, it is reported to the company president and the compliance officer, and an internal investigation is carried out under their direction. Corrective measures and preventative measures are then taken within the company if the result of the investigation requires them, and the whistleblower is also separately informed of the result of the investigation and the corrective measures.

[Examples of efforts at global companies]

- We established a whistleblowing system for all the executives and employees in the whole group that provides multilingual support 24 hours a day, so it became possible for the whole group to make whistleblowing reports, including those concerning foreign competition laws. This has enabled us to increase our ways of detecting and resolving compliance problems at an early stage.
- We have outsourced a contact point to a specialist business and law firm that can provide multilingual support and is shared among the group, so that it can be used by employees of our overseas subsidiaries.
- As a general rule, as well as each company establishing its own helpline, we have also set up a general shared helpline in each country and region such as in Japan, Europe, North America, China, and South Korea. As a result, when we received reports from overseas subsidiaries purporting that competitors had made contact, we were able to instruct them on how to deal with it appropriately, and prevent becoming involved in any violations of competition law.

(3) Introduction of an Internal Leniency System about the AMA

A. Check Points

- Has the company introduced an internal leniency system that allows for the reduction or exemption of disciplinary measures for those who voluntarily report about their involvement in AMA violations and cooperate with internal investigations?
- Are the conditions and details for reductions and exemptions of disciplinary measures by an internal leniency system clearly stated in the internal rules etc., and have these been properly disseminated to executives and employees?

B. Significance

Audits on the AMA (Part II, 3., (1)) and the whistleblowing system (Part II, 3., (2)) enable companies to obtain information about AMA violations occurring within their company at an early stage, which is important for not only promptly stopping the AMA violation, but also as a means for applying to JFTC for Leniency Program. In addition, Japan's Leniency Program has introduced a reduction system for cooperation in investigation, and the reduction rate applied is determined by the order of the application for leniency, including the voluntary reporting of AMA violations, as well as the degree to which the company's cooperation contributed to revealing the truth of the case. Therefore, in order to receive an exemption or a higher reduction rate for surcharges related to cartels and bid-rigging, it's important to make the designated application to the JFTC ahead of the company's competitors, and to cooperate with the JFTC's investigation.⁴⁰ In regards to this point, it's thought that the executives and employees who will have the most important information about the AMA violation are those who are personally involved in those violations, but they have little incentive to voluntarily report their involvement and cooperate in an internal investigation as they may be subject to disciplinary measures if their personal involvement is detected.

⁴⁰ In the reduction system for cooperation in investigations, the business that applies for the Leniency Program discusses and comes to an agreement with the JFTC about the reduction rate based on their planned reporting of the facts and the contents of the materials to be submitted, and if they report the facts and submit the materials as stipulated in the agreement within the stipulated period of time, then they can receive the reduction rate stipulated in the agreement.

In addition, although the first business to apply for the Leniency Program before the start date of an investigation by the JFTC is eligible for a full exemption of the surcharges, and so is not subject to the reduction system for cooperation in investigations, the JFTC can still request that the business submits additional materials and reports additional facts related to the AMA violation (Article 7-4, Item 6 of the AMA), and if the business fails to report these facts or submit these materials in response to the request, or submits false facts or false materials, then that business will no longer be eligible for the Leniency Program (Article 7-6, Item 2 of the AMA), so the business is required to cooperate proactively with the JFTC's investigation of the case.

Consequently, it's advisable to introduce an internal leniency system that allows exemptions or reductions of disciplinary measures for executives and employees who voluntarily report their involvement in AMA violations and cooperate with internal investigations, as a system that gives incentives to executives and employees to voluntarily report and cooperate with internal investigations in regards to their involvement in AMA violations.

However, it's possible that this may lead to a moral hazard as, depending on the details of the internal leniency system, executives and employees may exploit the fact that the system allows for exemptions and reductions of disciplinary measures and intentionally become involved in AMA violations, knowing that they will receive reductions and exemptions from disciplinary measures if they voluntarily report the facts afterwards. Therefore, it's advisable to carefully consider the conditions and details for reductions and exemptions, and to ensure that they are consistent with existing internal disciplinary rules, etc.

Also, if an internal leniency system is introduced, unless executives and employees involved in AMA violations are fully aware that there is some scope that allows for their disciplinary measures to be reduced or exempted, it's possible that they will hesitate to voluntarily make a report or cooperate with internal investigations. Therefore, in order to encourage these executives and employees to voluntarily report violations and cooperate with internal investigations, it's advisable to clarify the details and conditions for exemptions and reductions of disciplinary measures in the internal rules, etc., and to ensure that this information is adequately disseminated.

According to a 2012 survey carried out by the JFTC, approximately 80% of companies that responded to the survey said that it was possible they would consider reducing the disciplinary measures for an executive or employee involved in an AMA violation if they voluntarily reported that fact as required. However, only 20% of these companies who said they'd consider reducing the disciplinary measures said that this policy was well-known within their company,⁴¹ so it's advisable to clarify all of the details of the system and ensure that they are properly well-known when introducing an internal leniency system.

⁴¹ 2012 JFTC's Survey Report (Note 8 above), p. 36.

C. Examples of Good Practices

The following examples of good practices were found from questionnaires and interviews in past fact-finding surveys carried out by the JFTC, and it's hoped that companies will use these efforts for reference while proceeding with the introduction of an internal leniency system in accordance with their own actual situation and risks of AMA violations.

[Examples of an internal leniency system being introduced]

- Our rules on corporate ethics state that people who report about their own AMA violations will be exempt from disciplinary measures for that violation, or receive reduced disciplinary measures.
- Our rules clearly state our principle that for voluntarily reporting of involvement in AMA violations, internal punishments will be reduced in accordance with the report's timing, details, and its level of contribution to reducing the damage to the company.
- We have made it clear that the timing of a report will be one of the factors considered for reductions of internal punishments, in order to encourage employees involved in AMA violations to report it promptly.
- We've made it so that the first person who makes a report about committing or being involved in an AMA violation can be exempted from disciplinary measures.
- Our rules clearly state that if a person makes a voluntary report about being involved in AMA violations, and that report prevents an AMA violation before it happens, or enables the company to apply to JFTC for Leniency Program and receive reduced dispositions by administrative agencies, then that whistleblower will receive exemptions or reductions from disciplinary measures.
- Users of the internal leniency system are obliged to fully cooperate with any following investigation to ensure that the full story is effectively understood.

(4) Appropriate Response to Suspected Violations of the AMA

A. Check Points

- Are appropriate responses quickly carried out if a suspected violation of the AMA arises, such as considering applying to the JFTC for Leniency Program or cooperating with the JFTC's investigation?
- When conducting an internal investigation into the facts, are similar cases also thoroughly investigated so that the whole story of AMA violations in the company is revealed?
- When an AMA violation is detected, is there a thorough analysis of its root causes, and are effective measures to prevent recurrence formulated and implemented to ensure that it doesn't happen again?
- Is there a manual that compiles and summarizes what to do if there is a suspected AMA violation, including information on the system, internal reporting lines, reporting procedures, the department or person in charge of internal investigations of the facts, how to use the Leniency Program and the reduction system for cooperation in investigation, and how to consult with the JFTC, and has this manual been properly shared among all relevant parties?
- Is there training and simulations periodically carried out during normal times, so that the company can respond in accordance with the manual mentioned above if suspected violations of the AMA suddenly arise?

B. Significance

If suspicions of AMA violations arise from audits on the AMA (Part II, 3., (1)) or the whistleblowing system (Part II, 3., (2)), it's thought that the more a company delays its response for dealing with the AMA violation, the harder it becomes to avoid or reduce the losses that the company will have to bear. Therefore, it's important that a company responds promptly and appropriately after a suspected AMA violation arises.

It's thought that the best course of action after a suspected AMA violation arises will vary greatly depending on the specific details of the individual case, but in general it's advisable to keep the following points in mind.

(A) The Initial Response After a Suspected AMA Violation Arises

As previously mentioned in Part II, 3., (3), in order to receive an exemption from, or a larger reduction of surcharges for cartels or bid-

rigging, it's important to apply to the JFTC ahead of the company's competitors, and to cooperate with the JFTC's investigation of the case.

Therefore, it's important if a suspected AMA violation arises to swiftly report it to top management, the compliance officer, or the person in charge of compliance, and that an internal investigation into the facts is quickly and appropriately carried out under their supervision, in preparation for applying to the JFTC for Leniency Program and cooperating with the JFTC's investigation.

When applying to the JFTC for Leniency Program, in addition to submitting a written report in a prescribed format, materials related to the AMA violation also need to be submitted. Furthermore, in the reduction system for cooperation in investigations, the more the details of the report and the submitted materials "the degree of contribute to revealing the truth of the case," the higher the rate of reduction that can be applied is.

Therefore, when carrying out internal investigations into the facts, it's important to collect and preserve as much abundant and extensive objective evidence as possible, including transaction records of the concerned goods and services, competitors' business cards, agreements/memorandums with competitors, minutes, memos, and report materials related to meetings with competitors, evidence of applications/approvals/reports related to contacts with competitors, evidence of invoices and receipts related to travel expenses, transportation expenses, entertainment expenses, etc., daily sales reports, notes, notebooks, memo pads, telephone records, emails and records of social media chats, etc.⁴² In addition, if people suspected of being involved in AMA violations are interviewed, it's important to create a proper written statement containing details about the result of the interviews.⁴³

In addition, acts like destroying, concealing, or manipulating documents or materials related to an AMA violation are subject to sanctions as acts that obstruct a JFTC investigation. Therefore, it's important that top management take the initiative when there is a

⁴² For an example of materials that should be collected and preserved in an internal investigation into the facts, please refer as appropriate to the "Example of submission materials" that is published on the JFTC's website (https://www.jftc.go.jp/dk/seido/genmen/genmen_files/201221kaisairei/shiryousei.pdf). Also, as mentioned in Note 34 above, it's also necessary to pay great care to ensure that internal investigations don't infringe on the privacy of executives and employees and that there are no violations of the Personal Information Protection Act.

⁴³ Please refer as appropriate to the "Guidelines for preparing written statements" that is published on the JFTC website when conducting interviews and preparing written statements (https://www.jftc.go.jp/dk/seido/genmen/genmen_files/201221kaisairei/shiryousei.pdf).

suspicion of an AMA violation, and quickly prohibit executives and employees from destroying, concealing or manipulating materials related to the AMA violation, and take appropriate measures to preserve them.

(B) Internal Investigations of Similar Cases to Reveal the Whole Story of AMA Violations

If AMA violations are detected by audits (Part II, 3., (1)) or the whistleblowing system (Part II, 3., (2)), it's possible that it may be just the tip of the iceberg. Therefore, even if the initial response to the first violation that was detected is successful, another application to the JFTC for Leniency Program from a competitor may lead to the detection of new AMA violations, and lead to the company incurring further and more extensive losses due to AMA violations. Consequently, if one case of an AMA violation is detected, it's important to conduct thorough internal investigations of similar cases under the assumption that it's possible that there are other violations occurring, to reveal the full story of AMA violations taking place in the company, and to "remove all harms" to clean up any corruption.

In addition, when conducting internal investigations of similar cases, it's important to gather an extensive amount of information about AMA violations by giving a questionnaire to every executive and employee and setting up a temporary contact point for receiving whistleblowing just for the period of the internal investigation (it also might be worth considering setting up an internal leniency system that is limited to the period of the investigation).

(C) Analyzing the Root Causes of the AMA Violations and Formulating and Implementing Measures to Prevent Their Recurrence

If it comes to light in society that there was a recurrence of an AMA violation after the company has finished dealing with one AMA violation, it may become known as a "company that doesn't have any self-cleansing ability," or a "company that has difficulty continuing to do business without violating the AMA," which causes a significant amount of damage to its reputation, brand image, and the trust of its internal and external stakeholders. Therefore, if an AMA violation is detected, it's important to carry out a thorough analysis of its root causes, and formulate and

implement preventative measures to ensure that there is never a recurrence.⁴⁴

(D) Preparing During Normal Times for the Suspicion of an AMA Violation Arising

As stated above, if the suspicion of an AMA violation arises, it's advisable to quickly and appropriately carry out an internal investigation into the facts in order to apply to the JFTC for Leniency Program and cooperate with their investigation. However, it is thought that it is not necessarily easy for a company that has never had any prior suspicions of AMA violations to respond in this way without any advance preparations.

Therefore, it is important that each company, during normal times, compiles a manual with information about what to do if there is a suspected AMA violation, including information on the system, internal reporting lines, reporting procedures, the department or person in charge of internal investigations of the facts, how to use the Leniency Program and the reduction system for cooperation in investigation, and how to consult with the JFTC, and ensures that this is properly shared among all relevant parties.

Furthermore, if a company receives information about an AMA violation through its whistleblowing system (Part II, 3., (2)), it is expected to go into an emergency response phase without any advance warning. Therefore, in order for the company to be able to respond to the suspicion of an AMA violation in accordance with its manual, it's advisable that it periodically carries out training and simulations to practice this during normal times.

In addition to the above, it might also be worth considering making a list of legal advisors and outside lawyers, etc., with specialist knowledge and experience of the AMA, to create a system in which the company can quickly consult with experts (Part II, 2., (3)).

⁴⁴ In Japan Exchange Regulation's "Principles for Responding to Corporate Scandals" (February 24, 2016), it also states that "in working to identify the root causes of a scandal, a company should first establish the necessary and sufficient investigative scope and then go beyond simply examining phenomena and listing causal relationships on a superficial level. A proper investigation entails looking closely at the deeper contextual background of the problem, finding hard facts, and delineating the fundamental causes at the heart of the scandal," and "to prevent a scandal from recurring, a company should formulate highly effective policies that directly address the root causes of the issue and implement them swiftly and steadily." (<https://www.jpx.co.jp/regulation/public/nlsgeu000001igbj-att/1-01fusyojiprinciple.pdf>).

C. Examples of Good Practices

The following examples of good practices were found from questionnaires and interviews in past fact-finding surveys carried out by the JFTC, and it's hoped that companies will use these efforts for reference while appropriately responding after the suspicion of an AMA violation arises.

[Examples of responses after a suspicion of an AMA violation arose]

- When a suspicion of an AMA violation arose, we immediately secured all of the documents and electronic data of the department concerned and, under the direction of a lawyer, quickly interviewed the people concerned and researched the relevant documents, and earnestly responded to the authority's investigation.
- As we detected that bid-rigging was in fact occurring as a result of an internal investigation that the company president directed everyone to cooperate with, we were able to use the Leniency Program and received a reduction of our surcharges.
- Although the result of the internal investigation was a bit of a gray area, top management decided that doing nothing wasn't an option, so we used the Leniency Program and were able to receive an exemption from any surcharges.
- After we received an on-site inspection from the JFTC, we carried out an internal investigation of our other products and detected the fact that there was an AMA violation occurring, so we applied to the Leniency Program and were able to receive a reduction of our surcharges.

[Examples of preparations for emergencies during normal times]

- If someone comes across information that suggests a violation of the AMA, that person has to immediately report it to the head of crisis management through the head of their department. The head of crisis management then quickly takes responsibility to set up an investigation team and carries out an internal investigation. If an AMA violation is detected, then they immediately get the CEO's approval and take all the necessary measures to utilize the leniency system.
- As we could potentially face heavy sanctions if employees destroy or manipulate evidence in times of an emergency, we have created a manual that explains this in easy to understand terms and made it well known to

all relevant persons in advance, to ensure that it doesn't happen.

- As we didn't have any clearly defined established internal procedures for emergencies, it was extremely troublesome when we had to utilize the Leniency Program, and as a result we missed out on being in line for an exemption or a reduction, so we reflected on this and created a manual for responding to emergencies.
- We have selected in advance a designated lawyer and a forensic company in Japan, and created a system that will allow us to quickly carry out an internal investigation based on the lawyer's instructions if an investigation from a competition authority is begun.

[Examples of efforts at global companies]

- If we detect information that suggests the possibility of a violation of competition law, it's immediately reported to top management and we quickly carry out an internal investigation in cooperation with our domestic or overseas lawyers, while considering utilizing the leniency systems of different countries and regions' competition authorities. If a suspected violation of a competition law is detected at an overseas subsidiary, they immediately contact the legal department of our parent company, and we deal with it together.
- Daily business activities are dealt with by each overseas subsidiary and even if they were involved in litigation or a dispute, due to a lack of clearly defined rules, it would tend to be handled just within the business department and a report would only follow on later. Based on this, we constructed a system so that if there was a serious incident, such as a violation of competition law or a class action lawsuit, then this information is immediately shared with the head office's legal department.

4. Periodic Evaluation and Update of the Program

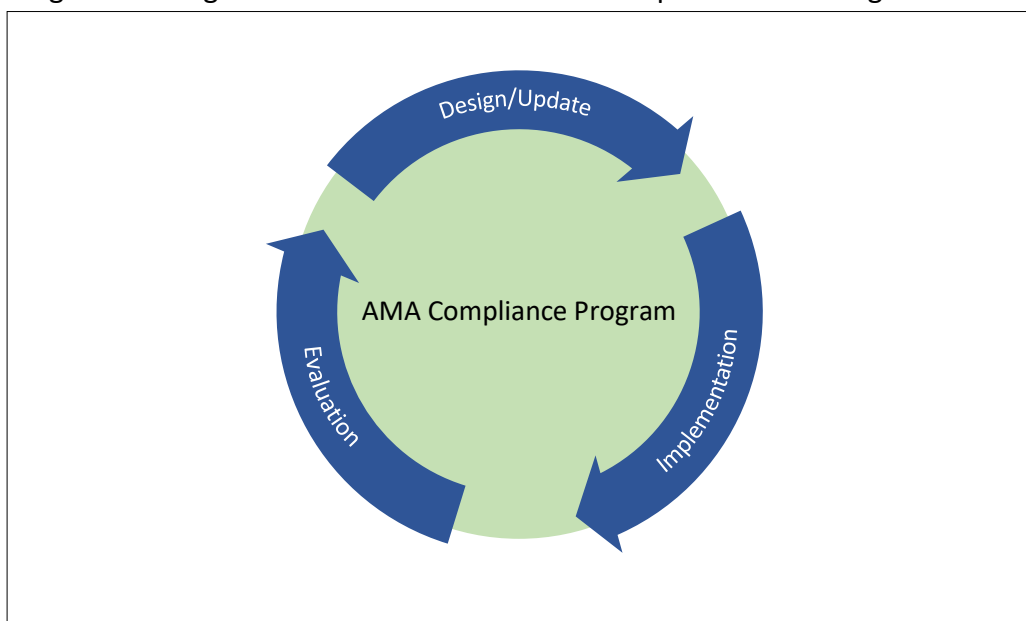
(1) Check Points

- Is the AMA compliance program periodically evaluated and updated?
- Does the department carrying out the evaluation compile the results into a written report and properly present it to relevant parties such as top management, the compliance officer, and the compliance committee?
- Are the processes and results of the evaluation properly stored and managed as records?

(2) Significance

As mentioned above in Part II, 1., (2), the risk of AMA violations that each company is facing continues to be constantly changing due to changes in each company's business contents, industry practices, competitors, regulatory environment, etc., and it's thought that individual executives and employees' awareness of compliance will also change with the passing of time. An AMA compliance program will in no way be flawless once it has been designed, and for it to be truly effective it's important that the program operates properly during daily business activities, its effectiveness is periodically checked through program evaluations, and it is updated as necessary if there are any points of the program that need improvement, and then the updated program should be operated and this same PDCA cycle should be continuously repeated.

Diagram 6. Image of the Periodic Evaluation and Update of the Program



When evaluating the program, it's important to comprehensively assess executives and employees' level of understanding and awareness of each component of the program, the status of compliance, and the effectiveness of each component by checking materials related to the AMA compliance program (internal rules, manuals, etc., minutes of the meetings of the board of directors, board of auditors, management committee, compliance committee, etc., evidence of applications, approvals, reports, etc., related to contact with competitors, training materials and records of implemented training, records of consultations related to the AMA, records related to disciplinary measures, reports of the results of internal audits, records related to whistleblowing, etc.), and conducting questionnaires⁴⁵ and interviews of executives and employees (it is also hoped that the check points listed in this guide will be used as appropriate). If the evaluation finds some points in the efforts that are inadequate, the program should be updated to make them adequate.

In addition, while it's thought that the frequency of program evaluations will differ for each company depending on the risk of AMA violations that they face and the state of the design and operation of their program, it's advisable to at least carry one out at the time when the program has completed the cycle of being designed and put into operation (and it's also worth considering conducting an evaluation at the time of a big change in the size or the scope of the business through an M&A, etc., or when an AMA violation is detected and an investigation is carried out).

Furthermore, it's possible that the evaluation of the effectiveness of the program may be conducted by the department or person in charge of compliance from the second line, under the direction of the compliance officer and the compliance committee, or by the internal audit department from the third line as an independent evaluation from an objective perspective. Either way, it's important that the person who conducts the evaluation records and compiles the procedures and results of the evaluation into a report, presents this report to top management, the compliance officer and the compliance committee, and that this report is then used to update the program.

⁴⁵ In practice, examples can be found of questionnaires being given to executives and employees as "surveys on compliance permeation," etc. In these questionnaires, it's important to collect the honest and frank opinions of executives and employees by ensuring their anonymity by not requiring their names, and refraining from asking for too much detailed information that could lead to identifying them through their job titles or the department that they belong to. It's also important to gather answers that are as objective as possible, by asking questions about the situation of others such as their superiors, colleagues and subordinates, rather than the respondent's own situation directly, and guaranteeing the principle that the answers will not adversely affect the respondents own personal evaluation or the department that they belong to.

(3) Examples of Good Practices

The following examples of good practices were found from questionnaires and interviews in past fact-finding surveys carried out by the JFTC, and it's hoped that companies will use these efforts for reference while periodically evaluating and updating their AMA compliance program.

[Examples of periodic efforts being carried out to evaluate the program]

- In our internal audits, we check the state of our adherence to and operation of the AMA compliance program (including the state of our compliance training regarding AMA compliance and the prohibition of bid-rigging, our requirements to collect written pledges from executives and employees, adherence to our rules for contact with competitors, adherence to our rules regarding joining and continuing to be in various organizations, and our branch managers pledges regarding decision documents for bidding and estimates), and guidance is given to achieve improvements if there are any inadequacies. As well as the audited department that received the guidance making the necessary corrections and improvements, other departments also make similar corrections and improvements and this lateral deployment of measures across departments enables us to continually carry out the PDCA cycle with the aim of eliminating bid-rigging.
- All employees fill out an anonymous questionnaire every year as part of our survey into compliance permeation.
- We use awareness surveys to continuously carry out monitoring and education of executives and employees in regards to AMA compliance and awareness.

Conclusion

This guide was compiled based on the results of past fact-finding surveys, questionnaires and interviews conducted by the JFTC, and with reference to similar guides about designing and implementing compliance programs for foreign competition laws created and published by competition authorities in other jurisdictions, etc., to outline the components of an effective AMA compliance program, and to introduce examples of good practices of each of the components.

This guide has also worked on compiling together some “Check Points” that are thought to be important points in practice for companies proceeding with designing and implementing an AMA compliance program (moreover, these Check Points have been excerpted and summarized on a separate sheet in the hope that these efforts will be easy to check), and describing in detail the significance, essence, and points to bear in mind concerning efforts related to each component, to make the importance of each component as clear as possible. In addition to this, some examples of efforts that were considered to be excellent have been selected from examples found from past fact-finding surveys, questionnaires, and interviews conducted by the JFTC, and introduced as “Examples of Good Practices.”

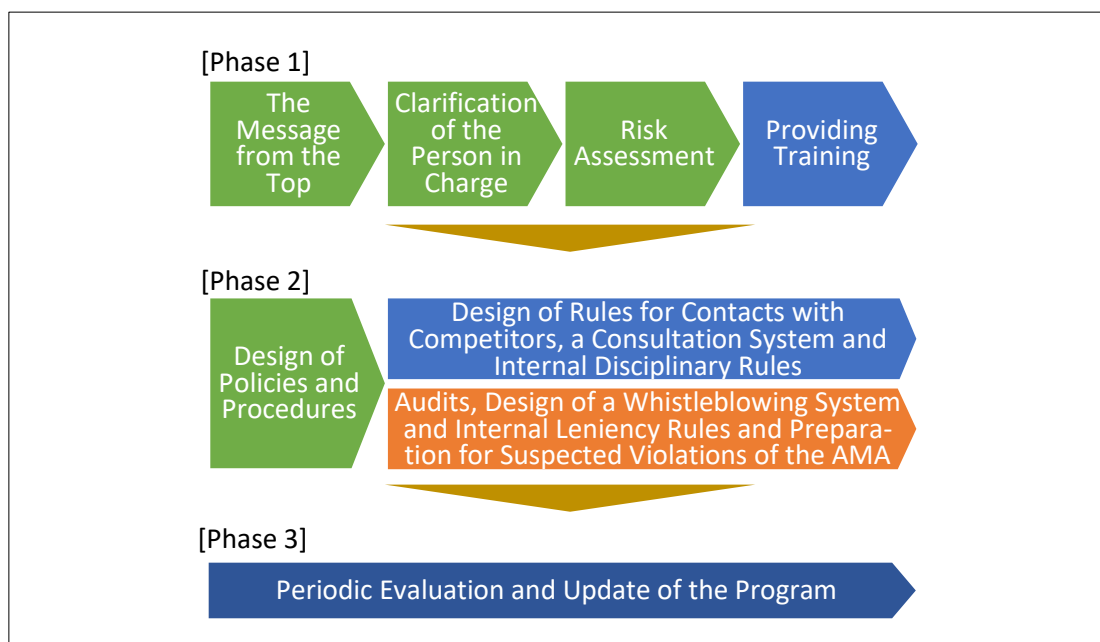
In this way, throughout this whole guide, we have sorted out and presented the best practices regarding designing and implementing an AMA compliance program. Although, as mentioned before in Part I, 3., it may be difficult for small and medium-sized enterprises, or companies with limited management department resources, to fully design and implement all the components included in this guide. In those cases, as suggested before in Part I, 3., it’s important for companies to prioritize efforts that are most likely to be cost-effective, and then gradually expand the scope of their efforts, depending on their situations and their risk of AMA violations. For example, it is thought that top management sharing and communicating messages, as described in “Commitment and Initiative of the Top Management” (Part II, 1., (1)), is a relatively easy measure that doesn’t involve much cost and can be quickly implemented by all companies regardless of their size or management department’s resources. As mentioned above in Part II, 1., (1), this is believed to have a big effect when promoting AMA compliance, as it is generally considered that the intentions and attitudes of top management have a strong influence on the culture and organizational climate of each company, as well as the awareness of compliance for individual executives and employees.

As well as the above, another relatively easy measure to start with, as mentioned in

Part II, 1., (4), on organizational structure, is to clarify who is the person responsible for or in charge of AMA compliance. Once the person responsible for or in charge of AMA compliance has been decided, that person can, for example, quickly identify, analyze and assess the risk of AMA violations in their company (Part II, 1., (2)), and following the results of the risk assessment, carry out in-house training (Part II, 2., (2)) for departments, etc., that are considered to have a high risk of AMA violations. Clarifying the person responsible for or in charge of AMA compliance is also thought to have a big effect when promoting AMA compliance.

The above efforts are considered to be valid as an emergency response for companies currently facing the risk of AMA violations, and it's advisable not only to continue on with these efforts, but to also design and implement basic policies and procedures for promoting AMA compliance (Part II, 1., (3)) alongside them, as an effort to avoid and reduce the risk of AMA violations, and to proceed with the design and implementation of specific measures to prevent AMA violations (Part II, 2.). Also, at the stage when the cycle of design and implementation of each effort has been completed, it is advisable to assess the program and update it.

Diagram 7. An Example of Phased-In Efforts in Small and Medium-Sized Enterprises, Etc.⁴⁶



Therefore, this guide does not require all companies to immediately design and

⁴⁶ Diagram 7 is an illustrated example of the process of phasing-in an AMA compliance program from a situation where nothing at all has been designed and implemented. In practice, it's important to make efforts in accordance with the company's actual situation and its risk of AMA violations, and based on the principles of each item in this guide.

implement a full-spec program. What is important is that each company uses the risk-based approach mentioned in Part II, 1., (2) and prioritizes allocating its limited resources to areas with a high risk of AMA violations, and customizes the contents of its efforts in accordance with its own actual situation and its degree of risk of AMA violations. For this reason, small and medium-sized enterprises do not necessarily have to take the same measures as large companies, and it's advisable that each company carefully considers what efforts to take and in what order to implement them, based on the significance, essence, and points to bear in mind mentioned in this guide, and while referring to the examples of good practices found from past fact-finding surveys, questionnaires, and interviews conducted by the JFTC.

In addition, the effects of efforts related to AMA compliance do not appear overnight, and it may take a few years or even a few decades to develop a culture and organizational climate that highly values AMA compliance. However, unless those efforts are started now, then that culture and organizational climate that values AMA compliance will not be developed in the years and decades ahead. Therefore, it is hoped that each company will work on designing and implementing an AMA compliance program, with reference to this guide, in order to achieve sustainable growth into the future.

The JFTC, through the dissemination of this guide, will continue to work on actively supporting and advocating for efforts related to AMA compliance in companies, as well as keep on endeavoring to collect and provide information on trends of various competition authorities in other jurisdictions, etc. in relation to compliance with foreign competition laws.

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