令和４年度産業経済研究委託事業
（諸外国における外国公務員贈賄防止及び営業秘密保護等に係る外国制度調査）

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I 調査の概要

1. はじめに

(1) 調査研究目的

事業者間の公正な競争を確保することを目的とする不正競争防止法（以下「不競法」という。）は、各種の不正競争及び国際約束に基づく禁止行為並びにこれらの違反があった場合の法的措置を規定している。

このうち、（A）国際約束に基づく禁止行為として、OECD 外国公務員贈賄防止条約に基づき、外国公務員贈賄罪を規律している（不競法第 21 条第 2 項第 7 号、第 18 条第 1 項）。平成 10 年に、不競法を改正し同罪を規定して以降も OECD 贈賄作業部会の相互審査等に対応する形で、順次、規律の強化を図るとともに、国際商取引に関連する企業における外国公務員等に対する贈賄防止のための自主的・予防的アプローチを支援することを目的として、「外国公務員贈賄防止指針」等を作成し、普及啓発を行うことによって、未然の防止策にも力を入れてきた。

一方で、2019 年に実施された第 4 期対日審査報告において、他の加盟国との比較において罰金額が低廉にとどまっていること、また、過去の事案において時効の完成により法人が起訴されなかったことがあること、さらには、日本国外で日本人ではない従業員やエージェントにより行われた贈賄に対し日本企業を起訴する管轄権を有していない、といった指摘とともに、同罪に係る規律を、さらに高いレベルとするよう制度的手当を行うべき、との勧告を受けている（「自然人及び法人に対する罰金額の上限の引上げ」（勧告 12．a、15．a）、「公訴時効期間の延長」（勧告 7．c）、「外国従業員に対する法人管轄権の確保」（勧告 14．b））。このような状況の下、産業構造審議会知的財産分科会不正競争防止小委員会において、不競法の将来課題の１つとして外国公務員贈賄罪の規律の強化を取り上げており、将来の制度的手当に向けて、継続的に議論を進めることとしている[1]。

このため、本事業では、不競法の上記（A）の外国公務員贈賄罪に関する規律の見直しを検討する上で参考となる、諸外国（アメリカ・イギリス・ドイツ・フランス・イタリア・オーストラリア・韓国）の制度や運用について、調査・整理を行う。

また、（B）不正競争との関係では、我が国産業界からの要請、大型紛争

[1] 産業構造審議会知的財産分科会不正競争防止小委員会「デジタル社会における不正競争防止法の将来課題に関する中間整理報告」（令和 4 年 5 月）、https://www.meti.go.jp/shingikai/sankoshin/chiteki_zaisan/fusei_kyoso/pdf/20220517_1.pdf、39～40 ページ。

の発生状況等も踏まえ、技術情報の保護（モノ）の観点から営業秘密に関する改正を累次行ってきており、平成 27 年改正で刑事罰の強化（罰則強化・海外重罰の導入）、立証負担の軽減（第 5 条の 2（営業秘密の不正使用の事実に係る推定規定の導入）等を講じてきた。

一方で、①立証負担の軽減に関しては、上記の推定規定に対象情報の拡大や対象類型の拡充、②損害賠償額算定規定に関しては、営業秘密全般への適用、有体物の譲渡によらない侵害行為への拡充や類似の特許法の推定規定の整備内容との乖離、③ライセンシーの保護に関しては、特許・ノウハウが一体的にライセンスされる中で、特許権その他知的財産権法でのライセンシー保護制度と整合的な営業秘密ライセンシーの保護のあり方、④渉外的な営業秘密侵害に係る国際裁判管轄・準拠法に関しては、この種の事案が発生する中で、海外での開示・使用目的等での営業秘密侵害に対する重罰規定がある中で、民事事案における我が国裁判所への提訴の可否、我が国不競法の適用の可否について不明瞭といった課題・問題意識が指摘されている[2]。

このため、本事業では、上記の（B）①～④の諸課題に対応するべく国内法制（不競法）の見直しを検討する上で参考となる、諸外国（アメリカ・EU・ドイツ・中国・韓国）の制度や運用について、調査・整理を行う。

さらに、（C）その他の新たな知的財産制度を巡る課題として、近時、メタバースといった仮想空間の活用が進み、従来、フィジカルで行われてきた事業のデジタル化が加速しており、フィジカル/デジタルを交錯する、知的財産の利用の加速が想定される。従来は、主にフィジカルの世界を中心に、各知的財産法の役割分担が行われてきたが、今後、フィジカル/デジタルを交錯して知的財産が利用される場合の役割分担について整理の必要性が指摘されている[3]。

例えば、フィジカルのファッションデザインについては、著作権による保護、意匠権による保護よりも、不競法第 2 条第 1 項第 3 号（形態模倣商品の提供行為に係る不正競争）の活用が選好されることが多い。今後、ファッションデザインがフィジカル/デジタルを交錯して利用される場合に、フィジカル/デジタルの交錯領域におけるファッションデザインの保護について、不競法第 2 条第 1 項第 3 号を活用する場合、①「商品の形態」に無体物を含むのか、無体物の「形状」は「形態」にあたるか、②同号は、

[2] 産業構造審議会知的財産分科会不正競争防止小委員会「デジタル社会における不正競争防止法の将来課題に関する中間整理報告」（令和 4 年 5 月）（前掲脚注 1）10～37 ページ。
[3] 産業構造審議会知的財産分科会不正競争防止小委員会「デジタル社会における不正競争防止法の将来課題に関する中間整理報告」（令和 4 年 5 月）（前掲脚注 1）38～39 ページ。

フィジカル/デジタルを交錯する模倣事例に対応できる規律となっているのか（有体物の商品が無体物としてコピーされる事例（又は、その逆の事例）が生じた場合に、当該コピーが「模倣」といえるか)、③被侵害者と侵害者の商品販売市場が競合していない場合に、被侵害者は「営業上の利益」（不競法第 3 条等）を侵害されたといえるか、という点が課題になると考えられる。

このため、本事業では、上記の（C）①～③の諸課題に対応するべく国内法制（不競法）の見直しを検討する上で参考となる、非登録デザインの保護に関する諸外国（アメリカ・ドイツ・フランス・韓国）の制度や運用について、ビジネス分野それ自体が黎明期であり、現時点での裁判例も僅少と思われることから、法制度やその議論状況に関する内容を中心に調査・整理を行う。

(2) 調査研究の方法

以上のような調査研究目的を踏まえて、本調査研究では、①国際約束に基づく禁止行為（外国公務員贈賄罪)、②不正競争との関係（営業秘密に係る立証負担の軽減等)、③その他の新たな知的財産制度を巡る課題について、書籍、論文、調査研究報告書、審議会等の報告書、法令・判例等検索データベース情報及びインターネット情報（OECD で提供しているレポートを含む。）等を利用して、本調査研究の内容に関する文献等の公開情報調査を行い、諸外国での制度・事例等の現状把握を行った。

また、諸外国の制度・事例等の調査を進めるに当たっては、調査対象国の制度事情等を熟知する海外法律事務所に情報提供と協力を求めることとしたが、後掲ア～ウの観点に留意して調査を実施した。なお、海外調査については、各国調査が同一の観点と品質で実施されることを確保するために、経済産業省経済産業政策局知的財産政策室と事前協議を行い、質問文（期待される回答例として、質問に対する日本の制度・状況等についての説明を参考記載。）の詳細について事前協議を行った上で、質問票の内容を確定した（質問票は資料 1 を参照されたい。)。

ア．国際約束に基づく禁止行為（外国公務員贈賄罪）に関する公開情報調査

a. 調査対象国

外国公務員贈賄に関する執行件数が多いアメリカ・イギリス・ドイツ、罰金スライド制を導入しているオーストラリア・韓国・フランス、

時効制度について法改正を実施したイタリアに関して、制度や運用が非常に参考になることから、調査を実施した。

b. 主な調査内容

外国公務員贈賄防止に関する法律に関して、以下の要素に留意して調査を進めた。

- 自然人・法人に対する制裁について、刑事罰（規定、罰金額、懲役刑（又は禁錮刑）など)、行政罰（規定、罰金額、懲役刑（又は禁錮刑）など）及び民事制裁（規定、金額等))。なお、制裁の中に罰金スライド制が導入されていれば、その基準（例えば、純利益、損失、贈賄額など）と基準の算出方法。
- ①自然人・法人に対する公訴時効期間（根拠となる規定及び期間)、②公訴時効期間を中断・停止する手段（根拠となる規定及び期間、自然人・法人のいずれに適用されるのか)
- 自然人・法人に対する管轄権（すなわち、根拠となる規定やガイドラインの記載など)、但し、外国公務員贈賄に関する調査において、管轄権とは、裁判管轄権ではなく、立法管轄権を指し、国内法がどこまで適用されるのか（すなわち、域外適用の範囲）という観点で調査。例えば、属地主義、属人主義などが知られている。

また、外国公務員贈賄防止に関する実態（摘発事例）に関して、以下の要素に留意して調査を進めた。

- 外国公務員贈賄防止に関する摘発事例（裁判の状況、制裁の規模等)
- 事案の概要、科せられた制裁（刑事、行政、民事のいずれか、また罰金額、懲役（又は禁錮）等の具体的な内容）
- 近年の摘発や制裁の傾向・動向
- 罰金スライド制を適用した事案において、どのように基準となる額を算定しているのか。
- 域外適用がなされた事案の概要、管轄権に関する主要な判示事項。
- アメリカ・イギリスを中心に、制裁規模が高い５件について、その概要と制裁規模。その他の国については、話題となった事例を中心としつつ、その概要と制裁規模。加えて、罰金スライド制を適用した事案及び域外適用がなされた事案で各国における制度

概要の理解に資する裁判例、訴訟事例があれば事案の概要を記載。

イ．不正競争との関係（営業秘密に係る立証負担の軽減等）に関する公開情報調査

a. 調査対象国

我が国不競法における営業秘密に係る課題の今後のあり方を検討する上で、知的財産の保護に積極的なアメリカ、ＥＵ及び我が国法制の母法であり法体系を同一にするドイツ、地域的に隣接し経済環境等を共通にする中国及び韓国の制度や運用は非常に参考になることから、調査を実施した。

b. 主な調査内容

営業秘密に係る立証負担の軽減等に関する法律に関して、以下の要素に留意して調査を進めた。

1．営業秘密の侵害事案における証拠収集制度
（1）証拠収集制度の概要（民事手続、刑事手続及び行政手続における一般的・概括的な概要、証拠収集における民事手続と刑事手続との関係、外国にある証拠の収集制度）
（2）知的財産法（特に特許法）における原告の立証負担軽減制度の概要
（3）営業秘密侵害の事実の立証に係る原告の立証負担軽減制度
2．営業秘密の侵害事案における損害賠償額算定・推定制度
（1）知的財産法（特に特許法）における原告の立証負担軽減制度の概要
（2）営業秘密の損害賠償額の立証に係る原告の立証負担軽減制度
3．営業秘密に係るライセンシーの保護制度
（1）知的財産権（特に特許権、著作権）の権利者の権利譲渡時・権利者破産時のライセンシーの保護制度の概要
（2）営業秘密保有者の事業譲渡時・破産時の営業秘密に係るライセンシーの保護制度の概要
（3）日本における物権の変動・破産倒産時の債権・利用権の保護・調整に関する制度の概要
4．営業秘密の渉外侵害事案における国際裁判管轄及び準拠法
（1）国際裁判管轄及び準拠法に関する制度の概要（国際裁判管轄及び準拠法に関する基本的な考え方・不法行為に関する考え方及び営

業秘密侵害に関する考え方、損害賠償請求と差止請求との差異、準拠法ルールと国際裁判管轄との整合性）
（2）涉外的な営業秘密侵害訴訟において域外適用を認めた判例及び概要
（3）国際私法の規定を介さずに国内の実質法を涉外事案に直接適用する法理・裁判例の有無及び営業秘密侵害に係る訴訟でのこの考え方の適用可能性・状況

また、前掲 1．～4．に関し、各国における制度概要の理解に資する裁判例、訴訟事例に関して調査を進めた。

ウ．その他の新たな知的財産制度を巡る課題に関する公開情報調査

a. 調査対象国

我が国不競法における新たな知的財産制度（保護領域）に係る課題の今後のあり方を検討する上で、知的財産の保護に積極的なアメリカ、デザイン保護について積極的なフランス、我が国法制の母法であり法体系を同一にするドイツ、地域的に隣接し経済環境等を共通にする韓国の制度や運用は非常に参考になることから、調査を実施した。

b. 主な調査内容

営業秘密に係る立証負担の軽減等に関する法律に関して、以下の要素に留意して調査を進めた。
1．非登録デザイン保護の法的根拠
（1）法的保護の概要
（2）近年の立法・法改正動向
2．非登録デザインの保護制度
（1）非登録デザインの保護対象について、有体物である商品に限られているのか、無体物である商品のデザインも含まれるのか。
（2）非登録デザインの保護に関する制度は、フィジカル/デジタルを交錯する模倣事例に対応できる規律となっているか（有体物の商品が無体物としてコピーされる事例（又は、その逆の事例）が生じた場合に、当該コピーが規律の対象となっているか。
（3）非登録デザインの被侵害者と侵害者の商品販売市場が競合していない場合に、被侵害者のデザイン盗用行為は規律の対象となるのか（日本法の観点からは、「営業上の利益」（同法第３条等）を侵害

されたといえるか。)。

(4) 非登録デザインの保護期間（保護の期間、始期及び終期（日本法の観点からは、最初の販売よりも前の公表段階から保護の享受は可能か。それが可能な場合、その保護の終期はいつにかるか。))。

なお、本課題に関連するビジネス分野それ自体が黎明期であり、本課題に関係する現時点での裁判例も僅少と思われることから、法制度やその議論状況に関する内容を中心に調査・整理を行った（各国における制度概要の理解に資する裁判例、訴訟事例があれば、可能な場合には調査・整理を行った。)。

本調査に協力した海外法律事務所は以下のとおりである。

アメリカ	Morgan Lewis（モルガン・ルイス） https://www.morganlewis.com/
イギリス	Bird & Bird（バード&バード） https://www.twobirds.com/
ドイツ	同上
フランス	同上
イタリア	同上
EU	同上
中国	同上
韓国	Yulchon（律村）

※Bird&Bird においては同法律事務所の各国オフィスが本調査に協力した。

(3) 本調査報告書の構成

本調査報告書は、上記の諸外国の制度・事例等の調査結果を踏まえて、その調査研究の成果としてとりまとめたものである。本調査報告書の構成は以下のとおりである。

「I　調査の概要」（本章）において、本調査の目的、調査方法、調査内容の概要（対象国・質問項目）を概説する。

「II　調査結果の概要」においては、質問事項ごとに、調査結果の概要を記載する。各調査結果の詳細については、「III　調査結果」の各国の回答内容を参照することを想定している。

「III　調査結果」では、3 つの質問テーマごとに、調査対象国それぞれの法律事務所の回答（英語）を掲載する。

II　調査結果の概要

1. 国際約束に基づく禁止行為（外国公務員贈賄罪）に関する公開情報調査

(1) 外国公務員贈賄防止に関する制度の調査

ア. 刑事罰の有無

a. アメリカ

海外腐敗行為防止法（U.S. Foreign Corrupt Practices Act 1977、以下「FCPA」という。）に基づき、腐敗行為防止条項への違反者に対する刑事罰が定められている。法人等の事業者による違反の場合は 200 万米ドル以下の罰金が（15 U.S.C. §§ 78dd-2（g)(1)(A), 78dd-3(e)(1)(A), 78ff(c)(1)(A).）、個人による違反の場合は 25 万米ドル以下の罰金及び 5 年以下の禁固刑が定められている（15 U.S.C. §§ 78dd-2(g)(1)(A), 78dd-3(e)(1)(A), 78ff(c)(1)(A).)。

また、裁判所は、選択的罰金法（Alternative Fine Act、18 U.S.C. § 3571（d)）に基づき、贈賄で得た利益の 2 倍の金額を上限として、FCPA に規定された金額を上回る罰金を科すことができる。

個人に対する罰金を、雇用主等が支払うことはできない（15 U.S.C. §§ 78dd-2(g)(3), 78dd-3(e)(3), 78ff(c)(3).）。

b. イギリス

贈収賄法（Bribery Act 2010、以下「BA2010」という。）に基づき、贈賄を行った個人又は法人は刑事罰を受ける。同法第 1 条（積極的贈賄）、第 2 条（消極的贈賄）又は第 6 条（外国公務員に対する贈賄）に該当する場合、①即決判決によるときは、12 ヶ月以下の禁固若しくは罰金[4]又はその両方、②正式起訴によるときは、10 年以下の禁固若しくは無制限の罰金又はその両方が科される可能性がある。

同法第 7 条（商業組織の贈賄防止義務違反）に該当する場合には、

[4] 2015 年 3 月 12 日より前に行われた犯罪については罰金の上限は 5 千ポンドであるが、同日以降の犯罪については、当該罰金の上限は撤廃され、無制限の罰金が科される可能性がある。

即決判決によることはできず、正式起訴により、無制限の罰金が科される可能性がある。但し、当該組織が贈賄防止のための適切な制度を整備していた場合には、免責される。

c. ドイツ

自然人に対する刑事罰はあるが、法人に対する刑事罰はない。

公務を行い、かつその公的な義務に違反することの見返りとして、公務員に対して、公務員又は第三者のために便宜を図ることを申し出、約束し、又は許諾した場合、(1) 通常は、3 月以上 5 年以下の拘禁刑又は 24 月以下分の罰金が科され（刑法第 334 条第 1 項)、(2) 犯罪全体として平均的な犯罪よりも著しく軽微である場合には、2 年以下の拘禁刑又は罰金が科され（刑法第 334 条第 1 項第 2 号)、(3) 特に重大である場合には、1 年以上 10 年以下の拘禁刑が科される（刑法第 335 条第 1 項第 1 号（b))。罰金は、5 ユーロ（1 ユーロ×5 日間）から 1,080 万ユーロ（3 万ユーロ×360 日）の間で、裁判官が個人の経済状況を考慮して決定する（刑法第 40 条第 1 項、第 2 項)。

d. フランス

自然人に対しては、10 年以下の禁固及び 1 百万ユーロ（犯罪組織による犯行の場合は 2 百万ユーロ）以下の罰金が科され、収益の 2 倍が罰金額とされることがある（刑法第 435-3 条)。法人に対しては、5 百万ユーロ以下の罰金が科され、収益の 10 倍が罰金額とされることがある。累犯の場合、罰金額の上限は、それぞれ 10 百万ユーロ又は収益の 20 倍に増額される（刑法第 435-3 条、第 131-38 条、第 132-12 条ないし第 132-14 条)。いずれも、共犯者も罰せられる（刑法第 121-6 条)。

なお、違反企業による罰金の支払い、反腐敗コンプライアンス・プログラムの実施、被害者に対する補償等への合意及び履行を条件とする起訴猶予合意制度（Public Interest Judicial Agreement、以下「PIJA」という。）がある（2016 年 12 月 9 日サパンⅡ法)。

e. イタリア

刑事責任及び刑事制裁は自然人に対してのみ適用される。

違反行為の内容に応じて、自然人に以下の禁固刑が科される（刑法第 322 条の 2)。

違反行為	制裁（禁固刑）
職務又は権限の遂行に対する贈収賄	3〜8 年
職務違反の行為に対する贈収賄	6〜10 年
職務又は権限の遂行に対する贈収賄の扇動	2〜5 年 4 ヶ月
職務違反の行為に対する贈収賄の扇動	4〜6 年 8 ヶ月
不当な誘引	最大 3 年
司法手続における汚職	6〜12 年

また、以下の制裁が適用される。

- 犯罪の対価又は利益を構成する全資産の差押え（刑法第 322 条の 3）。
- 付随的な罰則、特に法人及び会社の業務執行者としての一時的な欠格事由（刑法第 32 条の 2）。

f. オーストラリア

外国公務員への贈賄で有罪となった個人の罰則は、10 年以下の懲役及び/又は 1 万罰金単位（275 万豪ドル。1914 年刑法第 4 AA 条）以下の罰金である（1995 年刑法第 70.2 条）。

法人の場合、最高罰金額は、以下のいずれか大きい額となる。

- 10 万罰金単位（2 千 750 万豪ドル）
- 法人が直接又は間接的に得た利益の価値を判断できる場合、その利益の価値の 3 倍
- 裁判所が法人が直接又は間接的に得た利益の価値を判断できない場合、犯罪を構成する行為が発生した月の末日までの 12 ヶ月間における企業及び関連団体の年間売上高の 10%

オーストラリアでは、贈収賄は、連邦法と州・準州法の組み合わせで規制されている。

(a) 1995 年刑法は、個人と法人に適用され、以下の行為を犯罪として規定する。

- 外国公務員に対する贈賄（1995 年刑法第 70 条第 2 項）
- 連邦公務員の贈収賄（1995 年刑法第 141 条第 1 項）
- 虚偽会計（1995 年刑法第 490 条第 1 項）。

(b) 州法は一様ではないが、一般的に、不正な誘引や報酬の供与、提

供、受領を禁止している。

上記の規定は、オーストラリア国外で発生した犯罪行為にも適用される。

g. 韓国

(a) 自然人に対する罰則

外国公務員に対する贈賄罪で有罪判決を受けた者には、5 年以下の懲役又は 5 千万ウォン以下の罰金が科される。但し、当該犯罪行為によって得た利益が 1 千万ウォンを超える場合、5 年以下の懲役又は当該利益の 2 倍以上 5 倍以下の罰金が科される（国際商取引における外国公務員に対する贈賄の防止に関する法律第 3 条第 1 項）。また、懲役に処する場合は、罰金が併科される（同法第 3 条第 4 項）。

(b) 共犯関係者に対する罰則

上記（a）に記載の行為（外国公務員に対する贈賄罪に当たる行為）をする目的で第三者に金銭を交付した者及びその事実を知って当該金銭を受領した者に対しても、上記（a）と同様の罰則が科される（同法第 3 項第 2 項）。懲役に処する場合は、罰金が併科される（同法第 3 条第 4 項）。

(c) 法人に対する罰則

法人の代表者又は法人の代理人、従業員、その他雇用されている者が法人の業務に関して法第 3 条第 1 項に違反する行為をした場合、当該行為者が処罰されるだけでなく、法人に 10 億ウォン以下の罰金が科される。この場合、当該犯罪行為によって得た利益が 5 億ウォンを超える場合、法人に、当該利益の 2 倍以上 5 倍以下の罰金が科される。但し、当該法人が当該違反行為を防止するための職務に関して注意及び監督を怠っていなかった場合は、この限りではない（同法第 4 条）。

イ．行政罰の有無

a. アメリカ

FCPA に基づき、民事制裁金（Civil Penalty）として、贈賄禁止条項への違反者に対する民事制裁金が定められている。アメリカの国内関係者及びアメリカ内で行為の一部を行った者に対しては司法省

（Department of Justice、以下「DOJ」という。）が、発行体に対しては証券取引委員会（Securities and Exchange Commission、以下「SEC」という。）が訴追することができ、法人等の事業者による違反の場合及び個人による違反の場合ともに、2 万 4,793 米ドル以下の罰金が定められている（15 U.S.C. §§ 78dd-2(g)(1,2)(B), 78dd-3(e)(1,2)(B), 78ff(c)(1,2)(B)）。

個人による違反の場合、雇用主等が罰金を支払うことはできない。

刑事罰及び民事制裁金に加え、法人に対しては違反行為によって得た利益の没収及び吐き出しが定められており、さらに、法人及び個人の双方に対して、連邦政府調達からの停止や排除（48 C.F.R. §§ 9.406-2, 9.407-2.）、複数の国際開発金融機関からの共通排除（African Development Bank Group, Integrity and Anti-Corruption Progress Report 2009-2010 7, 14）、輸出権限の停止や取消し（22 C.F.R. §§ 126.7(a)(3)-(4), 120.27(a)(6)）等の制裁が加えられる。

b. イギリス

公的契約規則（Public Contracts Regulations 2015）第 57 条は、公的機関に対して、贈収賄を犯して有罪となった事業者を調達手続から排除しなければならない旨を規定している。そのため、贈収賄罪で有罪判決を受けた法人及び自然人は、原則として、公的契約の入札に参加することができない。

Financial Conduct Authority（以下「FCA」という。）による規制に関して定めた FCA Principles for Business（以下「FCA 規則」という。）は、明示的に贈収賄や汚職について規定していないものの、FCA の規制下にある会社が贈収賄や汚職に関与した場合や、それを妨げなかった場合には、FCA 規則第 2 条、第 3 条及び第 3 条を補完する Senior Management Arrangements, Systems and Controls（SYSC） 6.1.1R 違反に該当する可能性がある。FCA 規則第 2 条は、FCA の規制下にある会社に対し、事業の遂行における善管注意義務を課しており、第 3 条は、FCA の規制下にある会社に対し、適切なリスク管理制度により、責任を持って効果的に事業を所管することについて注意義務を課している。また、SYSC 6.1.1R は、会社（マネージャー、従業員、選任した代表者を含む。）がその義務を遵守し、金融犯罪に利用されるリスクに対抗するために、十分な方針と手続を確立、実施、維持する義務を課している。これらに違反した場合、金銭的なペナルティだけでなく、法人及び個人に対して許認可を剥奪する、個人に対して金融サービス

セクターで就業すること等一定の行為を禁止する、といった制裁が科されることがある。

c. ドイツ

(a) 法人に対する罰則

法人の法定代理人又は従業員が刑法第 334 条、第 335 条の贈賄行為を行った場合、当該法人に対して罰金が科される（行政犯罪法第 30 条第 1 項）。故意の場合 1000 万ユーロ以下の過料が科され、過失の場合 500 万ユーロ以下の過料が科される（行政犯罪法第 30 条第 2 項）。但し、違反行為から得られる経済的利益が過料の下限となり、罰金が違反行為から得られる経済的利益を超えるものでなければならないという目的達成のために必要である場合には、罰金額は上記の上限を超える可能性がある（行政犯罪法第 17 条第 4 項）。

(b) 自然人及び法人に対する罰則

主に被雇用者に対する監督義務に違反した場合、その会社又は事業の所有者（自然人又は法人）に対して、行政罰が課される（行政犯罪法第 130 条）。行政罰の内容は、監督義務違反により可能になった犯罪による。刑事罰が科される犯罪が可能になった場合は、100 万ユーロ以下の過料が科される。罰金が科される犯罪が可能になった場合は、元の犯罪の最高罰金刑以下の過料が科される。刑事罰と罰金が科される犯罪が可能になった場合は、元の最高罰金刑が 100 万ユーロを超えない場合には 100 万ユーロ以下の過料、元の最高罰金刑が 100 万ユーロを超える場合には元の最高罰金刑以下の過料が科される（行政犯罪法第 130 条第 3 項）。

d. フランス

該当なし。

e. イタリア

法人は、取締役、役員、その部下、代理人、その他法人のために行動する個人による犯罪が法人の利益又は便益のために行われた場合、当該犯罪の結果として、行政罰を受ける可能性がある（2001 年立法令第 231 号）。但し、以下の証拠を提出できる場合、法人は責任を免除される（2001 年立法令第 231 号第 6 条）。

- 犯罪を未然に防ぐことを目的とした組織的なモデルを導入して

いる。

- 独立した行動・管理権限を持ち、組織モデルの監督、実施、有効性、遵守に責任を持つ内部監督委員会を任命している。
- 犯罪を犯した、又は犯そうとした役員、管理職、その他の部下が、組織モデルで定められた規則に不正に違反した。
- 犯罪が行われる可能性のある事業活動や、犯罪の種類を特定している。
- 法人が直面する犯罪を防止するための手順、方針、プロトコルを設計し、実施している。
- 組織モデルを遵守しない場合の制裁制度を導入している。
- 従業員及び上級管理職のための適切な研修プログラムを採用している。

行政罰は、(i) 金銭的罰則、(ii) 資格剥奪の罰則、(iii) 犯罪の対価又は収益の差押え、及び (iv) 法人を有罪にする判決の公表で構成され得る。

法人に対する金銭的罰則は、2001 年立法令第 231 号第 10 条、第 11 条及び第 12 条に基づき、2 段階からなる「クオータメカニズム」に従って計算される。

(1) 第 1 段階として、裁判所は、100 以上 1000 以下のクオータを決定する（第 10 条）。具体的には、クオータの下限と上限は、個々の犯罪について概要がまとめられている法的枠組みに依拠する。クオータの具体的な決定は、(i) 事実の重大性、(ii) 事業者の責任の程度（事業者は組織モデル、倫理規定を採用したか、懲罰制度を実施したか）、(iii) 犯罪の実行後に行われた修復・再編成行為、の評価を通して行われる（第 11 条）。

(2) 第 2 段階として、裁判所は、法人の経済的・財産的状況に基づき、最低 258 ユーロから最高 1549 ユーロまでの個別のクオータの貨幣価値を決定する。

2001 年立法令第 231 号第 25 条に規定される海外贈収賄罪についての基本罰金の範囲は以下に記載のとおり。

違反行為	クオータ	基本罰金
職務又は権限の遂行に対する贈収賄	100-200	2 万 5,800～30 万 9,800 ユーロ
職務違反の行為に対する贈収賄	200-600	5 万 1,600 – 92 万 9,400 ユ

違反行為	クオータ	基本罰金
		ーロ
職務又は権限の遂行に対する贈収賄の扇動	100-200	2 万 5,800〜30 万 9,800 ユーロ
職務違反の行為に対する贈収賄の扇動	200-600	5 万 1,600 – 92 万 9,400 ユーロ
不当な誘引	300-800	7 万 7,400〜123 万 9,200 ユーロ
職務違反の行為に対する贈収賄で、法人が多額の利益を得た場合。	300-800	7 万 7,400〜123 万 9,200 ユーロ
司法手続における汚職	200-600	5 万 1,600 – 92 万 9,400 ユーロ

f. オーストラリア

該当なし。

g. 韓国

該当なし。

ウ．罰金スライド制の採否

a. アメリカ

罰金スライド制を採用している。詳細は、上記ア記載の選択的罰金法のとおり。

b. イギリス

罰金スライド制は採用していない。

c. ドイツ

該当なし。

d. フランス

罰金スライド制を採用している。詳細は、上記ア記載のとおり。

e. イタリア

不正な商取引の金額や利得の額等に応じて罰金額の上限が規定される、いわゆる罰金スライド制は導入されていない。

f. オーストラリア

罰金スライド制を採用している。詳細は上記ア記載のとおり。

g. 韓国

罰金スライド制を採用している。詳細は、上記ア記載のとおり。

エ．公訴時効の期間

a. アメリカ

FCPA 上は公訴時効に関する特別の定めを置いていないため、一般的な公訴時効である 5 年間が、法人と自然人のいずれについても適用される（18 U.S.C. § 3282）。

DOJ 若しくは SEC の捜査に協力する個人又は法人は、公訴時効の進行を停止し、公訴時効期間を延長することに自主的に合意することができる制度がある。また、アメリカ政府が、アメリカ外に所在する証拠を取得するために、3 年を上限として公訴時効期間を停止する内容の裁判所の決定を得ることができる制度がある（18 U.S.C. § 3292）。

b. イギリス

時効の制度は存在しない。時効制度とは異なるものの、判例法上、「遅延の法理（”Doctrine of delay”）」が確立されており、極めて例外的な場合に限られるが、検察が訴訟手続を遅延させ、かつ、裁判所が訴訟手続を停止すべき判断をした場合には、被告人の請求により、訴訟手続が永久的に停止される可能性がある。

c. ドイツ

刑事罰の時効は 5 年である（刑法第 78 条第 3 項）。

行政罰の時効は、行政犯罪法第 30 条に基づく行政罰については、元の自然人の贈収賄行為の時効に従い、また、行政犯罪法第 130 条に基づく行政罰については、3 年である（行政犯罪法第 31 条第 2 項第 1 号）。

ドイツ刑法第 78c 条（1）は、公訴の提起等の時効中断事由を規定している。中断事由が発生した場合でも、時効期間の開始後、法定時効期間の 2 倍が経過した時点で、時効が成立する。ドイツ刑法第 78b

条は、様々な時効の停止事由を規定する。犯罪者が外国にいて、権限のある当局がその国への引渡しを正式に要請する場合、外国による要請の受領時から犯罪者がドイツ当局に引き渡されるまで、犯罪者が他の手段により要請国の領域を離れるまで、外国によるこの要請の拒否をドイツ当局が受領するまで、又はこの要請が撤回されるまで、時効期間は停止される（刑法第 78b 条第 5 項）。

ドイツ刑法に規定されている時効の中断及び停止に関する規定は、自然人にも適用される。法人がその従業員の行為に付随して起訴された場合、これらの中断及び停止事由は、この法人の起訴にも適用される。

但し、法人が独立した手続の対象となる場合、これらの手続は、行政犯罪法第 33 条に規定される特定の中断事由に従う。

d. フランス

公訴時効は、法人と自然人のいずれについても 6 年である（刑事訴訟法第 8 条）。公訴時効は、捜査活動又は起訴によって中断され、また、公的活動に対する法的障害若しくは不可抗力と同レベルの事実上の障害があった場合、公訴時効はかかる事由が取り除かれるまでの間停止する（刑事訴訟法第 9-2 条、第 9-3 条）。

e. イタリア

自然人の場合、違反行為の内容に応じて、以下のとおり基準制限期間（公訴時効）が設けられている（刑法第 157 条）。

違反行為	**基準制限期間（年）**
職務又は権限の遂行に対する贈収賄	8
職務違反の行為に対する贈収賄	10
職務又は権限の遂行に対する贈収賄の扇動	6
職務違反の行為に対する贈収賄の扇動	6.7
不当な誘引	6
司法手続における汚職	12

法人の場合、行政罰が行われるのは犯罪行為が行われた日から 5 年以内とされている（2001 年立法令第 231 号第 22 条）。

自然人の場合、刑事訴訟の開始又は起訴に関連する一定の行為により、公訴時効が中断される（刑法第 160 条）。但し、公訴時効は一定

の閾値を超えて延長されることはない。また、訴えの期間制限（appeals time limits）内に裁判所は審理を終結させる必要がある。法人の場合、制限期間は(i)予防的資格はく奪措置の適用請求及び行政処分の通知（A request for the application of precautionary disqualification measures and the notification of the administrative offence）、(ii)検察官による法人の起訴によって中断される（2001 年立法令第 231 号の 22 条）。

なお、予防的資格はく奪措置（precautionary disqualification measures）とは、立法令第 9 条第 2 項に規定の「資格はく奪制裁」と同様の以下の性質を有するものである。

- 活動の実施の資格はく奪
- 犯罪の実行に機能する認可、ライセンス、コンセッションの停止又は取消
- 公共サービスの提供を受ける場合を除き、行政との契約締結の禁止
- 犯罪の実行に機能する便宜供与、資金提供、又は補助金からの除外
- 商品及びサービスの広告の禁止

但し、予防的資格はく奪措置と資格はく奪制裁は、以下の点において異なる。

- 資格はく奪制裁は、最終的かつ拘束力のある判決に基づいて適用される。
- 予防的資格はく奪措置は、法人が犯罪の責任を負うという重大な要素があり、同じ性質の犯罪が行われる可能性があるという具体的な危険がある場合、予備捜査中又は裁判中に（検察官の請求により裁判所が）適用する（2001 年立法令第 231 号第 46 条）。

公訴時効の停止は、自然人の場合のみ適用される。検察官が請求を行う日から、権限のある当局がこれを許可する日まで等、刑法第 159 条に定められる事由が生じた場合に、公訴時効が停止される。

f. オーストラリア

略式犯罪以外に時効はない（1914 年刑法第 15 条 B）。

g. 韓国

自然人、法人ともに 7 年の公訴時効が定められている（刑事訴訟法第 249 条第 1 項第 4 号、国際商取引における外国公務員に対する贈賄

の防止に関する法律第 6 条)。

起訴された場合(自然人及び法人)及び犯罪者が国外にいる場合(自然人)に公訴時効が停止される(刑事訴訟法第 253 条)。

オ. 法適用の範囲

a. アメリカ

アメリカ企業 X の外国支店の現地従業員 A、外国現地法人の現地従業員 B、外国代理店の現地従業員 C が外国で賄賂をオファーしたといういずれのケースであっても、X と A、B 又は C の双方が、FCPA 違反につき、刑事又は民事上の責任を負うことがある。

外国人又は外国法人であっても、FCPA 違反につき、幇助、教唆、助言、命令、誘発若しくは遂行を招来し、又は自己若しくは他社が実行すればアメリカに対する犯罪に該当する行為を故意に起こさせたことにより、罰せられる可能性がある(18 U.S.C. § 2)。また、一般的な企業責任に基づき、アメリカの親会社が子会社である外国現地法人の従業員による FCPA 違反につき、指示をし又は贈賄スキームに直接参加していた場合や、親会社と子会社の間に代理関係(両社間に支配関係があり、被支配者が自己のためではなく支配者の指示に従って行動する関係)がある場合には、親会社 X も民事、刑事上の責任を負う可能性がある(15 U.S.C. §78dd-1 (a))。さらに、法人と個人のいずれの場合も、FCPA 違反を幇助、教唆することになることを知りながら、又は過失により知らずに、かかる違反者に対して一定の援助をした場合には、民事上の責任を負う可能性があり、同様に、上記イの制裁を受ける可能性がある。

b. イギリス

イギリスに法人格を有する組織又はイギリスで事業若しくは事業の一部を営む組織に「関連する人物」が、当該組織の便宜のために贈賄を行った場合、当該組織は BA 2010 の第 7 条の罪責を負う。贈賄者が当該組織に「関連する人物」に該当するのは、当該人物が当該組織のために役務を提供している場合であるが、当該人物の当該組織上の立場を問わないため、当該組織の従業員、代理人又は子会社は「関連する人物」に該当しうる。なお、役務を提供しているといえるか否かは、当該人物と当該組織の関係のみでなく、具体的な状況により判断される。但し、当該人物が当該組織の従業員である場合、反証がない限り、当該人物は当該組織に役務を提供していると推定される。

このとき、贈賄を行った個人が罰せられるのは、当該個人がイギリス国民、イギリス市民、イギリスに通常居住する者である場合に限られる（BA2010 第 12 条（4））。

当該組織の外国子会社や国外代理店の従業員が贈賄を行った場合には、当該従業員が当該組織のために業務を行っていると認められれば、当該組織が BA 2010 の第 7 条の罪責を負う可能性がある。贈賄に該当する作為又は不作為がイギリスで行われたか否かは、結論を左右しない。

企業 X に関連する人物（従業員 A）が贈賄を行った場合、企業 X は BA2010 第 7 条の罪責を負う可能性がある。従業員 A はイギリス国籍でないため、BA2010 第 1 条又は第 6 条の罪責を負わない。

従業員 B はイギリス国籍でないため、BA2010 第 1 条又は第 6 条の罪責を負わない。このとき、企業 X は従業員 B が企業 X のために業務を行っていると認められる場合にのみ BA2010 第 7 条の罪責を負う。例えば、①従業員 B が企業 X の外国子会社と一体の存在であるとみなされる場合や、②企業 X の外国子会社がイギリスで事業の一部を遂行している場合が想定される。

従業員 C のケースは、従業員 B のケースと同様となる。

c. ドイツ

刑法第 331 条以下の贈収賄行為が公務員に対して行われた場合、犯行場所の法律に関係なく、ドイツ刑法が適用される（刑法第 5 条第 15 項 c）。

ドイツ国内で行われた犯罪については、ドイツ刑法が適用される（刑法第 3 条）。

従業員 A がドイツの本社従業員と共謀した場合、共謀又は犯罪の扇動行為の一部がドイツ国内で行われたことになり、従業員 A はドイツの法律で起訴される可能性がある（ドイツ刑法第 30 条）。

企業 X の経営陣が従業員による贈収賄行為を防止するために必要な監督上の措置をとらず、その結果贈収賄が行われた場合、企業 X は、刑法第 5 条第 15 項 a、行政犯罪法第 30 条及び第 130 条に関連して、ドイツ刑法の適用を受ける。

ドイツ法では、一般的に親会社の監督義務が認められており、支配権を持つ親会社は、子会社の経営に介入する法的可能性を持っていると考えられている。したがって、行政犯罪法第 130 条に基づき、支配親会社は子会社が犯した違反行為に対して責任を負う可能性がある。

子会社の経営陣が従業員による贈収賄行為を防ぐために必要な監督措置を取らず、その結果贈収賄が行われた場合、子会社が責任を負うことになる。

行政犯罪法第 130 条は、企業の所有者が、自らに課せられた義務の侵害を防止するために必要な監督上の措置を講じる義務を規定している。企業がその義務を第三者に転嫁することを避けるため、同条は、第三者が業務遂行において所有者に課された義務に違反した場合に適用されると解されている。したがって、監督義務が主に事業所の被雇用者に関係する場合、派遣労働者、自営業の商業エージェント、事業関連の仕事のために雇われた第三者にも適用される。したがって、会社は、ビジネス関連業務のために雇用された第三者によって行われた贈収賄行為について起訴される可能性がある。

d. フランス

フランス刑法は、実行行為の一部がフランス国内で行われた場合、又は実行者又は被害者がフランス国籍の場合には、フランス域外における犯行であっても、適用される。

フランス企業 X の外国支店の現地従業員 A が外国で賄賂をオファーしたケースの場合、X はフランス刑法によって罰せられるが、実行行為の全部が外国で行われた前提に立てばフランス国籍でない現地従業員 A には適用されない。また、外国現地法人の現地従業員 B、外国代理店の現地従業員 C が違反したケースのいずれの場合も、フランス刑法は直接又は間接的に反汚職法違反行為をしたフランス企業グループに適用されるため、X はフランス刑法によって罰せられるが、実行行為の全部が外国で行われた前提に立てばフランス国籍でない現地従業員 B 及び C には適用されない。

e. イタリア

① 国外支店又は営業所の従業員による贈賄

イタリアに本社を有する企業 X のイタリア国外に所在する支店又は営業所の従業員 A（イタリアの国籍を有しない個人）がイタリア国外（支店所在国/第三国）で贈賄した場合、企業 X と従業員 A の双方が処罰される可能性がある（従業員 A について刑法第 10 条、企業 X について 2001 年立法令第 231 号第 4 条）。

但し、従業員 A が処罰されるのは以下の条件を満たす場合に限る。

もっとも、通常はイタリア企業と何らかの関連がある外国人による外国人贈収賄の犯罪は少なくとも部分的にイタリア国内で行われたと認定される。

- 当該外国籍市民がイタリア領土内に居住していること。
- 当該外国への引渡しが認められていないこと。

また、企業 X が処罰されるのは以下の条件を満たす場合に限る。

- 犯罪が外国で行われた場合でも、国内法で罰せられる場合
- 犯罪が実質的に行われた国が犯罪者に対して法的措置を開始しない場合

② 外国子会社の従業員による贈賄

イタリアに本社を有する企業 X の外国子会社（foreign subsidiary）の従業員 B（イタリアの国籍を有しない個人）がイタリア国外（子会社所在国/第三国）で贈賄した場合、企業 X と従業員 B の双方が処罰される可能性がある。

但し、従業員 B が処罰されるのは以下の条件を満たす場合に限る。もっとも、通常はイタリア企業と何らかの関連がある外国人による外国人贈収賄の犯罪は少なくとも部分的にイタリア国内で行われたと認定される。

- 当該外国籍市民がイタリア領土内に居住していること。
- 当該外国への引渡しが認められていないこと。

イタリアの判例法によれば、子会社（外国又は国内）の代表者が犯した犯罪に対する親会社の責任が肯定されるのは、行政責任に関する一般要件が当該親会社について特に満たされる場合、特に、(i) 親会社の代表として行動する者が犯罪を共謀し、(ii) 親会社がそのような犯罪から経済的利益を得た場合にのみである。

本件では、企業 X の役員・従業員・代表者が外国子会社の従業員 B と共謀した場合に、企業 X が責任を問われる可能性がある。

③ 国外代理店の従業員による贈賄

②の場合と同様、イタリアに本社を有する企業 X の国外代理店（agent）の従業員 C（イタリアの国籍を有しない個人）がイタリア国外（子会社所在国/第三国）で贈賄した場合、企業 X と従業員 C の双方が処罰される可能性がある。

f. オーストラリア

企業 X がオーストラリア法に基づいて設立されている場合、オーストラリア国外の企業 X の代理人によって行われた贈賄には、オーストラリア法が適用される。企業 X は、従業員 A がその権限の範囲内で行動し、かつ、企業 X が従業員 A の贈賄行為を明示的又は黙示的に承認又は許可した場合にのみ、責任を負う。なお、従業員 A に対するオーストラリア法の適用はない（以上、刑法第 12 条第 1 項ないし第 3 項、第 70 条第 2 項、同条第 5 項）。

企業 X がオーストラリア法に基づいて設立され、企業 X の海外子会社が企業 X の代理人として行動しているとみなされる場合、企業 X にはオーストラリア法が適用される。企業 X が、その子会社の行為の幇助、教唆、又は扇動をする等共犯関係にある場合にも、オーストラリア法が適用される場合がある。なお、企業 X の代理人として行動しているとみなされた当該海外子会社の従業員 B に対するオーストラリア法の適用はない（以上、刑法第 11 条第 2 項ないし第 4 項、第 12 条第 1 項ないし第 3 項、第 70 条第 2 項、同条第 5 項）。

企業 X がオーストラリア法に基づいて設立されている場合、オーストラリア国外の代理人が行った賄賂には、オーストラリア法が適用される。企業 X は、国外代理店及び従業員 C がその権限の範囲内で行動していた場合、企業 X がその行為を明示的又は黙示的に承認又は許可した場合にのみ、責任を負う。なお、従業員 C に対するオーストラリア法の適用はない（以上、刑法第 12 条第 1 項ないし第 3 項、第 70 条第 2 項、同条第 5 項）。

g. 韓国

韓国に本社を有する企業 X の韓国国外に所在する支店又は営業所の従業員 A（韓国の国籍を有しない個人）が韓国国外（支店所在国/第三国）で贈賄した場合、刑法は企業 X に適用されるが、従業員 A には適用されない（刑法第 3 条）。

他方、韓国に本社を有する企業 X の外国子会社（foreign subsidiary）の従業員 B（韓国の国籍を有しない個人）が韓国国外（子会社所在国/第三国）で贈賄した場合や国外代理店（agent）の従業員 C（韓国の国籍を有しない個人）が韓国国外（代理店所在国/第三国）で贈賄した場合には、従業員 B、C のみならず、企業 X にも韓国法は適用されない。

(2) 調査対象国における外国公務員贈賄防止に関する実態について

ア．重い制裁が課せられた事例

a. アメリカ

① Credit Suisse 社のケース（2018 年 5 月 30 日）では、スイスの銀行である同社の香港子会社が、中国当局との案件獲得の為、組織的なスキームをもって、当局関係者の子女を雇用し、昇進させ、リテインしていたことにつき、同社に対して、約 30 百万米ドル利益返還及び 47 百万米ドルの罰金が科せられた。Credit Suisse Group AG は、ニューヨーク証券取引所に上場していること、同香港子会社が同社の“agent”であることから、アメリカ法である 15 U.S.C. §78dd-1（a）が適用された。

② United States v. Joo Hyun Bahn, et al.では、ニューヨークの不動産ブローカーが、仲介人に対して、中東のソブリンウェルスファンドをして当該ブローカーのクライアントが所有する不動産を購入させるため、当該ファンドの政府機関関係者に対する 2.5 百万米ドルの賄賂の支払いを約束し、500 千米ドルを当該仲介人に支払ったが、実際には、当該仲介人は当該政府機関とコネクションを有していなかったため、当該政府機関職員に賄賂は渡らなかった事案につき、225 千米ドルの利益返還が課されたが、刑事手続き上の没収、返還命令により充足したものとみなされた。

③ United States v. Liebo では、契約獲得のために、影響力のある外国当局関係者の従弟及び近しい友人に対して、個人的な支払いを代わりに支払う、航空機のチケット代を支払う等した者につき、禁固刑が言い渡された。

④ SEC v. Lucent Technologies Inc では、ニュージャージー州の通信企業が、中国当局の関係者に対して、工場視察、トレーニング、コンサル料等の名目で、アメリカでの旅費、食費、宿泊費、遊興費等数百万ドルを負担したが、実際はほとんどが観光目的であった事案で、同社には 1500 千米ドルの民事制裁金が課され、かつ、同社は、DOJ との間で 1 百万米ドルの罰金の支払い及び不起訴の合意を結んだ。

⑤ Complaint, SEC v. Schering-Plough Corp.では、外国当局からのビジネス獲得につなげるため、自社ポリシー等に反する形で、外国当局の主導する城修復チャリティーに寄付した事案で、500 千米ドルの民事制裁金が課せられた。

b. イギリス

① イギリス子会社を保有する外国会社（Airbus SE）が、その事業の一部をイギリスで行っていたと認められた事案で、イギリス外で行っていた贈賄行為について、イギリスで 9 億 9,100 万ユーロの罰金等を支払った。
② イギリス法人（Rolls-Royce）が、ロシア国営法人から、入札を有利に進めるための賄賂を要求され、約 800 万ポンドに上る贈賄を行った事案で、9,660 万ポンドの罰金を支払った。
③ イギリス法人（Standard Bank）が、適切な調査を行わずに、関連会社をしてタンザニア政府関係者が取締役兼株主であるタンザニア企業に対して 600 万米ドルの手数料を支払わせた事案で、1,680 万米ドルの罰金を支払った。
④ イギリスで FCA の規制を受ける事業を行っている Credit Suisse が、モザンビーク共和国のために手配した融資に関連して、現地の請負業者から 5,000 万米ドル以上のキックバックを受け取っていた事案で、FCA から 1 億 4,700 万ポンドを超える罰金を科された。
⑤ Glencore のイギリス子会社が、アフリカ 5 ヶ国の国営石油会社や政府省庁に対して総額 2,900 万米ドル相当の賄賂を支払っていた事案で、7 件の贈収賄罪の成立が認められ、2 億 8,000 万ポンドを超える罰金を支払った。

c. ドイツ

調査対象外。

d. フランス

調査対象外。

e. イタリア

調査対象外。

f. オーストラリア

調査対象外。

g. 韓国

調査対象外。

イ．実態を把握する上で参考になる事例

a. アメリカ

調査対象外。

b. イギリス

調査対象外。

c. ドイツ

① MAN Ferrostaal 社の事例

2005 年から 2011 年にかけて、ドイツの MAN Ferrostaal 社の 2 人の経営者（元取締役と元公認署名人）がアルゼンチンの政府高官を買収し、入札なしで潜水艦の一般分解整備を受注した。

元取締役と元公認署名人には、2 年の執行猶予付き禁固刑と、それぞれ 3 万 6,000 ユーロと 1 万 8,000 ユーロの罰金刑が言い渡された（同人らの年齢（起訴時 73 歳）が軽減要因として考慮された）。また、MAN Ferrostaal 社には、約 1 億 4,000 万ユーロの行政罰が課された。

② ドイツ連邦最高裁判所 2014.02.13 判決

I.GmbH 社の株主かつ同社の常務取締役である被告人が、2003 年 11 月から 2009 年 11 月の間に、I.GmbH 社のために、K 国の政府機関との間で、5 つの契約を締結した。被告人は、これらの受注を得るために、K 国の高官と接触し、契約が締結された場合の賄賂の支払いやその他の便宜供与を申し入れた。K 国政府は、契約履行のために合計 858 万 490 ユーロを送金するよう手配したが、このうち 85 万 5,229 ユーロが K 国の公務員に賄賂として支払われた。

マンハイム地方裁判所は、国際的な商取引に関連した外国公務員への贈賄（及び脱税）に対する 5 件の訴因で、被告に合計 4 年の禁固刑及び 19 万 3,000 ユーロの財産没収を命じた。また、夫の犯罪を幇助したとして、同人の妻に対して、2 年の禁固刑（執行猶予付き）及び約 19 万 2,000 ユーロの財産没収を命じた。ドイツ連邦最高裁判所は、かかる判決を確定させた。

③ シーメンス汚職事件

2000 年代に入り、シーメンス社が契約を獲得するために、数カ国の外国公務員に賄賂を贈るというシステムを構築していたことが発覚した。同社の経営陣と経理担当の数名が逮捕された。数ヶ月にわたる交渉の末、シーメンスは、ドイツ当局、米司法省、米証券取引委員会（SEC）に対して、総額 10 億ユーロ以上の和解金を支払うこととなった。また、シーメンスの幹部や会計士数名が処罰され、例えば、ある会計士には、2 年間の執行猶予と 15 万ユーロの罰金刑が言い渡された。

d. フランス

① TOTAL IRAN SOUTH PARS　2018 年 12 月 21 日判決では、TOTAL によるイラン・サウスパースン油田操業に関わる外国公務員への汚職の事案につき、自然人に 4 年の禁固、法人に 50 万ユーロの罰金が科された。
② SOCIETE GENERALE が、2018 年 5 月 24 日に、同社の金融商品に対するリビアの国有投資機関による投資を得る目的で、仲介者（ブローカー）を介して当局職員に賄賂を提供した事案で、PIJA に基づき同社が締結した起訴猶予合意に基づき、2 億 5,015 万 755 ユーロの罰金が課された。
③ ARMEMENT 1 CAMEROUN　2014 年 6 月決定では、カメルーン当局への違法な戦闘用品のブローキングや、カメルーン当局者へのリベート支払いシステムが存在したケースで、自然人に対して、6 ヶ月の禁固及び 3 万ユーロの罰金が科された。

e. イタリア

① ミラノ裁判所における Saipem S.p.A（エネルギー部門で操業するイタリアの企業）に対する 2001 年立法令第 231 号第 25 条第 3 項に基づく手続

イタリア企業とその他の会社から成るジョイントベンチャーが、60 億米ドル以上の液化天然ガス施設の建設契約を得る目的でナイジェリアの公務員に 1 億 8,000 万米ドル以上の賄賂を仲介役のイギリスの個人と日本の商社が支配するペーパーカンパニーを通じて支払い、その後、2006 年に Saipem 社が当該イタリア企業を買収したという事案において、検察庁は、ナイジェリアの公務員が所属する石油産業・セクターの商業活動に携わる国営企業である NNPC（ナイジェリア国有

石油公社、Nigerian National Petroleum Corporation）又はその子会社との契約関係の禁止を内容とする予防的欠格処分の請求を行ったが、2453 万 580 ユーロの保釈金の供託と引き換えに、当該請求を放棄した。

その後、同裁判所は、時効により自然人である被告人らに対する請求を却下する判決を下し、Saipem S.p.A に対しては罰金 60 万ユーロの支払いを命じ、預託された保釈金を差し押さえた。

② ミラノ地方裁判所における 2001 年立法令第 231 号第 25 条第 3 項及び刑法第 322 条の 2 に基づく ENI S.p.A.、取締役及び代理人に対する手続

ENI S.p.A.と英蘭の石油・ガス多国籍企業がナイジェリアの海上油田の石油試掘ライセンス取得のために贈収賄に関与し、イタリアの検察当局が、イタリアと英蘭の企業、及び当該企業の幹部、複数の仲介者、元石油大臣を含む 13 人の個人を外国贈賄罪で起訴したが、裁判所は、企業がナイジェリア公務員と腐敗した契約について交渉した直接的な証拠はないと判断し被告人全員を無罪とした。

③ Busto Arsizio 裁判所における 2001 年立法令第 231 号第 25 条第 3 項及び刑法第 322 条の 2 に基づく、Agusta Westland S.p.A.、取締役及び代理人に対する刑事手続

イタリアのヘリコプター製造会社 Agusta Westland S.p.A が、インド国防省へのヘリコプター12 機の供給に関する 5 億 5600 万ユーロの契約を得るため、インド空軍の前首長とその近親者に仲介者を通じて約 1050 万ユーロの賄賂を支払った事案において、Busto Arsizio 裁判所は、贈収賄を仲介した自然人と、2 つの企業（Agusta Westland S.p.A: Agusta Westland ltd）との 2 つの「patteggiamento」（司法取引）を承認した。当該自然人には 1 年 10 ヶ月の禁固刑が言い渡されたが、すでに服役済みであった。また、企業のうち 1 社は 8 万ユーロの罰金、もう 1 社は 30 万ユーロの罰金と 750 万ユーロの没収の支払いを命じられた。違反行為の後、両社はコンプライアンス・プログラムを実施したため、軽減措置として考慮され、資格剥奪を含む相互制裁が発動されなかった。また、Busto Arsizio 裁判所は 2 人の元企業幹部を無罪とした。ミラノ控訴院はこの判決を覆し、有罪判決を下したが、翌年、最高裁は手続上の理由から有罪判決を破棄し、再審を命じた。2018 年、ミラノ

控訴院は再審を行い、汚職は立証されなかったと結論づけ、両被告を無罪とした。最高裁は 2019 年、この判決に対する上告を棄却した。

f. オーストラリア

① 2020 年 8 月、Radiance International 社の取締役が、ナウルからオーストラリアへの岩リン鉱石の出荷に関連して、ナウルの外国公務員に対する賄賂を支払わせたとして、禁固 2 年 6 ヶ月及び 400 時間の社会奉仕活動の有罪判決を受けた。

適用法令：1995 年刑法第 70 条第 2 項第 1 号。

② 2017 年 9 月、Lifese 社の取締役 2 名と従業員 1 名が Lifese 社のインフラ契約を確保するためにイラクの外国公務員を買収することを共謀したとして、従業員に対し、禁固 4 年（2 年の仮釈放不能期間）の有罪判決が言い渡された。また、控訴審では、取締役 2 名に対し、禁固 3 年 4 ヶ月（1 年 8 ヶ月の仮釈放期間付）とそれぞれ罰金 25 万豪ドルの有罪判決が言い渡された。

適用法令：1995 年刑法第 11 条第 5 項第 1 号、第 70 条第 2 項第 1 号

③ Securency International 社と Note Printing Australia 社は、それぞれ外国公務員への贈賄を共謀した 3 つの容疑について有罪を認め、起訴に関連して執行当局に協力したため、罰金額が大幅に割り引かれ、Securency 社には 48 万豪ドル、NPA には 45 万豪ドルの罰金刑が科せられた。また、両社は合わせて 2,166 万豪ドルの制裁金を支払った。また、Securency 社の元 CEO を含む従業員 2 名とその代理人も、外国公務員への贈賄の共謀で有罪判決を受けた。

適用法令：1995 年刑法第 11 条第 5 項第 1 号、第 70 条第 2 項第 1 号

g. 韓国

① 韓国大法院判決（2019 年 9 月 10 日、事件番号 2019 도 9653）

釜山に本社を置く企業の韓国籍従業員 3 名が、マレーシアのインフラ工事担当のマレーシア国籍幹部 3 名に対し、工事受注の過程で各種便宜を受ける目的で、9 回にわたり約 55 万米ドルの利益を提供したとして起訴され、それぞれ懲役 3 年（執行猶予 4 年）及び罰金 300 万

ウォン、懲役 1 年（執行猶予 2 年）及び罰金 200 万ウォン、懲役 2 年 6 ヶ月（執行猶予 3 年）及び罰金 100 万ウォン、法人に当該企業に対して罰金 200 万ウォンの刑事罰が科された。

国際商取引における外国公務員に対する贈賄の防止に関する法律に基づき、被告人が処罰された公表済みの事件は上記 1 件を除き不見当である。

ウ．近年の摘発や制裁の傾向及び動向

a. アメリカ

バイデン政権は、汚職の防止はトッププライオリティであることを公式に表明しており、調査件数が増加しているとの報告があり、複数の法域で、10 億米ドルを超える多額の罰金が科される事案が生じている。加えて、DOJ は、近年新たな企業犯罪に関する執行ポリシーを発行し、いくつかの重点分野を示しており、企業コンプライアンス・プログラムの評価ガイダンスについても、近く新版を公表することをアナウンスしている。

b. イギリス

汚職を行った企業と重大不正捜査局（SFO）との間で訴追延期合意（DPA）が締結され、企業が起訴されない事案が続いていたが、Glencore の事件は、汚職に積極的に関与し又は贈収賄を防止するための適切な体制整備を怠っている企業に対して、裁判所が多額の罰金や罰則を科す権限を有していることを改めて明らかにした。SFO と検察局（Crown Prosecution Service）は、贈賄防止義務違反の適用範囲の拡大を要請しており、これが実現されれば経済犯罪の訴追が増加する可能性がある。

c. ドイツ

ここ数年、刑法の強化がされたが、その効果はまだ評価できない。例えば、2015 年 11 月 26 日に施行された汚職撲滅法により、公務員の刑事責任は、外国公務員に対する贈賄行為も含むように拡大された。2015 年の施行以来、ドイツ刑法新第 335a 条を根拠とする公判が行われておらず、外国公務員贈賄事件の摘発や制裁に与える影響を評価することは困難である。その背景には、制裁のリスクやネガティブな評判を避けるために、企業におけるコンプライアンスを強化する傾向も明確に見られるからかもしれない。

d. フランス

OECD Phase 4 報告によると、以下のとおり評価されている。

(a) フランスでは、実際の罰金額を決定するためのガイドラインが存在せず、判例法も無いことから、罰金額の計算方法が不明である

(b) National Financial Prosecutor's Office 及び Centra Office for Combating Corruption and Financial and Tax offences が作られ、外国公務員汚職と戦うための専門化が検察及び捜査機関において進められている

(c) Sapin II 法に基づく PIJA 導入により、既に 5 つの法人対象ケース及び罰金の賦課において手続きの効率化迅速化が図られている

e. イタリア

2022 年 10 月 18 日に発表されたイタリアの贈収賄防止に関する OECD 報告書では、特に国際的な汚職に責任のある企業に関して、汚職行為に対する抑制力は、罰金が低すぎること及び時効が短すぎることに加え、内部通報者保護の適用が不完全であることにより効果的ではないということが重要な困難として報告されている。イタリアで起訴された国際贈収賄事件のほとんどが棄却又は無罪となり、刑事罰に司法取引が適用されているという点においてもさらなる問題が生じている。

OECD はさらに勧告を行い、国際的な腐敗に対応するための明確な国家戦略を実施すること等を、イタリアに要請している。

f. オーストラリア

2022 年 2 月、OECD の贈収賄に関する作業部会はフォローアップ報告書（https://www.oecd.org/australia/australia-oecdanti-briberyconvention.htm ）を発表し、外国公務員に対する贈収賄の検知、調査、訴追におけるオーストラリアの進展についてコメントした。同報告書によれば、オーストラリアは、(a)　内部告発者保護の実施と現金支払いの制限を通じて、外国人贈収賄の摘発を改善し、(b)　連邦法執行機関への専門的なフルタイムスタッフの雇用を含む外国贈収賄調査に関する予算を大幅に増加させた、とされている。しかし、これらの変更は、連邦検察庁長官（CDPP）への外国贈収賄の送検の増加には未だつながっていない。CDPP は、立証が最も容易な犯罪、すなわち偽計業務妨害

罪について起訴する傾向があることが指摘されている。

g. 韓国

国際商取引における外国公務員に対する贈賄の防止に関する法律に基づき被告人が処罰された事例は、上記韓国大法院判決（2019 年 9 月 10 日、事件番号 2019 도 9653）以外不見当であったため、外国公務員贈賄事件における摘発や制裁の現状と動向に関する情報は得られなかった。

エ．罰金スライド制を適用した事例

a. アメリカ

調査対象外。

b. イギリス

調査対象外。

c. ドイツ

調査対象外。

d. フランス

該当なし。

e. イタリア

調査対象外。

f. オーストラリア

g. 該当なし。韓国

該当なし。

オ．調査対象国の国内法を域外適用した事例

a. アメリカ

上記 2⑵ア a ④に記載した事例では、米国法が域外適用された。同事案では、現地従業員が、デュー・ディリジェンスレポートをレビューする立場にあったところ、コンサルタントが当局関係者に対して違法な支払いや贈与を行おうとしていることを示す、数多くのレッドフ

ラッグがあるにもかかわらず、発見・調査できていなかった。

b. イギリス

上記 2⑵ア b に記載した事例は、すべて BA 2010 の域外適用を行っている。

c. ドイツ

該当なし。

d. フランス

2001 年から 2002 年にかけて、フランスの会社及び外国の会社を含む TKSJ コンソーシアムが、ナイジェリアの政府高官に対して、政府との契約獲得等のために 40～45 百万米ドルの賄賂を支払った事案につき、2013 年 1 月 30 日パリ刑事裁判所判決において、旧役員 2 名（営業担当取締役を含む。）に対し、それぞれ 1 万ユーロ、5,000 ユーロの罰金が科された。

e. イタリア

外国公務員贈賄の摘発事例のうち、イタリアの国内法を域外適用した事案はない。

これは、「外国人贈賄」には通常、外国人コンサルタント、エージェント、仲介者が関与しており（2-2 の回答を参照）、そのような場合、当該犯罪は少なくとも部分的にイタリア領内で行われたと認められ（例：共謀がイタリアで行われた）、その結果、域外適用の条件を検討するまでもなく、イタリア法が適用されるためであると考えられる。

もっとも、理論的には、イタリア刑法の純粋な「域外適用」として、以下の条件を満たせば、外国人による外国公務員贈賄が、刑法の下で処罰される可能性がある（刑法第 10 条）。

- 外国籍市民がイタリア領内にいること。
- 関係する外国への引渡しが認められていないこと。

f. オーストラリア

- Securency 社及び Note Printing Australia 社の事例（2011 年）
- R v Jacobs Group 社の事例（2021 年） -NSWSC 657。

g. 韓国

該当なし。

2. 不正競争との関係（営業秘密に係る立証負担の軽減等）に関する公開情報調査

(1) 営業秘密の侵害事案における証拠収集手続について

ア．民事手続における証拠収集方法

a. アメリカ

民事訴訟全般で利用できる制度として、ディスカバリー制度（文書の提出要求、認諾の要求、質問書、証言録取等）がある。

また、国外にある証拠の収集手続としては、外国の被告が証拠開示を保証する手続的措置を課すよう要請する制度、要求書等を通じた外国の裁判所における被告・第三者への証拠開示請求、外国における訴訟手続の実施、外国にいるアメリカの国民・居住者の証言・書類の召喚状の発行を要請する制度等がある。

b. EU

規定はない（EU 加盟国各国の制度による。）。

c. ドイツ

民事訴訟全般で利用できる制度として、訴訟準備のための物品検査・文書閲覧請求、裁判所による文書提示命令、裁判所による対象物の検査・提出命令、事件記録の閲覧・謄写等がある。

特許権侵害訴訟においてのみ利用できる制度としては、文書提出・物品検査請求、損害賠償請求権の行使のため侵害者が保有する銀行・金融・商業文書への適切なアクセス権を求める請求等がある。

また、EU 域内にある国外の証拠については、各加盟国の法律に準拠して収集することができる。

d. 中国

民事訴訟全般で利用できる制度として、裁判所による証拠の調査・収集・保全、裁判所による証拠提出命令、鑑定、鑑定人による意見陳述、裁判所による物証の検証・現場検証の実施、裁判所の弁護士に対する調査命令等がある。

特許権侵害訴訟又は営業秘密侵害を含む不正競争行為訴訟においてのみ利用できる制度としては、技術調査官による質問等がある。

また、国外にある証拠の収集手続として、司法当局は、一定の他国の当局に対し、民事上又は商事上の問題について証拠の入手等を要請

できる。

e. 韓国

民事訴訟全般で利用できる制度として、書証所持者に対し、書証提出を義務付ける制度、裁判所に対する、書証所持者に対する書証提出の委託、裁判長に対する相手方への質問要請、訴訟記録の閲覧・謄写等がある。

特許権侵害訴訟又は営業秘密侵害を含む不正競争行為訴訟においてのみ利用できる制度としては、裁判所による侵害・損害の立証に係る書類の提出命令、侵害の具体的態様の明示等を義務付ける制度、鑑定に必要な事項の説明を義務付ける制度等がある。

なお、民事手続において、国外にある証拠を収集できる手続はない。

イ．刑事手続における証拠収集方法

a. アメリカ

任意捜査としては、潜入捜査、秘密情報提供者、協力証人、大陪審の召喚状、捜査令状、国境捜査、他国の法執行機関との相互法的支援条約に基づく要請等がある。強制捜査としては、大陪審の召喚状による証拠提出・証言強制、令状に基づく押収等がある。

また、国外にある証拠の収集手続としては、刑事共助条約（MLAT）に基づく他国での証拠収集等がある。

b. EU

規定はない（EU 加盟国各国の制度による。）。

c. ドイツ

被疑者・証人の尋問・取調べ、領置、捜索、差押え等がある。

なお、刑事手続において、国外にある証拠を収集できる手続はない。

d. 中国

任意捜査としては、裁判所等に対し無罪等を立証する証拠の取得を申請できる制度、強制捜査としては、起訴後の証拠収集・捜査、収集した証拠の検証のための予備調査、被疑者の取調べ、証人尋問、犯罪に関連する現場・物・人等についての審問・調査、捜索、証拠の封印

又は押収、鑑定、（一定の犯罪の場合における）技術的捜査手段、指名手配による追跡等がある。

知的財産権訴訟においてのみ利用できる制度としては、技術調査官による質問等がある。

また、国外にある証拠の収集手続として、司法機関は、一定の他国の司法機関に対し、刑事事務について司法援助を要請できる。

e. 韓国

任意捜査としては、被疑者の取調べ、任意提出物等の領置、公的機関に対する捜査に必要な事項の照会等、強制捜査としては、差押え、捜索、検証、郵便・通信の傍受等がある。

なお、刑事手続において、国外にある証拠を収集できる手続はない。

ウ．行政手続における証拠収集方法

a. アメリカ

行政手続全般で利用できる制度としては、国際貿易委員会（ITC）に提訴した場合における ITC 調査がある。

b. EU

規定はない（EU 加盟国各国の制度による。）。

c. ドイツ

該当なし。

d. 中国

行政手続全般で利用できる制度としては、市場規制当局による証拠収集・調査、市場監督部門による違法疑義物品等の検査、市場監督当局が資格を有する機関に委託して行う試験・検査・検疫・鑑定、市場監督当局による証拠保全、行政法執行部門による差押え・勾留等がある。

知的財産権に関する行政手続において利用できる制度としては、技術調査官に対する質問等がある。

なお、行政手続において、国外にある証拠を収集できる手続はない。

e. 韓国

該当なし。

エ．証拠収集手続に関する民事手続と刑事手続相互の関係

a. アメリカ

刑事事件で使用された公的証拠は、民事訴訟において証拠として使用することができる。

b. EU

規定はない（EU 加盟国各国の制度による。）。

c. ドイツ

刑事訴訟記録は、民事訴訟において証拠として使用することができる。

d. 中国

営業秘密侵害事件では、刑事訴訟において収集・使用された証拠につき、刑事裁判の結果に影響を与えない限り、民事訴訟において使用することができる。

e. 韓国

当事者は、民事手続又は刑事手続で収集された証拠を他方の手続に提出できる。但し、民事手続で使用される証拠については、刑事手続では使用できないものもある。

(2) 営業秘密侵害事案における立証負担を軽減する制度

ア．知的財産訴訟一般における立証負担軽減制度について

a. アメリカ

該当なし。

b. EU

調査対象外。

c. ドイツ

新製品の製造方法の発明に関する特許権の侵害の場合において、第三者が当該製品と同じ製品を製造したときは、当該製造方法により製造されたものとみなされる。また、文書提出・物品検査請求（上記（1）ア c.）、損害賠償請求権の行使のため侵害者が保有する銀行・金融・商業文書への適切なアクセス権を求める請求（上記（1）ア c.）も行うことができる。

d. 中国

製造方法の発明に関する特許権の侵害の場合には、特許権者が、①かかる発明が新製品の製造方法であること、又は②侵害者が製造した製品が、当該発明の実施により製造される製品と同一であり、当該発明の実施により製造された可能性が高く、かつ、特許権者が、侵害者が当該発明を実施したことを証明するためにあらゆる合理的努力を尽くしたことを立証することにより、侵害の立証責任が侵害者に転換される。

e. 韓国

物の発明・方法の発明それぞれについて、みなし侵害の規定が置かれている。

イ．営業秘密侵害訴訟における立証負担軽減制度について

a. アメリカ

該当なし。

b. EU

調査対象外。

c. ドイツ

該当なし。

d. 中国

営業秘密の保有者が営業秘密の保護措置を講じたこと及び営業秘密が侵害された疎明証拠を提出した場合、被疑侵害者はこれが営業秘密に該当しないことを証明しなければならない。

e. 韓国

該当なし。

(3) 営業秘密の侵害事案における損害賠償額算定・推定制度について

ア．知的財産法一般における損害賠償額算定・推定制度について

a. アメリカ

原則として、原告が、逸失利益又は合理的なロイヤルティを立証する。但し、原告の立証負担を軽減する制度として、懲罰的損害賠償、弁護士費用賠償等の規定がある。

b. EU

調査対象外。

c. ドイツ

原則として、原告が、逸失利益、侵害者の利益又は仮定のロイヤルティを立証する。但し、原告の立証負担を軽減する制度として、損害額の概算、裁判所による損害額の推定、文書提出・物品検査請求（上記（1）ア c. ）、損害賠償請求権の行使のため侵害者が保有する銀行・金融・商業文書への適切なアクセス権を求める請求（上記（1）ア c. ）等がある。

d. 中国

技術侵害の場合、原則として、原告が、規定されている算定方式に基づき損害額を立証し、かかる方式で立証できない場合には、ライセンス料の料率を参考に裁判所が合理的な損害額を認定する。但し、原告の立証負担を軽減する制度として、裁判所が被疑侵害者に対し損害算定に必要な資料の提出を命ずる制度、懲罰的損害賠償、法定損害賠償等の規定がある。

e. 韓国

原則として、原告が、侵害があった場合と侵害がなかった場合との差分を損害額として立証する。但し、原告の立証負担を軽減する制度として、損害額の推定規定、損害額の算出が困難な場合に裁判所が合理的な損害額を認定できる制度、懲罰的損害賠償等の規定がある。

イ．営業秘密侵害訴訟における損害賠償額算定・推定制度について

a. アメリカ

原則として、原告が、実損を損害額として立証する。但し、原告の立証負担を軽減する制度として、侵害者の不当利得額又は合理的なロイヤルティを損害として請求することを認める規定、懲罰的損害賠償、合理的な弁護士報酬の裁定を受ける制度等がある。

b. EU

規定はない（EU 加盟国各国の制度による。）。

c. ドイツ

損害額の推定規定、裁判所による損害額の推定等がある。

d. 中国

営業秘密の被疑侵害者に対する損害計算のための書類の提出命令、懲罰的損害賠償、法定損害賠償等の規定がある。

e. 韓国

損害額の推定規定、損害額の算出が困難な場合に裁判所が合理的な損害額を認定できる制度、懲罰的損害賠償制度等がある。

ウ．高額な損害賠償が認められた代表的な裁判例について

a. アメリカ

- 故意による企業秘密の不正利用
  アピアン社対ペガシステムズ、バージニア州フェアファックス郡巡回裁判所（決定：2022 年 5 月）：
  20 億 9,000 万ドル

b. EU

調査対象外。

c. ドイツ

- 営業秘密の記録の窃盗：
  フランクフルト高等裁判所の判決、2006 年 11 月 28 日-11 U 57/03
  704 万 5,940.48 ユーロ
- 製品製造のためのデータの開示：
  州労働裁判所 Düsseldorf の判決、2018 年 6 月 28 日-8 Sa 379/17
  16 万 6,677.36 ユーロ

d. 中国

- 技術に関する営業秘密侵害
  最高人民法院、（2020） 瑞高法民中第 1667 号、2021 年 2 月 19 日：
  1 億 5,900 万人民元
- 営業情報に関する営業秘密侵害
  北京知的財産裁判所、（2021）経 73 民中第 3593 号、2022 年 7 月 25 日：
  350 万人民元（約 48 万 2439.21 米ドル）

e. 韓国

- 技術に関する営業秘密侵害
  最高裁判所判決 2017Da3498（2019 年 9 月 10 日決定）：67 億ウォン

(4) 営業秘密に係るライセンシーの保護制度について

ア．知的財産法一般におけるライセンシー保護制度について

a. アメリカ

権利者（ライセンサー）が知的財産権を譲渡した場合にライセンシーを保護する制度はない。

権利者（ライセンサー）が破産した場合において、ライセンサーがライセンス契約を拒絶した場合であっても、ライセンシーは、ライセンサーに対して損害賠償を請求するか、又はライセンシーとしての権利を保持することができる。

b. EU

調査対象外。

c. ドイツ

特許権が譲渡された場合であっても、当該譲渡は、当該譲渡前に付与されたライセンスに影響を与えない。

なお、知的財産権の権利者が破産した場合にライセンシーを保護する制度はない。

d. 中国

知的財産権が譲渡された場合であっても、当該譲渡は、当該譲渡前に既に有効であったライセンス契約の有効性に影響を与えない。また、登録された特許ライセンス契約は、善意の第三者に対抗することができる。

なお、知的財産権の権利者が破産した場合にライセンシーを保護する制度はない。

e. 韓国

特許権が移転した場合、ライセンシーは新しい特許権者に対して権利を主張することができる。

なお、知的財産権の権利者が破産した場合にライセンシーを保護する制度はない。

イ．営業秘密におけるライセンシー保護制度

a. アメリカ

営業秘密保持者（ライセンサー）が事業を譲渡した場合にライセンシーを保護する制度はない。

営業秘密保持者（ライセンサー）が破産した場合において、ライセンサーがライセンス契約を拒絶した場合であっても、ライセンシーは、ライセンサーに対して損害賠償を請求するか、又はライセンシーとしての権利を保持することができる。

b. EU

規定はない（EU 加盟国各国の制度による。）。

c. ドイツ

営業秘密保有者（ライセンサー）が事業を譲渡した場合であっても、その譲受人は、ライセンシーによる営業秘密の使用を禁止することができない。

なお、営業秘密保有者が破産した場合にライセンシーを保護する制度はない。

d. 中国

営業秘密保有者（ライセンサー）が事業を譲渡した場合であっても、当該譲渡は、当該譲渡前に締結された技術秘密ライセンス契約の有効性に影響を与えない。

なお、営業秘密保有者が破産した場合にライセンシーを保護する制度はない。

e. 韓国

該当なし。

(5) 日本における物権の変動・破産倒産時の再建・利用時の保護・調整に関する制度の概要

権利者が、第三者に対し、当該権利の対象物の利用権を付与した後に、当該権利を別の第三者に譲渡した場合において、当該利用権につき対抗要件が具備されていないときは、当該利用権者は、原則として、当該権利の譲受人に対し、利用権を対抗することができない[5]。もっとも、特許権、実用新案権、意匠権、著作権については、その通常実施権・利用権につき対抗要件が具備されていない場合であっても、そのライセンシーは、権利の譲受人に対し、通常実施権・利用権を対抗できる（当然対抗制度。特許法99条、実用新案法19条3項、意匠法28条3項、著作権法63条の2）。

他方、営業秘密のライセンス契約が締結された後に、営業秘密保有者が第三者に営業秘密を譲渡した場合、当該ライセンシーが営業秘密の譲受人

[5] 例えば、所有権者が第三者に対して賃借権を付与した後に、当該所有権を別の第三者に譲渡した場合において、当該賃借権につき対抗要件が具備されていない場合、所有権と賃貸人たる地位は別個の権利ないし地位であることから、当該所有権が譲渡されたとしても、賃貸人たる地位は当然には譲受人に移転せず、賃借人は、当該所有権の譲受人に対し、当該賃借権を主張することができない。また、商標権者が、第三者に対して通常使用権を付与した後に、別の第三者に当該商標権を譲渡した場合において、当該通常使用権につき対抗要件が具備されていないときは、当該ライセンシーは、商標権の譲受人に対し、当該通常使用権を対抗できない（商標法31条4項）。

に対し対抗できる制度はない。

権利者が、当該権利の対象物の賃借権その他の使用及び収益を目的とする権利を付与する双務契約を締結した後に破産し、破産手続開始時に当該契約に基づく双方の債務が未履行である場合において、当該使用収益権につき対抗要件が具備されていないときは、破産管財人は、当該契約を解除し、又は破産者の債務を履行して相手方の債務の履行を請求することができる（破産法 56 条 1 項、53 条 1 項）。

なお、営業秘密を使用する権利については、対抗要件を具備することはできないため、営業秘密のライセンス契約が締結された後に、当該ライセンシーが営業秘密の譲受人に対し対抗できる制度はない。この点について、このほかに、営業秘密の使用権原を保護するために、営業秘密のライセンス契約を保護する制度は現行法では存在しない。

また、このほかにも、法的に財産権が認められていない情報の使用権原を第三者に対抗するための制度を調査したが、現行法において、かかる制度は見当たらなかった。

(6) 営業秘密の渉外侵害事案における国際裁判管轄及び準拠法について

ア．国際裁判管轄の決定方法

a. アメリカ

アメリカの裁判所は、当該事件に州法の域外適用が認められる場合、又は被告が法廷地と一定の関連性を有する場合に国際裁判管轄権を有する。不法行為については、特則がある。

b. EU

調査対象外。

c. ドイツ

ドイツの裁判所は、被告の住所等がドイツにある場合、ドイツ国内で履行されるべき契約上の請求に関する紛争の場合、排他的管轄権を有する場合、及び当事者間の合意がある場合に国際裁判管轄権を有する。不法行為については特則がある。

d. 中国

中国の裁判所は、①被告の住所等が中国にある場合、②法律関係の類型ごとに定められた管轄規定に従って判断した結果、中国の裁判所に管轄が認められる場合、③契約その他の財産権益紛争の当事者間の合意により、紛争と実際に関係する中国国内の裁判所を管轄裁判所として選択した場合、及び④契約紛争その他の財産権益に係る紛争により、中国国内に住所を有しない被告に対し提起された訴訟において、中国に関わる要素がある場合に、国際裁判管轄権を有する。不法行為については特則がある。

e. 韓国

韓国の裁判所は、当事者又は紛争が韓国と実質的に関連している場合に国際裁判管轄権を有する。不法行為については特則がある。

イ．準拠法の決定方法

a. アメリカ

裁判地国の法選択の原則に基づき決定するところ、契約当事者間で合意した準拠法がある場合には、選択した当該州法が当事者又は取引と実質的な関係を有し、かつ、法廷地に当該州法と矛盾する理念がない限り、当該州法が準拠法となる。他方、準拠法につき当事者間に明確な合意がない場合には、当事者及び取引と最も重要な関係を持つ州法が準拠法となる。不法行為については特則がある。

b. EU

調査対象外。

c. ドイツ

ローマ規則又はドイツ民法入門法に基づき決定するところ、最も一般的な規定としては、人の国籍に基づき決定するものである。不法行為については特則がある。

d. 中国

外国人関連民事関係法令適用法に基づき決定するところ、同法は、法律関係の種類ごとに準拠法を規定している。訴訟の対象となっている法律関係の準拠法が同法に規定されていない場合には、当該訴訟に最も関係のある法律を適用する。

e. 韓国

法律関係により準拠法の決定方法が異なる。不法行為、営業秘密侵害については特則があり、営業秘密侵害については、侵害が発生した場所の法律が準拠法となる。

ウ．準拠法ルールと国際裁判管轄の適用関係

a. アメリカ

まず、アメリカの裁判所の国際裁判管轄権の有無が判断され、管轄権を有する場合には、準拠法が決定される。

b. EU

調査対象外。

c. ドイツ

まず、ドイツの裁判所の国際裁判管轄権の有無が判断され、管轄権を有する場合には、準拠法が決定される。

d. 中国

まず、中国の裁判所の国際裁判管轄権の有無が判断され、管轄権を有する場合には、準拠法（中国法又は外国法）が決定される。

e. 韓国

まず、韓国の裁判所の国際裁判管轄権の有無が判断され、管轄権を有する場合には、準拠法（韓国法又は外国法）が決定される。

エ．　国際裁判管轄及び準拠法の決定方法に関する代表的な裁判例

a. アメリカ

- 国際裁判管轄に関する裁判例：
  - Micron Technology, Inc. v. United Microelectronics Corp., 2019 WL 266518, at *3 (N.D. Cal. Jan. 18, 2019)
  - Vendavo, Inc. v. Price f(x) AG, 2018 WL 1456697 (N.D. Cal. March 23, 2018)
  - Genentech, Inc. v. JHL Biotech, Inc., No. C 18-06582 WHA, 2019

WL 1045911, at *4-8 (N.D. Cal. Mar. 5, 2019)

b. EU

調査対象外。

c. ドイツ

- 国際裁判管轄に関する裁判例：
  - ・ デュッセルドルフ高等裁判所の判決（2021 年 11 月 25 日）- 15 SA 1/21
    原告は、ドイツ、オランダ又はスペインに居住地又は事業所を有する被告に対し、営業秘密侵害を理由に訴訟を提起した。裁判所は、営業秘密侵害を含む不法行為に関する国際裁判管轄は、有害な事象が発生した場所又は有害な事象を引き起こす事象（行為）が発生した場所にあり、被告が会社である場合には、行為地とは会社の設立地を指すと判断した。
  - ・ カールスルーエ高等裁判所の判決（2022 年 3 月 31 日）- 6 W 15/22:
    ドイツに本拠を置く控訴人が、アメリカに本拠を置く被控訴人とともに、営業秘密を不適切に共有した事件について、裁判所は、行為地の裁判所が国際裁判管轄を有すると判断した。

- 準拠法に関する裁判例：
  - ・ デュッセルドルフ高等裁判所の判決（2019 年 11 月 21 日）- 2 U 34/19
    アイルランドに拠点を置き、中国において注射器等を製造・販売する控訴人が、被控訴人に対し、営業秘密侵害を理由に、被控訴人による注射器の販売の停止を請求した。裁判所は、当該事案について、中国と明らかに密接な関係があることから、中国法が適用されると判断した。

d. 中国

- 知的財産権侵害の請求についての準拠法に関する裁判例：
  - ・ 上海浦東人民法院（2015）普民三（志）朱子 第 1880 号 2017 年 4 月 28 日付
    中国法人の原告が、日本法人の被告に対し、営業秘密侵害を理由に訴訟を提起した。裁判所は、知的財産権侵害の請求に

は、保護を請求した場所の法律が適用されるとし、中国法が適用されると判断した。

- 営業秘密侵害訴訟についての国際裁判管轄・準拠法に関する裁判例：
  - 浙江省瑞安市人民法院（2012）文瑞之楚子 第 48 号
    2013 年 10 月 23 日付
    アメリカ法人である原告が中国において提起した訴訟であることから、当該訴訟は外国関連民事訴訟とみなされた。
    侵害訴訟については、侵害又は被告の居住地の裁判所が管轄権を有するところ、侵害行為は瑞安市で行われたことから、同裁判所が管轄権を有すると判断された。また、知的財産権侵害の請求には、保護請求地の法律が適用されることから、本訴訟には中国法が適用されると判断された。

e. 韓国

- 国際裁判管轄に関する裁判例：
  - 最高裁判所判決 2002Da59788（2005 年 1 月 27 日交付）
    韓国法人である原告が、アメリカにおいて登録したドメイン名について、被告が、全米仲裁連盟において争ったところ、原告は当該ドメイン名を被告に引き渡さなければならない旨の決定が下されたため、原告が、当該決定に異議を唱えて韓国の裁判所に訴えを提起した。
    最高裁は、国際裁判管轄の判断は、当事者間の私益のみならず、裁判所及び国家の利益も考慮して、個々の事案ごとに、裁判所と当事者との実質的関係、裁判所と紛争事件との実質的関係という客観的基準を適用して、合理的に判断されるべきとした上で、韓国に居住し、同国で事業を営む者が、アメリカにおいて登録・保有していたドメイン名の移転を命じた全米仲裁連盟の決定は、その紛争の内容が韓国と実質的に関連しているとして、同国の裁判所の国際裁判管轄権を認めた。
- 差止請求の準拠法に関する裁判例：
  - 最高裁判所判決 2009Da15596（2011 年 5 月 26 日決定）
    アメリカカリフォルニア州に本社を置く被告が、アメリカ内で登録された商標「hp」に係る権利が侵害されたことを理由に、アメリカ内の NAF において紛争処理を申し立て、ドメイン名「hpweb.com」に対する権利の保有者となった後、当

該ドメイン名を登録及び使用する韓国の常住者の原告が、被告側の不当利得を理由に当該ドメイン名の回復を求めた。最高裁は、被告が当該ドメイン名の権利保有者となった時、カリフォルニアにおいて当該不当利得が生じたとみなさなければならず、不当利得の主張の成立及び有効性を判断する際には、カリフォルニア州法が準拠法となると判断した。

オ．国際的・渉外的な営業秘密侵害事件において域外適用を認めた裁判例

a. アメリカ

- T&S Brass & Bronze Works, Inc. v. Slanina, 2017 WL 1734362, at *12 (D. S.C. May 4, 2017) (section 1837 to DTSA claim without analysis)
- Micron Tech., Inc. v. United Microelectronics Corp., No. 17-CV-06932-MMC, 2019 WL 1959487, at *4, 8 (N.D. Cal. May 2, 2019)
- Luminati Networks Ltd. v. BI Science Inc., No. 2:18-CV-00483-JRG, 2019 WL 2084426, at *9 (E.D. Tex. May 13, 2019)

b. EU

調査対象外。

c. ドイツ

該当なし。

d. 中国

該当なし。

e. 韓国

該当なし。

カ．絶対的強行法規[6]の有無

a. アメリカ

該当なし[7]。

[6] 法廷地の裁判所に国際裁判管轄が認められた場合に、準拠法の決定手続なしに当然に適用される法廷地の法規

[7] 代理人が把握する限り、営業秘密に関し、絶対的強行法規及び域外適用されることを定めた法律はない。

b. EU

調査対象外。

c. ドイツ

あり（解釈により絶対的強行法規とされている法律[8]がある。）。

d. 中国

あり（明文で規定されている。）。

e. 韓国

あり（明文で規定されているもの、及び解釈により絶対的強行法規とされているものがある。）。

キ. 絶対的強行法規を認めた裁判例

a. アメリカ

該当なし。

b. EU

調査対象外。

c. ドイツ

- 連邦労働裁判所の判決（2021 年 6 月 24 日）- 5 AZR 505/20
ブルガリアに本社を置く被告との間で雇用契約を締結したブルガリア国籍の原告が、その後赴任先のドイツにおいて、介護サービスを提供した。原告は、被告に対し、未払いの最低賃金の支払いを求めた。裁判所は、最低賃金法第 1 条（1）項及び第 20 条が、雇用関係へのドイツ法の適用の有無にかかわらず適用される、絶対的強制法規であると判断した。

d. 中国

- 最高人民法院（2011）民申字第 290 号
中国の会社と香港の会社の間で生じた中外合弁契約に関する紛争において、裁判所は、中国の領土内で履行される契約について

[8] ローマ-I規則第 9 条及びローマII規則第 16 条、並びに外国貿易法、競争法、消費者保護及び被雇用者保護の個別規定がこれに当たる。

は、中国の法律が直接適用されると判断した。

e. 韓国

該当なし。

3. その他の新たな知的財産制度を巡る課題に関する公開情報調査

(1) 非登録デザイン保護制度の概要

ア．概要

a. アメリカ

非登録デザインは、連邦著作権法に基づき保護されている。もっとも、本質的に実用的な機能を有する物品には連邦著作権法の保護が及ばない[9]。

また、デザインが出所の指標であり、デザインが機能的でなく、本質的に特徴的である（又は後天的識別力が確立されている）場合は、連邦ランハム法に基づき、登録なしで、「トレードドレス」として保護される。

b. ドイツ

非登録デザインは、意匠法、著作権法、不正競争防止法に基づき保護される。EU 共同体意匠規則（No.6/2002）第 11 条に基づき、個性的な意匠はいわゆる非登録共同体意匠として EU 全域で保護される。

また、著作権法においても、いわゆる応用美術の作品について、原則として他の著作物と同じ要件の下で保護されるように裁判例の判断が変化してきている。

さらに、不正競争防止法においても、競争上の独創性と一定の周知性があれば、不正競争防止法第 4 条第 3 項に基づいて保護される。

c. フランス

非登録デザインは、所有者がそのデザインが「オリジナル」である場合、すなわち、そのデザインはその創作において作者の個性を示していることを証明できる場合は、著作権法[10]で保護される。

また、意匠法[11]では、非登録意匠の保護に関する規定は存在しないが、EU 共同体意匠規則（No.6/2002）第 11 条に基づき、新規性の条件を満たし、個別性を有し、EU 内で公衆に開示されているデザインは、非登録共同体意匠として保護される。

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[9] 合衆国法律集第 17 編（著作権法）第 101 条
[10] フランス知的財産法典 L.111-3 以下
[11] フランス知的財産法典 L.511.1 以下

d. 韓国

非登録デザインは、「不正競争防止及び営業秘密保護に関する法律」（以下「韓国不正競争防止法」という。）において保護されている。

韓国不正競争防止法第 2 条第 1 項第 1 号では、他人が製造した「商品の形状」を模倣する行為が不正競争行為として禁止されている。

イ．保護対象（有体物/無体物）

a. アメリカ

有体物と無体物の双方とも保護の対象となる[12]。

有体物のデザインは、連邦著作権法及び連邦ランハム法により保護される。また、無体物のデザインについても、デザインが機能的でない等の要件を満たす限り保護される。

b. ドイツ

有体物と無体物の双方とも保護の対象となる[13]。

意匠法では、製品の全体又は一部の外観を保護しており、工業製品又は手工業製品がその対象となる。製品の定義は広く、画面表示やアイコン、グラフィック・ユーザー・インターフェース、その他コンピュータ・プログラムの目に見える要素も、新しく、個々の特徴を有している限り、意匠に含まれる。

著作権法では、個人的な知的創作物であるすべての著作物を保護しており[14]、例えば、テキスト、サウンド、イメージ、グラフィック、データ等を組み合わせた、マルチメディア又は仮想空間における無形著作物も含まれる。

不正競争防止法では、裁判所の解釈により、すべての「商品とサービス」が保護の対象と認められており、無形の商品も保護の対象に含まれる。

また、無体物の「商品の形状」について判断した裁判例は確認されていない。

c. フランス

[12] 合衆国法律集第 17 編（著作権法）第 101 条以下、合衆国法律集第 15 編（ランハム法）第 1051 条以下、第 3 次不正競争防止法リステイトメント第 16 条州の制定法と州の慣習法

[13] EU 共同体意匠規則第 4 条第 3 号、ドイツ著作権法第 2 条、ドイツ不正競争防止法第 4 条第 3 号

[14] ドイツ著作権法第 2 条第 2 項

有体物と無体物の双方とも、EU 共同体意匠規則第 3 条に基づく共同体意匠規則の保護の対象となる[15]。欧州連合知的財産庁（EUIPO）は、グラフィカルユーザーインターフェースや、画面表示デザイン、ホログラフィックデザイン、バーチャル 3D デザイン等も共同体意匠の保護の対象となるとの見解を示している。

また、最高裁判所の判決では、仮想的な要素がビデオゲームに表示されたり使用されたりすることによっても、侵害が原則として生じうることを示しているため[16]、無形の仮想空間におけるデザインも保護の対象となる可能性がある。

d. 韓国

韓国不正競争防止法により「商品の形状」は保護されるため、有体物は保護の対象となる。

もっとも、無体物については、保護されるかが明確ではない。韓国不正競争防止法は、「商品の形状」を保護し、一般に「無形」の商品の形状は含まれないと解釈されているが、現時点で一般的ではないものの、無形物の形状も含まれる解釈があるためである。

また、無体物の「商品の形状」について判断した裁判例は確認されていない。

ウ．フィジカル/デジタルが交錯する場合の保護

a. アメリカ

フィジカル/デジタルを交錯する模倣品・酷似品の提供行為[17]についても、連邦著作権法及び連邦ランハム法に基づく民事請求（差止請求、損害賠償請求等）、刑事罰及び国境措置の対象となる。

b. ドイツ

フィジカル/デジタルを交錯する模倣品・酷似品の提供行為について、意匠法では、民事請求（差止請求、損害賠償請求等）、国境措置（有体物のみ）の対象となる。一方、著作権法では、民事請求（差止請求、損害賠償請求等）、刑事罰及び国境措置（有体物のみ）の対象となる。

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[15] EU 共同体意匠規則第 4 条第 3 号、ドイツ著作権法第 2 条、ドイツ不正競争防止法第 4 条第 3 号

[16] フランス最高裁判所商事法廷 2014 年 4 月 8 日判決 No.13-10-689.

[17] 具体的には、有体物の商品が無体物としてコピーされる事例（又は、その逆の事例）が生じた場合に、当該コピーが規律の対象となっているかという問題をいいます。

また、不正競争防止法では、民事請求（差止請求、損害賠償請求等）の対象となる。

c. フランス

フィジカル/デジタルを交錯する模倣品・酷似品の提供行為について、EU 共同体意匠規則に基づく民事請求（差止請求、損害賠償請求等）、刑事罰の対象となる。もっとも、国境措置については対象となるかは明らかでない。

なお、欧州連合知的財産庁（EUIPO）は、有体物である自動車のデザインについて、コンピュータやバーチャルリアリティ環境における使用は保護の対象になるとの解釈を示している[18]。

d. 韓国

フィジカル/デジタルを交錯する模倣品・酷似品の提供行為について、民事請求（差止請求、損害賠償請求等）、刑事罰及び国境措置の対象となるかは明らかではない。

エ．商品販売市場競合の要否

a. アメリカ

非登録デザインの権利者と被疑侵害者の商品販売市場が競合していない場合であっても、模倣・酷似するデザインの商品の提供行為は連邦著作権法及び連邦ランハム法に基づく規制の対象となる。

b. ドイツ

非登録デザインの権利者と被疑侵害者の商品販売市場が競合していない場合であっても、EU 共同体意匠規則及び著作権法では、模倣・酷似するデザインの商品の提供行為は規制の対象となる。もっとも、このような場合について、不正競争防止法では規制の対象とならない。

裁判例においても、玩具の自動車が全体的に同じ印象を与える場合、BMW の自動車の意匠権を侵害する可能性があると判断されている[19]。

c. フランス

非登録デザインの権利者と被疑侵害者の商品販売市場が競合してい

[18] 意匠五庁（ID5）会合「Catalogue on the Practices on the Protection of New Technological Design」（http://id-five.org/study-of-practices-on-protection-of-new-technological-designs/）
[19] 連邦裁判所 1995 年 10 月 12 日判決 No. I ZR 191/93

ない場合であっても、EU 共同体意匠規則では、模倣・酷似するデザインの商品の提供行為は規制の対象となる。もっとも、不正競争防止法では、商品販売市場が競合していない場合は、規制の対象とならない。

裁判例においても、フランス知的財産法典 L.511-1、L 521-4 に基づく保護の対象となるモデルを模倣したミニチュア車両を製造した行為について、モデル権の侵害に該当すると判断されている[20]。

d. 韓国

非登録デザインの権利者と被疑侵害者の商品販売市場が競合していない場合であっても、韓国不正競争防止法では、模倣・酷似するデザインの商品の提供行為は規制の対象となる。

オ. 保護期間

a. アメリカ

著作権法上の保護については、作品が有形の表現媒体に固定された時点から始まり、1978 年 1 月 1 日以後に創作された著作物については、(1) 著作者の死後、(2) 職務著作の場合は公表から 95 年、(3) 創作から 120 年のいずれからのうち、早く到来したときに満了する[21]。ランハム法に基づくトレードドレスの保護は、公衆で使用された時から、出所の表示として使用され、認識され続ける限り存続する。

b. ドイツ

意匠法については、デザインが EU 内で最初に公衆に提供された日から 3 年間[22]。著作権法については、著作物の創作時から、著作者の死後 70 年間[23]。不正競争防止法については、明確な存続期間はないが、請求者が請求の原因となる状況を認識した、又は認識すべきであった時から 6 ヶ月以内にする必要がある[24]。

c. フランス

デザインが欧州連合内で最初に公衆に提供された日からから 3 年間

[20] パリ大審裁判所、3rd ch. sect. 03、2002 年 10 月 29 日
[21] 合衆国法律集第 17 編（著作権法）第 302 条
[22] EU 共同体意匠規則（No.6/2002）第 11 条第 1 項
[23] ドイツ著作権法第 64 条
[24] ドイツ不正競争防止法第 11 条

[25]。

d. 韓国

商品の形状が確立した時から 3 年間[26]

(2) 非登録デザインの立法・法改正の動向

a. アメリカ

アメリカ議会は、衣料品等のデザインを保護するための新しい法律を検討している。

また、非代替性トークン（NFT）についても、連邦議会著作権局とアメリカ特許商標庁が NFT の利用拡大に関連する知的財産権の懸念についての意見募集を開始した。

さらに、人工知能を用いたデザインの保護についても、著作権による保護を受けられないというリスクがある。このため、これらの問題に対処するための新たな法律や規制が設けられる可能性がある。

b. ドイツ

ドイツでは、近時、裁判所が判例法を変更し、応用美術の著作物の著作権保護について、非常に緩やかに認めるようになった[27]。これは、欧州司法裁判所の判例法[28]において、著作者の自由で創造的な選択の表現として、その著作者の人格を反映したものであることのみを著作物の条件としたためである。したがって、多くの場合、非登録デザインも、EU 共同体意匠規則による典型的なデザイン保護に加えて、著作権の保護を受けることになる。

c. フランス

欧州委員会では、EU のデザイン保護制度の改正の必要性を判断するために、現状で適用される法律の目的適合性の評価を行っているが、その草案はまだ公表されていない。

しかし、欧州委員会が公表した「デザイン保護に関する EU 法の評価」において、製品の定義を新しいタイプの無形形態に拡張し、新しいデジタルモデルの特異性を考慮に入れて要件を修正すべきである旨

[25] EU 共同体意匠規則（No.6/2002）第 11 条第 1 項
[26] 韓国不正競争防止法第 2 条第 1 項第 1 号（1）
[27] 連邦裁判所 2013 年 11 月 13 日判決 No. I ZR 143/12
[28] 欧州司法裁判所 2020 年 5 月 11 日 C-833/18

が記載されている[29]。

d. 韓国

非登録デザインの保護に関する法律の制定又はその他の法令の改正に関する情報は確認されていない。

[29] 欧州委員会「Commission Staff Working Document Evaluation of EU legislation on design protection,」（SWD/2020/0264 final）

III　各国の調査結果

1. はじめに

本調査研究において諸外国の制度・事例等の調査を進めるに当たっては、調査対象国の制度事情等を熟知する海外法律事務所に情報提供を求めるために調査を実施した。本調査への協力を得た海外法律事務所は以下のとおりである。

アメリカ	Morgan Lewis（モルガン・ルイス） https://www.morganlewis.com/
イギリス	Bird & Bird（バード&バード） https://www.twobirds.com/
ドイツ	同上
フランス	同上
イタリア	同上
EU	同上
中国	同上
韓国	Yulchon（律村）

※　Bird&Bird においては同法律事務所の各国オフィスが本調査に協力した。

本章では、海外法律事務所への調査結果をとりまとめた。調査における質問文の内容は、各国調査が同一の観点と品質で実施されることを確保するために、経済産業省経済産業政策局知的財産政策室と事前協議を行い確定したもの（資料 1 参照）を基に、調査対象国に応じた内容に適宜変更している。

本章では、本調査にかかる 3 つのテーマである「国際約束に基づく禁止行為（外国公務員贈賄罪）に関する公開情報調査」、「不正競争との関係（営業秘密に係る立証負担の軽減等）に関する公開情報調査」、「その他の新たな知的財産制度を巡る課題に関する公開情報調査」ごとに、海外法律事務所への質問及び回答を調査対象国ごとに記載する。より具体的な、調査テーマごとの調査対象国は以下のとおりである。

国際約束に基づく禁止行為（外国公務員贈賄罪）に関する公開情報調査	アメリカ・イギリス・ドイツ・フランス・イタリア・オーストラリア・韓国
不正競争との関係（営業秘密に係る立証負担の軽減等）に関する公開情報調査	アメリカ・EU・ドイツ・中国・韓国
その他の新たな知的財産制度を巡る課題に関する公開情報調査	アメリカ・ドイツ・フランス・韓国

2. 国際約束に基づく禁止行為（外国公務員贈賄罪）に関する公開情報調査

(1) アメリカ

NO.	Question	Answer
1	**System for Combating Bribery of Foreign Public Officials**	
1-1	(i) Are criminal penalties provided as sanctions against natural and juridical persons?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the statutory penalties (fine and/or imprisonment) and the relevant laws, regulations and provisions on which they are based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Details of the Statutory Penalties (Fine and/or Imprisonment) / Laws, Regulations, and Provisions on Which They Are Based: https://www.justice.gov/criminal-fraud/file/1292051/download Page 69 &70 **the U.S. Foreign Corrupt Practices Act (FCPA or the Act) 1977** For each violation of the *anti-bribery provisions*, the FCPA provides that:- Corporations and other business entities are subject to a fine of up to $2 million. **(15 U.S.C. §§ 78dd-2(g)(1)(A), 78dd-3(e)(1)(A), 78ff(c)(1)(A).)** Individuals, including officers, directors, stockholders, and agents of companies, are subject to a fine of up to $250,000 and imprisonment for up to five years. **(15 U.S.C. §§ 78dd-2(g)(1)(A), 78dd-3(e)(1)(A), 78ff(c)(1)(A).)** Under the **Alternative Fines Act, 18 U.S.C. § 3571(d)**, courts may impose significantly higher fines than those provided by the FCPA—up to twice the benefit that the defendant obtained by making the corrupt payment, as long as the facts supporting the increased fines are included in the indictment and either proved to the jury beyond a reasonable doubt or admitted in a guilty plea proceeding. **(18 U.S.C. § 3571(d); see Southern Union v. United States, 132 S. Ct. 2344, 2350-51 & n.4 (2012**). Fines imposed on individuals may not be paid by their employer or principal. **(15 U.S.C. §§ 78dd-2(g)(3), 78dd-3(e)(3), 78ff(c)(3).)** **U.S. Sentencing Guidelines** The Guidelines provide different penalties for the different provisions of the FCPA For individuals, the initial offense level is modified by factors set forth in **Chapters 3, 4, and 5 of the Guidelines** to identify a final offense level. This final offense level, combined with other factors, is used to determine whether the Guidelines would recommend that incarceration is appropriate, the length of any term of incarceration, and the appropriate amount of any fine. For corporations, the offense level is modified by factors particular to organizations as described in **Chapter 8** to determine the applicable organizational penalty.
1-2	(i) Are civil penalties provided as sanctions against natural and juridical persons?	☒Yes ☐No If Yes, please go to (ii)

	(ii) [If Yes in (i)] Please explain the statutory penalties (fine and/or imprisonment) and the relevant laws, regulations and provisions on which they are based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Details of the Statutory Penalties (Fine and/or Imprisonment) / Laws, Regulations, and Provisions on Which They Are Based: https://www.justice.gov/criminal-fraud/file/1292051/download Page 70 & 71 **the U.S. Foreign Corrupt Practices Act (FCPA or the Act) 1977** **Civil Penalties** DOJ may pursue civil actions for anti-bribery violations by domestic concerns (and their officers, directors, employees, agents, or stockholders) and foreign nationals and companies for violations while in the United States, while SEC may pursue civil actions against issuers and their officers, directors, employees, agents, or stockholders for violations of the anti-bribery and the accounting provisions. For violations of the anti-bribery provisions, corporations and other business entities are subject to a civil penalty of up to $21,410 per violation. Individuals, including officers, directors, stockholders, and agents of companies, are similarly subject to a civil penalty of up to $21,410 per violation, which may not be paid by their employer or principal. **(15 U.S.C. §§ 78dd-2(g)(1,2)(B), 78dd-3(e)(1,2)(B), 78ff(c)(1,2)(B))**
1-3	(i) Are administrative penalties provided as sanctions against natural and juridical persons? Administrative penalties include fines and civil sanctions imposed by the administrative branch of government.	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the administrative penalties and the laws, regulations and provisions on which they are based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	**Administrative penalties:** https://www.justice.gov/criminal-fraud/file/1292051/download Page 71 &72 **Forfeiture and Disgorgement** In addition to criminal and civil penalties, companies may also be required to forfeit the proceeds of their crimes, or disgorge the profits generated from the crimes. **Collateral Consequences** In addition to the criminal and civil penalties described above, individuals and companies who violate the FCPA may face significant collateral consequences, including suspension or debarment from contracting with the federal government, cross-debarment by multilateral development banks, and the suspension or revocation of certain export privileges. **Laws, regulations and provisions on which they are based:** https://www.justice.gov/criminal-fraud/file/1292051/download Page 72 - 73 **Debarment** The Federal Acquisition Regulations (FAR) provide for the potential suspension or debarment of companies that contract with the government upon conviction of or civil judgment for bribery, falsification or destruction of records, the making of false statements, or "[c]omission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor." (**48 C.F.R. §§ 9.406-2, 9.407-2.)** These measures are not intended to be punitive and may be imposed only if "in the public's interest for the Government's protection. **(48**

		C.F.R. § 9.402(b)) **<u>Cross-Debarment by Multilateral Development Banks</u>** Multilateral Development Banks (MDBs), like the World Bank, also have the ability to debar companies and individuals for corrupt practices. **(African Development Bank Group, Integrity and Anti-Corruption Progress Report 2009-2010 7, 14)** **<u>Loss of Export Privileges</u>** Companies and individuals who violate the FCPA may face consequences under other regulatory regimes, such as the Arms Export Control Act (AECA), 22 U.S.C. § 2751, et seq., and its implementing regulations, the International Traffic in Arms Regulations (ITAR), 22 C.F.R. § 120, et seq. AECA and ITAR together provide for the suspension, revocation, amendment, or denial of an arms export license if an applicant has been indicted or convicted for violating the FCPA. **(22 C.F.R. §§ 126.7(a)(3)-(4), 120.27(a)(6))** **Other** While not explicitly referenced in the FCPA Guide, any FCPA investigation comes with collateral consequences of business disruption to conduct the investigation (investigations often last for years), in addition to the substantial cost of doing so (legal fees, discovery, lost productivity of employees that need to facilitate the investigation, etc.). There is also the risk of reputational harm, and potential impact to share price. Further, under the Biden Administration, there are heightened expectations[30] that companies have implemented effective anti-corruption compliance programs that prevent and detect misconduct. Companies who can not satisfy this heightened expectation have seen the imposition of multi-year independent monitors[31], which are expensive and whose cost is borne by the company.
1-4	(i) Are there any sanctions against natural or juridical persons for which <u>a sliding fine scale</u> has been introduced? Sliding fine scale: A system that prescribes a maximum fine amount depending on/ linking to the amount of the wrongful business transaction and the amount of the gain.	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the index factors (e.g., net income, loss, bribe amount, etc.) for calculating the sanction amount and how it is	**<u>https://www.justice.gov/criminal-fraud/file/1292051/download</u>** **Page 69** **<u>Criminal Penalties</u>** **<u>U.S. Sentencing Guidelines</u>[32]**

[30] The DOJ has been explicit around what it means to have an effective compliance program (generally and specifically as it relates to anticorruption). This is an extensive set of expectations that we could provide to you, at a high level, through a two hour training but would not cover all of the expected elements of an effective anticorruption program. But it would be a good overview. These expectations are not a defense, although they are considered when determining whether to decline prosecution and are factors at the sentencing stage -- so having an effective compliance program could result in a significant deduction of fines and penalties.

[31] DOJ also makes a decision about whether an independent monitor should be imposed. That independent monitor essentially has an oversight and reporting function. It oversees the company's compliance program and reports back to the DOJ on any gaps, issues or necessary improvements. Failure to stand up an effective compliance program may result in an extension of that independent monitor. That independent monitor is separately paid for by the company. As a result, getting an independent monitor is typically a costly and disruptive event for a company. The best way to avoid it is to have an effective compliance program in place.

[32] To determine the appropriate penalty, the "offense level" is first calculated by examining both the severity of the crime and facts specific to the crime, with appropriate reductions for cooperation and acceptance of responsibility, and, for business entities, additional

	calculated.	When calculating penalties for violations of the FCPA, DOJ focuses its analysis on the U.S. Sentencing Guidelines in all of its resolutions, including guilty pleas, DPAs, and NPAs. The Guidelines provide a very detailed and predictable structure for calculating penalties for all federal crimes, including violations of the FCPA. The U.S. Sentencing Guidelines are promulgated by the **U.S. Sentencing Commission**: The guidelines and policy statements promulgated by the Commission are issued pursuant to Section 994(a) of Title 28, United States Code. U.S. Sentencing Guidelines § 1A1.1 (2021). Index factor: How it is calculated: https://www.ussc.gov/guidelines/2021-guidelines-manual-annotated **https://www.justice.gov/criminal-fraud/file/1292051/download** **Page 69-70** To determine the appropriate penalty, the "offense level" is first calculated by examining both the severity of the crime and facts specific to the crime, with appropriate reductions for cooperation and acceptance of responsibility, and, for business entities, additional factors such as voluntary disclosure, pre-existing compliance programs, and remediation. The initial offense level for violations of the antibribery provisions is determined under § 2C1.1. For individuals, the initial offense level is modified by factors set forth in Chapters 3, 4, and 5 of the Guidelines to identify a final offense level. This final offense level, combined with other factors, is used to determine whether the Guidelines would recommend that incarceration is appropriate, the length of any term of incarceration, and the appropriate amount of any fine. For corporations, the offense level is modified by factors particular to organizations as described in Chapter 8 to determine the applicable organizational penalty. For example, violations of the anti-bribery provisions are calculated pursuant to § 2C1.1. The offense level is determined by first identifying the base offense level; adding additional levels based on specific offense characteristics, including whether the offense involved more than one bribe, the value of the bribe or the benefit that was conferred, and the level of the public official; adjusting the offense level based on the defendant's role in the offense; and using the total offense level as well as the defendant's criminal history category to determine the advisory guideline range. For companies, the offense level is calculated pursuant to §§ 2C1.1 or 2B1.1 in the same way as for an individual—by starting with the base offense level and increasing it as warranted by any applicable specific offense characteristics. The organizational guidelines found in Chapter 8, however, provide the structure for determining the final advisory guideline fine range for organizations. The base fine consists of the greater of the amount corresponding to the total offense level, calculated pursuant to the Guidelines, or the

factors such as voluntary disclosure, pre-existing compliance programs, and remediation. This is individualized depending on aggravating and mitigating factors, depending on whether this is an indivudal or an entity, etc.

		pecuniary gain or loss from the offense. This base fine is then multiplied by a culpability score that can either reduce the fine to as little as five percent of the base fine or increase the recommended fine to up to four times the amount of the base fine. As described in § 8C2.5, this culpability score is calculated by taking into account numerous factors such as the size of the organization committing the criminal acts; the involvement in or tolerance of criminal activity by high-level personnel within the organization; and prior misconduct or obstructive behavior. The culpability score is reduced if the organization had an effective pre-existing compliance program to prevent violations and if the organization voluntarily disclosed the offense, cooperated in the investigation, and accepted responsibility for the criminal conduct. **Civil Penalties** **https://www.justice.gov/criminal-fraud/file/1292051/download Page 70-71**[33] For violations of the anti-bribery provisions, corporations and other business entities are subject to a civil penalty of up to $21,410 per violation. Individuals, including officers, directors, stockholders, and agents of companies, are similarly subject to a civil penalty of up to $21,410 per violation,376 which may not be paid by their employer or principal.
1-5	(i) Is there a statute of limitations period for prosecution against natural and juridical persons?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the limitations period for prosecution against natural and juridical persons and the laws, regulations and provisions on which it is based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	**Limitations period for prosecution:** https://www.justice.gov/criminal-fraud/file/1292051/download Page 36-37 Criminal Cases: The FCPA's anti-bribery and accounting provisions do not specify a statute of limitations for criminal actions. Accordingly, the general statutes of limitations periods apply[34]. For ubstantive violations of the FCPA anti-bribery provisions, the five-year limitations period set forth in 18 U.S.C. § 3282 applies. **Laws, regulations and provisions on which it is based:** Criminal Cases: **18 U.S.C. § 3282(a)** provides: "Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed." Civil Cases: In civil cases brought by SEC, the statute of limitations is set by 28 U.S.C. § 2462, which provides for a five-year limitation on any "suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture." The five-year period begins to run "when the claim first accrued." In cases against individuals who are not residents of the United States, the statute is tolled for any period when the defendants are not "found within the United States in order that proper service may be made thereon." (28 U.S.C. § 2462).

[33] They are adjusted for inflation. As of January 15, 2023, the maximum fine for a civil violation of the anti-bribery provisions is $24,793 per violation (https://www.sec.gov/files/civil-penalties-inflation-adjustments_1_1.pdf).

[34] The statutes of limitations are the same for individuals and entities. Five years for anti-bribery provisions; six years for accoutning provisions.

	(iii) [If Yes in (i)] Is there a means to interrupt or suspend the limitations period for prosecution against natural and juridical persons?	☒Yes ☐No If Yes, please go to (iv)
	(iv) [If Yes in (iii)] Please explain the grounds for the interruption or suspension and the scope of persons (individual natural person/juridical person/both) to whom the interruption or suspension of the statute of limitations on prosecution extends. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	**Grounds for interruption[35]:** **Grounds for suspension[36]:** https://www.justice.gov/criminal-fraud/file/1292051/download Page 36,37 1. companies or individuals cooperating with DOJ or SEC may enter into a tolling agreement that voluntarily extends the limitations period[37]. 2. Under **18 U.S.C. § 3292**, the government may seek a court order suspending the statute of limitations period in a criminal case for up to three years in order to obtain evidence from foreign countries. **Applicable to:** companies & individuals **Applied laws and provisions:** **18 U.S.C. § 3292**
1-6	Please explain, for each of the following cases, the application of the local laws of the country under investigation. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	
	(i) Employee A (an individual who is not a citizen of the country under investigation) of a branch or sales office located outside the country under investigation of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the branch or sales office locates or any third country).	Applicable to Company X: ☒Yes ☐No Applicable to Employee A: ☒Yes ☐No Conditions under which the local law applies (e.g., conspiracy with an overseas office): https://www.justice.gov/criminal-fraud/file/1292051/download Page 35 *Under federal law, individuals or companies that aid or abet a crime, including an FCPA violation, are as guilty as if they had directly committed the offense themselves.* *The aiding and abetting statute provides that whoever "commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission," or "willfully causes an act to be done which if directly performed by him or another would be an offense against the United States," is punishable as a principal (**18 U.S.C. § 2)*** *Under normal principles of conspiracy liability, individuals and companies, including foreign nationals and companies, may also be liable for conspiring to violate the FCPA*

[35] When the statute of limitations is interrupted, the limitations period that has been running until that point loses its effect. When the grounds for interruption are removed, the statute of limitations begins to run again from the beginning.
[36] Even if the statute of limitations is suspended, the limitations period that has been running up to that point does not lose its effect. Once the grounds for suspension are removed, the statute of limitations begins to run for the remainder of the limitations period.
[37] The DOJ has an ability to unilaterally toll the statute of limtation under 18 U.S.C. § 3292. Those extensions do have limitations outlined in the statute.

		Applied laws and provisions: https://www.justice.gov/criminal-fraud/file/1292051/download Page 36 Even though no action has been taken in the United States, foreign Japanese and European companies were charged with conspiring with and aiding and abetting a domestic concern's FCPA violations. **(See Criminal Information, United States v. Marubeni Corp., No. 12- cr-22 (S.D. Tex. Jan. 17, 2012), ECF No. 1 [hereinafter United States v. Marubeni], available at https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2012/01/24/2012-01-17-marubeni-information.pdf; Criminal Information, United States v. JGC Corp., supra note 60; Criminal Information, United States v. Snamprogetti, supra note 199; see also Criminal Information, United States v. Technip,)** However, in **United State v. Hoskins, 902 F.3d 69, 76-97 (2d Cir. 2018).,** the Second Circuit addressed the question of *whether individuals not directly covered by the FCPA antibribery provisions could nevertheless be guilty of conspiring to violate, or aiding and abetting the violation of, the FCPA anti-bribery provisions, and concluded they could not. Therefore, at least in the Second Circuit, an individual can be criminally prosecuted for conspiracy to violate the FCPA antibribery provisions or aiding and abetting an FCPA anti-bribery violation only if that individual's conduct and role fall into one of the specifically enumerated categories expressly listed in the FCPA's anti-bribery provisions.* *At least one district court from another circuit has rejected the reasoning in the Hoskins decision, and concluded that the defendants could be criminally liable for conspiracy to violate the FCPA anti-bribery provisions, and aiding and abetting a violation, even though they do not "belong to the class of individuals capable of committing a substantive FCPA violation." (United States v. Firtash, 392 F. Supp. 3d 872, 889 (N.D. Ill. 2019).)* ***Convention on Combating Bribery of Foreign Public 18, 1997, 37 I.L.M. 1 [hereinafter Anti-Bribery Convention].*** *The Anti-Bribery Convention requires member countries to make it a criminal offense "for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business." The Convention and its commentaries also call on all parties (a) to ensure that aiding and abetting and authorization of an act of bribery are criminal offenses, (b) to assert territorial jurisdiction "broadly so that an extensive physical connection to the bribery act is not required," and (c) to assert nationality jurisdiction consistent with the general principles and conditions of each party's legal system. Id. at art. 1.2, cmts. 25, 26.*
	(ii) Employee B (an individual who is not a citizen of the country under investigation) of a foreign subsidiary of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where	Applicable to Company X: ☒Yes ☐No Applicable to Employee B: ☒Yes ☐No Conditions under which the local law applies (e.g., conspiracy with an overseas office): https://www.justice.gov/criminal-fraud/file/1292051/download Page 28,29

	the foreign subsidiary locates or any third country). Note: If the scope of application varies depending on whether it is subsidiary or affiliate, please explain each.	General principles of corporate liability apply to the FCPA. Thus, a company is liable when its directors, officers, employees, or agents, acting within the scope of their employment, commit FCPA violations intended, at least in part, to benefit the company. If an **agency relationship exists** between a parent and a subsidiary, the **parent is liable for bribery committed by the subsidiary's employees.** https://www.justice.gov/criminal-fraud/file/1292051/download Page 36 **Additional Principles of Civil Liability for Anti-Bribery Violations: Aiding and Abetting and Causing** Both companies and individuals can be held civilly liable for aiding and abetting FCPA antibribery violations if they knowingly or recklessly provide substantial assistance to a violator. Similarly, in the administrative proceeding context, companies and individuals may be held liable for causing FCPA violations. This liability extends to the subsidiaries and agents of U.S. issuers. Applied laws and provisions: **Parent-Subsidiary Liability** There are two ways in which a parent company may be liable for bribes paid by its subsidiary. First, a parent may have participated sufficiently in the activity to be directly liable for the conduct—as, for example, when it directed its subsidiary's misconduct or otherwise directly participated in the bribe scheme. Second, a parent may be liable for its subsidiary's conduct under traditional agency principles. The fundamental characteristic of agency is control. Pacific Can Co. v. Hewes, 95 F.2d 42, 46 (9th Cir. 1938) ("***Where one corporation is controlled by another, the former acts not for itself but as directed by the latter, the same as an agent, and the principal is liable for the acts of its agent within the scope of the agent's authority.***"); United States v. NYNEX Corp., 788 F. Supp. 16, 18 n.3 (D.D.C. 1992) (holding that "***[a] corporation can of course be held criminally liable for the acts of its agents," including "the conduct of its subsidiaries***").
	(iii) Employee C (an individual who is not a citizen of the country under investigation) of a foreign agent of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the foreign agent locates or any third country).	Applicable to Company X: ☒Yes ☐No Applicable to Employee A: ☒Yes ☐No Conditions under which the local law applies (e.g., conspiracy with an overseas office, if any): https://www.justice.gov/criminal-fraud/file/1292051/download Page 36 **Additional Principles of Civil Liability for Anti-Bribery Violations: Aiding and Abetting and Causing** Both companies and individuals can be held civilly liable for aiding and abetting FCPA antibribery violations if they knowingly or recklessly provide substantial assistance to a violator. Similarly, in the administrative proceeding context, companies and individuals may be held liable for causing FCPA violations. This liability extends to the subsidiaries and agents of U.S. issuers. Applied laws and provisions:

		https://www.justice.gov/criminal-fraud/file/1292051/download Page112 Pacific Can Co. v. Hewes, 95 F.2d 42, 46 (9th Cir. 1938) ("***Where one corporation is controlled by another, the former acts not for itself but as directed by the latter, the same as an agent, and the principal is liable for the acts of its agent within the scope of the agent's authority.***"); United States v. NYNEX Corp., 788 F. Supp. 16, 18 n.3 (D.D.C. 1992) (holding that "***[a] corporation can of course be held criminally liable for the acts of its agents," including "the conduct of its subsidiaries***"). https://www.justice.gov/criminal-fraud/file/1292051/download Page 36 In one case, the U.S. subsidiary of a Swiss freight forwarding company was held civilly liable for paying bribes on behalf of its customers in several countries. Although the U.S. subsidiary was not an issuer for purposes of the FCPA, it was an "agent" of several U.S. issuers. By paying bribes on behalf of its issuers' customers, the subsidiary both directly violated the FCPA and aided and abetted the issuers' FCPA violations. (**See Complaint, SEC v. Panalpina, Inc., No. 10-cv-4334 (S.D. Tex. Nov. 4, 2010), ECF No. 1, available at https://www.sec.gov/litigation/complaints/2010/comp21727.pdf.)**
2	**Actual situation regarding measures against the bribery of foreign public officials in the country under investigation**	
2-1	**[Only for the US and the UK]** Please describe up to five (5) cases of bribery of foreign public officials that were severely sanctioned. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese).	
	Case 1 https://www.justice.gov/criminal-fraud/file/1292051/download Page 16	Case Information: **In re Credit Suisse (May 30, 2018)** https://www.justice.gov/criminal-fraud/file/1079596/download **U.S. Department of Justice** https://www.sec.gov/news/press-release/2018-128 **U.S. Securities and Exchange Commission** Outline of the case: a Hong Kong subsidiary {**Credit Suisse (Hong Kong) Limited}** of a Switzerland-based bank **(Credit Suisse AG)** engaged in a systematic scheme to hire, promote, and retain the children of Chinese officials in order to win business with those officials. ☒ Criminal penalty ☐ Administrative penalty ☒ Other (Disgorgement) Sanctions: The company ultimately disgorged approximately $30 million and paid a $47 million criminal fine for its FCPA violations. Applied laws and provisions: Credit Suisse AG ("CSAG") shares were publicly traded on the New

		York Stock Exchange and it was an "issuer" within the meaning of the **Foreign Corrupt Practices Act ("FCPA"), Title 15, United States Code, Section 78dd-1(a)** Credit Suisse (Hong Kong) Limited was an "agent" of an issuer within the meaning of the **FCPA, Title 15, United States Code, Section 78dd-1(a).** Many of Credit Suisse's clients in China were stateowned enterprises ("SOEs"), which were owned and controlled by the government of China and which performed a function that the government treated as its own, and thus were each an "instrumentality" within the meaning of the **FCPA, Title 15, United States Code, Section 78dd1(f)(1).** Foreign Official #1 was a "foreign official" within the meaning of the **FCPA, Title 15, United States Code, Section 78dd-1(f)(1).** As early as 2007, **Credit Suisse's Global Anti-Bribery Policy** specified that *"[o]ffers of employment, including internships, to Government Officials, their family members, or associates," could be considered to be "things of value" under the FCPA, and were prohibited* *if offered "to obtain or retain business, or otherwise secure an improper advantage."*
	Case 2 https://www.justice.gov/criminal-fraud/file/1292051/download Page13	Case Information: United States v. Joo Hyun Bahn, et al., No. 16-cr-831 (S.D.N.Y. Dec. 15, 2016), ECF No. 1 https://www.justice.gov/criminal-fraud/case/file/942226/download In the Matter of JooHyun Bahn https://www.sec.gov/news/press-release/2018-181 Outline of the case: a New York-based commercial real estate broker promised a middleman that he would pay a $2.5 million dollar bribe—and in fact paid $500,000 to the middleman as an upfront payment—to a government official at the sovereign wealth fund of a Middle Eastern country in order to induce the sovereign wealth fund to buy an $800 million dollar office building complex owned by the broker's client. However, unbeknownst to the real estate broker, the middleman did not have any relationship with the foreign official, and simply kept the $500,000 payment. Even though there was no foreign official actually receiving the bribe, the defendant was convicted of violating the FCPA. ☒ Criminal penalty ☒ Administrative penalty ☐ Other (Civil penalty) Sanctions: pay $225,000 in disgorgement, which was deemed satisfied by the forfeiture and restitution ordered at his September 6, 2018 sentencing in a related criminal proceeding, United States v. Bahn, Crim. No. 16 CR 00831-ER-1 (S.D.N.Y. 2016). Applied laws and provisions: **15 U.S.C. §§ 78dd-1(a), 78dd-2(a), 78dd-3(a)** Where corrupt intent is present, the FCPA prohibits paying, offering, or promising to pay money or anything of value (or authorizing the

		payment, offer, or promise).
	Case 3 https://www.justice.gov/criminal-fraud/file/1292051/download Page 16	Case Information United States v. Liebo, No. 89-cr-76 (D. Minn. Jan. 31, 1992) https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2012/06/22/1992-01-31-liebor-judgment.pdf Outline of the case: one defendant paid personal bills and provided airline tickets to a cousin and close friend of the foreign official whose influence the defendant sought in obtaining contracts. ☒ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: The defendant was convicted at trial and received a prison sentence. Applied laws and provisions: Aiding & abetting violations of the antibribery provisions of the Foreign Corrupt Practices Act of 1977; Making a false statement to the Defense Security Assistance Agency **15 U.S.C. Sections 78dd-l(a)(1) & (3), 78dd-2(a)(l) & (3), 78dd-2(b)(1)(B) & 78ff(c)(2) & 18** **U.S.C. Section 2 18 U.S.C. Sections 2 & 1001**
	Case 4 https://www.justice.gov/criminal-fraud/file/1292051/download Page 15	Case Information: SEC v. Lucent Technologies Inc., No. 07-cv-2301 (D.D.C. Dec. 21, 2007), ECF No.1 https://www.sec.gov/litigation/complaints/2007/comp20414.pdf In re Lucent Technologies (Nov. 14, 2007) https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2011/02/16/11-14-07lucent-agree.pdf Outline of the case: a New Jersey-based telecommunications company spent millions of dollars on approximately 315 trips for Chinese government officials, ostensibly to inspect factories and train the officials in using the company's equipment. In reality, during many of these trips, the officials spent little or no time visiting the company's facilities, but instead visited tourist destinations such as Hawaii, Las Vegas, the Grand Canyon, Niagara Falls, Disney World, Universal Studios, and New York City. Some of the trips were characterized as "factory inspections" or "training" with government customers, but consisted primarily or entirely of sightseeing at locations chosen by the officials, typically lasting two weeks and costing between $25,000 and $55,000 per trip. In some instances, the company gave the government officials $500 to $1,000 per day in spending money and paid all lodging, transportation, food, and entertainment expenses. The company either failed to record these expenses or improperly recorded them as "consulting fees" in its corporate books and records. The company also failed to implement appropriate internal controls to monitor the provision of travel and other things of value to Chinese government officials. ☒ Criminal penalty ☐ Administrative penalty ☒ Other ( )

		Sanctions: The company consented to the entry of a final judgment permanently enjoining it from future violations of the books and records and internal controls provisions and paid a civil penalty of $1,500,000. Additionally, the company entered into a non-prosecution agreement with DOJ and paid a $1,000,000 monetary penalty. Applied laws and provisions: Jurisdiction of the United States District Court (**Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. $9 78u(d), 78u(e) &d 78aa]** *The Defendant made use of the means or instrumentalities of interstate commerce, of the mails, or the facilities of a national securities exchange in connection with the acts, transactions, practices and courses of business alleged herein.* **Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. 5 78m(b)(2)(A)]** failure to make and keep books, records, or accounts that, in reasonable detail, accurately and fairly reflected the transactions and disposition of its assets. **Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. 5 78m(b)(2)(B)].** Failure to devise, maintain, and implement a system of internal accounting controls sufficient to provide reasonable assurances that payments were made in accordance with management's general or specific authorization.
	Case 5 https://www.justice.gov/criminal-fraud/file/1292051/download Page 16	Case Information: Complaint, SEC v. Schering-Plough Corp., No. 04-cv-945 (D.D.C. June 9, 2004), ECF No. 1, https://www.sec.gov/litigation/complaints/comp18740.pdf Admin. Proc. Order, In the Matter of Schering-Plough Corp., Exchange Act Release No. 49838 (June 9, 2004) (finding that company violated FCPA accounting provisions and imposing $500,000 civil monetary penalty) https://www.sec.gov/litigation/admin/34-49838.htm Outline of the case: a pharmaceutical company used charitable donations to a small local castle restoration charity headed by a foreign government official to induce the official to direct business to the company. Although the charity was a bona fide charitable organization, internal documents at the pharmaceutical company's subsidiary established that the payments were not viewed as charitable contributions but rather as "dues" the subsidiary was required to pay for assistance from the government official. The payments constituted a significant portion of the subsidiary's total promotional donations budget and were structured to allow the subsidiary to exceed its authorized limits. The payments also were not in compliance with the company's internal policies, which provided that charitable donations generally should be made to healthcare institutions and relate to the practice of medicine. ☐ Criminal penalty ☐ Administrative penalty ☒ Other ( ) Sanctions:

		$500,000 civil monetary penalty Applied laws and provisions: violations of the books and records and internal controls provisions of the **Foreign Corrupt Practices Act ("FCPA") (Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act)**
2-2	**[for jurisdictions other than the US and the UK]** Please describe some of the leading cases of bribery of foreign public officials detected, if any. Three cases or less is fine, and if you would like to explain more than three cases, please add a line. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese).	
	Case 1	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 2	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 3	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
2-3	Please explain the current trends and developments in detection and sanctions in cases involving bribery of foreign public officials.	The Biden Administration has publicly announced that public corruption is a top priority. As a result, it has increased resources and there is a reported uptick in investigations and there have been recent cross-jurisdictional resolutions with significantly large fines and penalties (exceeding $1 Billion USD) along with the imposition of monitors. In addition, the Department of Justice has recently issued a new policy on Corporate Criminal Enforcement that outlines several areas of focus for the department (https://www.justice.gov/opa/speech/file/1535301/download), and has recently stated that it expects to release a new edition of its Evaluation of Corporate Compliance Program in the next few weeks.
2-4	[Only for Australia, South Korea and France] (i) Have any of the cases of bribery of foreign public officials been subject to a sliding scale of fines?	☐Yes ☐No If Yes, please go to (ii)

	(ii) [If Yes in (i)] Please describe a typical case. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese). Note: If sanctions were imposed for the acts of a sales office, subsidiary, or agent, please also specify the laws, regulations and provisions on which they are based.	Case Information: Outline of the case: Type of sanction: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Fine amount: Factors considered in the calculation of the fine amount: How the amount of the fine was calculated: Laws and provisions on which they are based: Note: If you have more than one case that should be mentioned, please add them below.
2-5	(i) Have any of the cases of bribery of foreign public officials involved the extraterritorial application [38] of the local laws of the country under investigation?	☒Yes ☐No If Yes, please go to (ii) https://www.justice.gov/criminal-fraud/file/1292051/download Page 11 under the "alternative jurisdiction" provision of the FCPA enacted in 1998, U.S. companies or persons may be subject to the antibribery provisions even if they act outside the United States. The FCPA also applies to certain foreign nationals or entities that are not issuers or domestic concerns. Since 1998, the FCPA's anti-bribery provisions have applied to foreign persons and foreign non-issuer entities that, either directly or through an agent, engage in any act in furtherance of a corrupt payment (or an offer, promise, or authorization to pay) while in the territory of the United States. The FCPA's anti-bribery provisions can apply to conduct both inside and outside the United States. Issuers and domestic concerns—as well as their officers, directors, employees, agents, or stockholders—may be prosecuted for using the U.S. mails or any means or instrumentality of interstate commerce in furtherance of a corrupt payment to a foreign official. The Act defines "interstate commerce" as "trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof …." The term also includes the intrastate use of any interstate means of communication, or any other interstate instrumentality. Thus, placing a telephone call or sending an e-mail, text message, or fax from, to, or through the United States involves interstate commerce—as does sending a wire transfer from or to a U.S. bank or otherwise using the U.S. banking system, or traveling across state borders or internationally to or from the United States.

[38] This is a case in which the laws of a country are applied to acts committed outside that country, whereas the general rule is that the laws of a country are applied within the territory of that country and their effect does not extend to foreign countries.

	(ii) [If Yes in (i)] Please describe a typical case. In particular, if there are any cases of bribery by foreign employees, agents, etc., please give priority to such cases.	Case Information: Outline of the case: Key judicial decisions on governing law and jurisdiction: *Kindly refer to Part 2-1 Case 4 in this questionnaire.* This case presents an example of how third party intermediaries (agents) can be used to funnel bribes to government officials. Alcatel's subsidiaries allegedly used consultants who performed little or no legitimate work to funnel bribes to government officials in in Costa Rica, Honduras, Malaysia, and Taiwan in order to obtain or retain lucrative telecommunications contracts and other contracts. A lax corporate control environment enabled these third parties to be retained and paid. Alcatel employees failed to detect or investigate numerous red flags suggesting that its business consultants were likely making illicit payments and gifts to government officials. Employees responsible for reviewing due diligence reports on the company's business consultants either did not do so or were not equipped to do so; for example, they sometimes did not speak the language in which these reports were written, and had little or no understanding of these consultants' background or the tasks they purportedly performed. The respective heads of several Alcatel subsidiaries and geographical regions, some of whom reported directly to Alcatel's executive committee, authorized extremely high commission payments under circumstances in which they failed to determine whether such payments were, in part, to be funneled to government officials in violation of the FCPA. Note: If you have more than one case that should be mentioned, please add them below.

(2) イギリス

NO.	Question	Answer
1	**System for Combating Bribery of Foreign Public Officials**	
1-1	(i) Are criminal penalties provided as sanctions against natural and juridical persons?	☒Yes ☐No If Yes, please go to (ii)

	(ii) [If Yes in (i)] Please explain the statutory penalties (fine and/or imprisonment) and the relevant laws, regulations and provisions on which they are based.
	Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.
		Details of the Statutory Penalties (Fine and/or Imprisonment) / Laws, Regulations, and Provisions on Which They Are Based:
		Section 11, Bribery Act 2010[39]
		• Bribery offences committed under sections 1, 2 and 6 are "either way" offences; they can be tried summarily (usually before a bench of lay Magistrates) or on indictment (before a jury[40] in the Crown Court, presided over by a professional judge).
		• Bribery offences committed under section 7 are indictable only offences.
		• An individual who commits "active bribery" (*section 1*) or "passive bribery" (*section 2*) or bribery of foreign public officials (*section 6*) is liable:
		  ○ on summary conviction, to up to 12 months' imprisonment, or a fine up to the statutory maximum[41], or both; or
		  ○ on indictment, to up to a 10 years' imprisonment, or an unlimited fine, or both.
		• Any other person (i.e., a juridical person) who commits an offence under these sections is liable to a fine up to the statutory maximum on summary conviction, or an unlimited fine on conviction on indictment.
		• A section 7 offence (*Failure of commercial organisations to prevent bribery*) is indictable only, meaning that the case must be tried in the Crown Court. If a (juridical) person is convicted of an offence under this section, the maximum penalty is an unlimited fine.
		Sentencing guidelines for natural persons[42]
		• Natural persons charged with an offence under section 1, 2 or 6 of the Bribery Act 2010 ("**BA 2010**") can either be tried in the Magistrates Court or in the Crown Court. The sentencing guidelines for both courts have been in effect since 1 October 2014, with further changes made with effect from 1 October 2019 (these being the explanatory notes to the "Factors increasing seriousness" and "Factors reducing seriousness or reflecting personal mitigation").
		• In both the Magistrates and Crown courts, the sentence to be handed down will be decided in accordance with the following process:
		  1. Determining the offence category (with regard to culpability and harm)
		  a. Culpability is divided into three levels (from high culpability to lesser culpability. Harm is divided into four categories, with Category 1 being the most serious and Category 4 being the least serious.
		  2. Starting point and category range

[39] Bribery Act 2010 (legislation.gov.uk) – See Item 10 in the Supporting Documents Index.

[40] The jury decides on matters of fact and determines conviction.

[41] Prior to 1 April 2015, the statutory maximum fine for a summary offence was £5,000. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 ("**2015 Regulations**") were implemented to give effect to section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (the "**Act**"). This section removed the £5,000 cap on fines levied on summary conviction. Therefore, the "statutory maximum" referenced in BA 2010 is therefore moot, as an offender could face an unlimited fine, even on summary conviction. The 2015 Regulations apply to any offence committed on or after 12 March 2015 (but are not retrospective). See Items 2 and 2a in the Supporting Documents Index.

[42] See the Sentencing Guidelines for the Magistrates Court (Bribery – Sentencing (sentencingcouncil.org.uk)) and the Crown Court (Bribery – Sentencing (sentencingcouncil.org.uk)). See Items 1 and 3 in the Supporting Documents Index.

		a. The sentencing guidelines contain a table which sets out the penalty starting point based on the culpability and harm factors set out in step 1. b. From the starting point, the second step also contains a non-exhaustive list of factors increasing seriousness of the offence and factors reducing seriousness or reflecting personal mitigation. 3. Consider any factors which indicate a reduction, such as assistance to the prosecution 4. Reduction for guilty pleas (noting that the level of reduction will depend on when the guilty plea is made and in any event, the maximum level of reduction in sentence for a guilty plea is one-third)[43] 5. Totality principle a. The court should consider whether the total sentence is just and proportionate to the overall offending behaviour. b. This principle is to be considered where an offender is being sentenced for more than one offence, or where the offender is already serving a sentence. 6. Confiscation, compensation, and ancillary orders a. Confiscation orders under the Proceeds of Crime Act 2002[44] may only be made by the Crown Court. b. Where the offence has resulted in loss or damage, the court must consider whether to make a compensation order. c. The court may also consider whether to make ancillary orders. These may include a deprivation order, a financial reporting order, a serious crime prevention order and disqualification from acting as a company director. 7. Reasons a. Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence. 8. Consideration for time spent on bail (tagged curfew) **Sentencing guidelines for juridical persons[45]** • Like natural persons, juridical persons charged with an offence under section 1, 2 or 6 BA 2010 can be tried in either the Magistrates Court or the Crown Court. Indictable offences (i.e. including the 'corporate' offence of failure to prevent bribery under section 7 BA 2010) must be tried in the Crown Court, as a jury is required. As the sentencing guidelines note, most offences under BA 2010 will be sufficiently serious (indictable rather than summary offences) to justify trial in the Crown Court. • The sentencing guidelines for both courts have been in effect since 1 October 2014, with the only subsequent changes made with effect from 1 October 2019 (these being the explanatory notes to the "Factors increasing seriousness" and "Factors reducing seriousness or reflecting mitigation"). • The sentence to be handed down will be decided in accordance with the following process: 1. Compensation

[43] There is no specific guidance on a reduction of the sentence in exchange for a guilty plea to a bribery offence. The Sentencing Council has however produced a Definitive Guideline for reduction in sentence for a guilty plea, which is applicable to all offences prosecuted in England Wales. See Item 4 in the Supporting Documents Index.

[44] This enables the Court to order a defendant to pay a sum of money, which is calculated on the basis of the benefit which the defendant obtained from the offence. Further information can be found on the Crown Prosecution Service website (Proceeds of crime | The Crown Prosecution Service (cps.gov.uk)). See Item 5 in the Supporting Documents Index.

[45] See the Sentencing Guidelines for the Magistrates Court (Corporate offenders: fraud, bribery and money laundering – Sentencing (sentencingcouncil.org.uk)) and the Crown Court (Corporate offenders: fraud, bribery and money laundering – Sentencing (sentencingcouncil.org.uk)). See Items 6 and 7 in the Supporting Documents Index.

		2. Confiscation 3. Determining the offence category a. As with the sentencing guidelines for natural persons, the offence is categorised according to culpability and harm. b. Harm is represented by a financial sum. For bribery offences, the appropriate figure will normally be the gross profit from the contract obtained, retained, or sought as a result of the offending. An alternative measure for offences under section 7 BA 2010 may be the likely cost avoided by failing to put in place appropriate measures to prevent bribery. 4. Starting point and category range a. The starting point and category range are set out in a table, with the percentage for fines varying according to the culpability level and the harm figure multiplier. b. The guidelines include a non-exhaustive list of factors which increase or reduce the seriousness of the offence or reflecting mitigation for determining whether the fine should be adjusted. c. Additionally, the guidelines contain advice related to obtaining financial information for the offender (for the purposes of calculating a revenue- or profit-based penalty). 5. Adjustment of fine. a. The court should 'step back' and consider the overall effect of its orders. The combination of orders made, compensation, confiscation, and fine ought to achieve: i. the removal of all gain; ii. appropriate additional punishment; and iii. deterrence. 6. Consider any factors which would indicate a reduction, such as assistance to the prosecution 7. Reduction for guilty pleas 8. Ancillary orders 9. Totality principle a. If sentencing an offender for more than one offence, consider whether the total sentence is just and proportionate to the offending behaviour. 10. Reasons a. The court must give reasons for, and explain the effect of, the sentence.
1-2	(i) Are <u>administrative penalties</u> provided as sanctions against natural and juridical persons? Administrative penalties include fines and civil sanctions imposed by the administrative branch of government.	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the administrative penalties and the laws, regulations and provisions on which they are based. <u>Note:</u> Please clearly indicate laws and provisions on which	Administrative penalties: See below Laws, regulations and provisions on which they are based: **The Public Contracts Regulations 2015**[46] *Regulation 57 (Mandatory exclusions)* (1) Contracting authorities[47] shall exclude an economic operator from participation in a procurement procedure whether they have established…or

[46] The Public Contracts Regulations 2015 (legislation.gov.uk). See Item 8 in the Supporting Documents Index.

[47] "Contracting authorities" are defined under the Public Contracts Regulations 2015 to mean "the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law and includes central government authorities".

	they are based. Please also share the wording of such provisions.	are otherwise aware, that that economic operator has been convicted of any of the following offences: […] (b) corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889[48] or section 1 of the Prevention of Corruption Act 1906[49]; (c) the common law offence of bribery; (d) bribery within the meaning of section 1, 2 or 6 of the Bribery Act 2010, or section 113 of the Representation of the People Act 1983; […] In summary, juridical and natural persons which have been convicted of a bribery offence cannot tender for public contracts in the UK. However, there is a limited exception to this in circumstances where on an exceptional basis, for overriding reasons relating to the public interest (e.g. public health or protection of the environment). *(Regulation 57(6))*
1-3	(i) Are there any sanctions against natural or juridical persons for which a sliding fine scale has been introduced? Sliding fine scale: A system that prescribes a maximum fine amount depending on/ linking to the amount of the wrongful business transaction and the amount of the gain.	☐Yes ☒No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the index factors (e.g., net income, loss, bribe amount, etc.) for calculating the sanction amount and how it is calculated.	Index factor: How it is calculated:
1-4	(i) Is there a statute of limitations period for prosecution against natural and juridical persons?	☐Yes ☒No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the limitations period for prosecution against natural and juridical persons and the laws, regulations and provisions on which it is based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Limitations period for prosecution: See below. Laws, regulations and provisions on which it is based: No statute of limitations or similar regulation exists under criminal law in England and Wales. However, the "doctrine of delay" has been established through English case law. This would be considered where the prosecution has delayed bringing about proceedings, and so the defendant might request a permanent stay of proceedings. The test for a permanent stay on the ground of delay is quite strict. The Crown Prosecution Service has compiled several principles for the courts to consider when they receive an application for a stay on the ground of delay. Under these principles, a permanent stay "should be the exception rather than the rule" and no stay should be granted: (a) where the prosecution or complainant are not at fault, or (b) where the risk of an unfair trial is negligible[50].
	(iii) [If Yes in (i)] Is there a means to interrupt or suspend the limitations period for prosecution against natural and juridical persons?	☐Yes ☒No If Yes, please go to (iv)

[48] This act, a predecessor to the Bribery Act 2010, was repealed by the Bribery Act 2010.
[49] This act, a predecessor to the Bribery Act 2010, was repealed by the Bribery Act 2010.
[50] Abuse of Process | The Crown Prosecution Service (cps.gov.uk). See Item 9 in the Supporting Documents Index.

	(iv) [If Yes in (iii)] Please explain the grounds for the interruption or suspension and the scope of persons (individual natural person/juridical person/both) to whom the interruption or suspension of the statute of limitations on prosecution extends. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Grounds for interruption[51]: Grounds for suspension[52]: Applicable to: Applied laws and provisions:
1-5	Please explain, for each of the following cases, the application of the local laws of the country under investigation. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Two distinct situations have to be considered: the primary offences under sections 1, 2 or 6 BA 2010 and the 'corporate' offence of failure to prevent bribery under section 7. The relevant law on jurisdiction that applies to all three scenarios is contained in section 12 (*Offences under this Act: territorial application*) BA 2010[53]. The analysis also requires consideration of sections 7 (*Failure of commercial organisations to prevent bribery*) and 8 (*Meaning of associated persons*). *Section 12* Even if no act or omission which forms part of an offence under section 1, 2 or 6 takes place in the United Kingdom, an offence can *still* be committed under sections 1, 2 or 6 BA 2010 if: • a person's acts or omissions done or made outside the United Kingdom *would* form part of such an offence if done or made in the United Kingdom, and • that person has a close connection with the United Kingdom. (*Section 12(2)*) A person has a "close connection" with the UK if, and only if, the person was a British national, a British citizen, someone ordinarily resident in the UK or a UK-incorporated entity at the time the acts or omissions concerned were done or made. (*Section 12(4)*) *Section 7* A "relevant commercial organisation" ("**C**") commits the offence of failing to prevent bribery if a person ("**A**") associated with C bribes another person with the intention of obtaining or retaining business or an advantage for C. A key element of this offence is the definition of "relevant commercial organisation". This term is defined to include: a. UK-incorporated body corporate or partnership (wherever it carries on business); and b. a body corporate or partnership (wherever incorporated) carrying on a business, or part of a business, in the UK. (*Section 7(5)*) In essence, therefore, this offence requires a UK nexus. If, for example, a French employee of a German company pays a bribe in Italy, the German company would not commit an offence under section 7, *unless* the German company carried on part of its business in the UK. *Section 8* A person ("**A**") is associated with a relevant commercial organisation ("**C**") if A is a person who performs services for or on behalf of C. The capacity in which A performs services for or on behalf of C does not matter, so A could be C's employee, agent, or subsidiary.

[51] When the statute of limitations is interrupted, the limitations period that has been running until that point loses its effect. When the grounds for interruption are removed, the statute of limitations begins to run again from the beginning.

[52] Even if the statute of limitations is suspended, the limitations period that has been running up to that point does not lose its effect. Once the grounds for suspension are removed, the statute of limitations begins to run for the remainder of the limitations period.

[53] Bribery Act 2010 (legislation.gov.uk). See Item 10 in the Supporting Documents Index.

		Whether or not A 'performs services' for C will depend on the particular circumstances and not merely the nature of the relationship between A and C. If A is an employee of C, it is presumed that A performs services for C unless evidence is shown to the contrary. An offence can be committed by a relevant commercial organisation ("**C**") under section 7 BA 2010 irrespective of whether the acts or omissions which form part of the offence take place in the UK or elsewhere. (*Section 12(5)*) We understand, for the purposes of these scenarios, that the 'country under investigation' is the UK.
	(i) Employee A (an individual who is not a citizen of the country under investigation) of a branch or sales office located outside the country under investigation of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the branch or sales office locates or any third country).	Applicable to Company X: ☒Yes ☐No Applicable to Employee A: ☐Yes ☐No Conditions under which the local law applies (e.g., conspiracy with an overseas office): If an associated person (such as Employee A) of a relevant commercial organisation (on these facts, Company X) has bribed another person, the organisation can commit an offence under section 7 BA 2010 for failing to prevent bribery[54]. On these facts, it seems almost incontestable that Employee A is an associated person of Company X. This offence can be committed irrespective of where the acts or omissions forming the offence took place. A natural person, such as Employee A, would need to have a "close connection" to the UK in order to commit one of the primary offences under sections 1 or 6 of BA 2010. Applied laws and provisions: For a "close connection" with the UK, the test in section 12(4) BA 2010 would need to be met. Employee A is not a citizen of the UK, so would not be a "close connection". With regard to the section 7 offence, section 12(5) BA 2010 provides that an offence can be committed under section 7 BA 2010 irrespective of whether the acts or omissions take place in the UK or elsewhere.
	(ii) Employee B (an individual who is not a citizen of the country under investigation) of a foreign subsidiary of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the foreign subsidiary locates or any third country). Note: If the scope of application varies depending on whether it is subsidiary or affiliate, please explain each.	Applicable to Company X: ☒Yes ☐No Applicable to Employee B: ☐Yes ☒No Conditions under which the local law applies (e.g., conspiracy with an overseas office): Employee B is unlikely to attract personal liability for a primary offence under sections 1 or 6 BA 2010 because B lacks a close connection to the UK. If Employee B's bribes are wholly unrelated to services performed on behalf of Company X (for example, the foreign subsidiary has a separate business which cannot be said to 'provide services' for Company X), it seems unlikely that Employee B's bribes can lead to the commission of a section 7 offence by Company X. A mere corporate ownership chain (where there is no UK nexus) is not likely to amount to providing services within the meaning of section 7 BA 2010. If the foreign subsidiary *is* providing services for Company X then there is a question of the lengths to which a prosecutor would go – i.e. the liability of Company X for the conduct of an associated person of the foreign subsidiary (on which there is no jurisprudence). It would be necessary to demonstrate that Employee B is providing services for Company X. If it could be said that B is the *alter ego* of the foreign subsidiary (in other words, the 'controlling mind' of the subsidiary) then the acts of Employee B will be those of the foreign subsidiary. In that event, it would not be necessary to consider the liability of a relevant commercial organisation for the acts of an employee of an associated person of the relevant commercial organisation. On those facts, the acts of Employee B *are* those of the foreign subsidiary, which is an associated person of Company X. Thus Company X is liable under section 7 (on the assumption that Company X cannot rely on the defence under section 7 of having 'adequate procedures' in place). It is certainly possible, on these facts, that Employee B is providing services

[54] The organisation may be able to invoke the 'adequate procedures' defence, but this has no bearing on jurisdictional issues.

		for Company X (regardless of the subsidiary/employee chain – this is a question of fact). If this is indeed the case, then X is liable under section 7 (again, on the assumption that Company X does not have 'adequate procedures' in place). This can be the case even if Employee B is a mere employee (as opposed to a controlling mind) of the foreign subsidiary. Indeed, we would ordinarily expect the conduct of employees of an associated person to be regarded as those of the associated person and therefore attributable to the relevant commercial organisation for whom the associated person is providing services. The issue of multiple 'tiers' of associated persons is likely to become more relevant when services are contracted on a number of occasions through a chain of sub-contractors. Conceivably, the relationship between Company X and the foreign subsidiary is such that the foreign subsidiary is carrying on part of a business in the UK (again, this depends on the relationship). If so, the foreign subsidiary is a 'relevant commercial organisation for the purposes of BA 2010 and is therefore potentially liable for Employee B's conduct, as an associated person of the foreign subsidiary. This does not, however, necessarily dictate that Company X would commit a section 7 offence in this case. Applied laws and provisions: If, following the analysis above, it is indeed the case that the foreign subsidiary and Employee B are providing services on behalf of Company X, they would meet the tests in sections 8 and 12(4) BA 2010. Section 7 BA 2010 would apply to Company X if it is found that Employee B paid a bribe while providing services on behalf of the foreign subsidiary.
	(iii) Employee C (an individual who is not a citizen of the country under investigation) of a foreign agent of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the foreign agent locates or any third country).	Applicable to Company X: ☒Yes ☐No Applicable to Employee A: ☐Yes ☒No Conditions under which the local law applies (e.g., conspiracy with an overseas office, if any): If an agent, as an "associated person" of a "relevant commercial organisation" commits a bribery offence on behalf of the organisation, that organisation itself could be liable under section 7 BA 2010 for failing to prevent bribery. Applied laws and provisions: The associated persons test is set out in section 8 BA 2010. There is a question of whether Employee C, as an employee of the foreign agent of Company X, has performed services for or on behalf of Company X, and would therefore be an associated person for the purposes of BA 2010. It would need to be determined whether Employee C or the foreign agent is providing the services to Company X. Similar to the analysis regarding Employee B above, whether Company X would liable to an offence under section 7 BA 2010 would depend on the specific services which Employee C is performing and if there are some aspects of Employee C's work which, whilst related to the services provided by the foreign agent to Company X, are not themselves 'the services'. Again, we would usually expect the conduct of employees of the agent to be regarded as those of the agent and therefore attributable to Company X, on the same basis as discussed above, but note that there is no jurisprudence on the point. Section 12(5) BA 2010 states that an offence can be committed under section 7 BA 2010 irrespective of whether the acts or omissions take place in the UK or elsewhere.
2	**Actual situation regarding measures against the bribery of foreign public officials in the country under investigation**	
2-1	**[Only for the US and the UK]** Please describe up to five (5) cases of bribery of foreign public officials that were severely sanctioned. Note: Please clearly indicate laws and provisions on which they are based.	

	Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese).	
	Case 1	Case Information: Airbus SE (2020) Outline of the case: The investigation into Airbus was conducted jointly by the US Department of Justice ("**DOJ**"), the US Department of State ("**DOS**"), the Serious Fraud Office ("**SFO**") and the French Parquet National Financier ("**PNF**"), each of which entered into a DPA (or the local equivalent of a DPA) with Airbus at the conclusion of the investigation.[55] Airbus had had a practice of hiring third parties to win sales contracts in return for a commission. It had anti-corruption policies and committees to oversee the third parties' actions. However, according to the indictment agreed to in the DPA, employees and third parties offered very substantial sums of money by way of bribes to secure the purchase of aircraft by various airlines and governments. Some of the members of Airbus' Company Development and Selection Committee were aware of and/or involved in the wrongdoing. When internal audits conducted by Airbus uncovered the wrongdoing, the group froze certain payments arranged by third parties. Airbus then contacted the SFO, which opened a criminal investigation in partnership with the DOJ, DOS and PNF. The Airbus case was the first (and, thus far, only) case involving a foreign company, where the suspected offences occurred wholly outside the UK. Airbus SE is a French and Dutch domiciled company registered in the Netherlands. The SFO investigated Airbus' conduct in South Korea, Indonesia, Sri Lanka, Malaysia, Taiwan, Ghana, Colombia, and Mexico.[56] ☐ Criminal penalty ☐ Administrative penalty ☒ Other (Deferred Prosecution Agreement) Sanctions: Airbus agreed to pay a fine, disgorgement of profits and costs amounting to €991 million (£830 million) in the UK and an overall total of €3.6 billion, including fines paid to the DOS, DOJ and PNF. Applied laws and provisions: Airbus SE is not a UK-incorporated entity. However, the SFO looked at Airbus SE's relationship with two UK subsidiaries (Airbus Operations Limited and Airbus Military UK Ltd). The SFO concluded that: *"A part of Airbus SE business is therefore carried on in the UK and Airbus SE has continuously carried on a part of its business in the United Kingdom since, for material purposes, 1 July 2011. It is agreed that the UK companies, Airbus Operations Limited and Airbus Military UK Ltd are subject…to the strategic and operational management of Airbus SE. It follows that Airbus SE…, Airbus Group NV and Airbus Group SE, is a 'relevant commercial organisation' for the purposes of Section 7 of the Bribery Act 2010."*[57] Section 7(1) BA 2010 states: "A relevant commercial organisation ("C") is guilty of an offence under this section if a person ("A") associated with C bribes another person intending to obtain or retain business for C, or to obtain or retain an advantage in the conduct of business for C." Under section 7(5) BA 2010 a 'relevant commercial organisation' includes "any other body corporate (wherever incorporated) which carries on a

[55] A Deferred Prosecution Agreement is an agreement reached between a prosecutor and an organisation (never an individual), where the organisation, absent the DPA, could be prosecuted for one or more offences. Under a DPA, prosecution will be suspended for a defined period, provided that the organisation meets certain conditions, which are set out in the terms of the DPA. The benefit of a DPA for an organisation is that it can make reparations for an offence without being convicted of that offence. In the UK, DPAs must be concluded under the supervision of a judge.

[56] Paragraph 38, Airbus DPA Statement of Facts

[57] Paragraph 11, Airbus DPA Statement of Facts

		business, or part of a business, in any part of the United Kingdom".
	Case 2	Case Information: Rolls-Royce PLC and Rolls-Royce Energy Systems, Inc. (2017) Outline of the case: Rolls-Royce had engaged in systemic bribery and corruption over a period of 24 years in seven countries. The offences in this instance related to the relationship between Rolls-Royce and an official of Russian state-owned company, Gazprom. It should be noted that these offences formed one count (Count 7) within a 12-count indictment in the DPA. During a tender process for the supply of gas compression equipment to Gazprom, the official had requested (and Rolls-Royce employees made) payment in exchange for influence over the tender in Rolls-Royce's favour. The payment was made by way of a "commission" to a Russian intermediary, and amounted to approximately £8 million. At the end of the tender process, Rolls-Royce won the contract to supply Gazprom. On this, and the other 11 counts, Rolls-Royce cooperated extensively with the SFO's investigation. ☐ Criminal penalty ☐ Administrative penalty ☒ Other (Deferred Prosecution Agreement) Sanctions: The DPA involved payments of £497 million (comprising disgorgement of profits of £258 million and a financial penalty of £239 million) plus interest. Rolls-Royce also reimbursed the SFO's costs in full (c. £13 million). It should be noted that the payments made by Rolls-Royce related to all 12 counts referenced in the DPA; Count 7 incurred a financial penalty of £96.6 million.[58] Applied laws and provisions: Count 7 in the DPA was an indictment for the crime of "conspiracy to corrupt", which is an offence under section 1 of the Criminal Law Act 1977. This is because the offences in question occurred between 2008 and 2009, which was prior to the implementation of the BA 2010. Offences referenced under other counts in the indictment occurred both before and after the implementation of the BA 2010. According to the judgment, Rolls-Royce Systems, Inc. ("**RRESI**") was included on the indictment as the relevant Rolls-Royce entity for the project because, although the contracting entities were different subsidiary companies, RRESI was supplying, manufacturing, and selling equipment for the project. A senior employee of Rolls-Royce PLC was working on behalf of RRESI and its business on the project and, at a functional level, sufficiently senior to bind RRESI.[59]
	Case 3	Case Information: Standard Bank Plc (2015) Outline of the case: The Government of Tanzania had raised finance from Standard Bank and its sister company Stanbic Bank Tanzania Limited ("**SBT**"). A combined fee of 1.4% of gross proceeds raised was initially quoted for the financing, which SBT increased to 2.4%. The additional 1% was to be paid to a "local partner", which was a Tanzanian company of which a government member was a director and shareholder. Standard Bank did not have adequate procedures in place to guard against the risks of corrupt practices in Tanzania, and it relied on SBT to conduct appropriate due diligence into the "local partner". By completion of the financing, US$600 million had been raised. The local partner had opened an account with SBT, into which SBT paid the 1% fee of US$6 million. The money was quickly withdrawn, so SBT escalated its concerns about the withdrawals to Standard Bank. Standard Bank commenced an internal investigation and self-reported to the Serious and Organised Crime Agency (now the National Crime Agency) and

[58] See Appendix B, *Serious Fraud Office v Rolls-Royce PLC, Rolls-Royce Energy Systems Inc* [2017] 1 WLR 189, judgment. See also Item 16 in the Supporting Documents Index.

[59] *Serious Fraud Office v Rolls-Royce PLC, Rolls-Royce Energy Systems Inc* [2017] 1 WLR 189, judgment, paragraph 76.

		the SFO. The SFO was satisfied that there was a reasonable suspicion that Standard Bank had failed to prevent bribery. ☐ Criminal penalty ☐ Administrative penalty ☒ Other (Deferred Prosecution Agreement) Sanctions: As a result of the DPA, Standard Bank was ordered to pay financial orders of US$25.2 million and required to pay the Government of Tanzania a further US$7 million in compensation (calculated as payment of compensation of US$ 6 million plus US$ 1 million in interest). The payments made by Standard Bank consisted of disgorgement of its profit on the financing of US$ 8.4 million and a financial penalty of US$ 16.8 million.[60] Standard Bank also agreed to pay the SFO's costs of £300,000 in relation to the investigation and subsequent resolution of the DPA. The financial penalty of US$ 16.8 million had been calculated in line with an assessment of culpability and harm following the Sentencing Guidelines, under which the judge concluded that the appropriate penalty should be 300% of the total fee.[61] This amount was reduced by one third in acknowledgment of an early guilty plea by Standard Bank and other factors which reduced the seriousness of the offence, including the fact that Standard Bank had self-reported the incident, had disclosed its internal investigation, and had cooperated with the SFO's investigation.[62] This was the first DPA entered into following the entry into force of BA 2010. Applied laws and provisions: The SFO had been satisfied that Standard Bank had failed to prevent bribery contrary to section 7 BA 2010.
	Case 4	Case Information: Credit Suisse International, Credit Suisse Securities (Europe) Ltd and Credit Suisse AG (2021) Outline of the case: Credit Suisse was fined by the Financial Conduct Authority ("FCA") for serious financial crime due diligence failings related to loans worth over US$1.3 billion, which the bank arranged for the Republic of Mozambique. These loans, and a bond exchange, were tainted by corruption, and Credit Suisse additionally had to agree to forgive US$200 million of debt owed by the Republic of Mozambique to avoid a larger fine. Credit Suisse should have appreciated the unacceptable bribery risk associated with the loans and bond exchange, which were related to government-sponsored projects. Mozambique had engaged a contractor on these projects, who paid kickbacks estimated as over US$50 million to members of Credit Suisse's deal team, to secure the loans at more favourable terms. The FCA found that, while those Credit Suisse employees took steps to deliberately conceal the kickbacks, warning signs of potential corruption should have been clear to Credit Suisse's control functions and senior committees. There had been repeated insufficient challenge within Credit Suisse, or scrutiny and inquiry in the face of important risk factors and warnings. ☐ Criminal penalty ☒ Administrative penalty ☐ Other ( ) Sanctions: Credit Suisse was fined over £147 million by the FCA. Applied laws and provisions: The fine issued by the FCA was not linked to offences committed under BA 2010. This was due to the fact that Credit Suisse employees had accepted bribes and not paid them, which did not trigger liability under section 7 BA 2010. Rather, as a business regulated by the FCA in the UK, the FCA

[60] *Serious Fraud Office v Standard Bank Plc [2015] 11 WLUK 804,* judgment, paragraph 13. See Item 19 in the Supporting Documents Index.

[61] *Serious Fraud Office v Standard Bank Plc [2015] 11 WLUK 804,* judgment, paragraph 16

[62] *Serious Fraud Office v Standard Bank Plc [2015] 11 WLUK 804,* judgment, paragraph 15

		considered that Credit Suisse had breached Principles 2 and 3 of the FCA Principles for Business. The FCA Principles for Business (the "Principles") (and details of penalties for breaching any of those principles) are detailed and cover a multitude of topics which do not relate to bribery and/or corruption. For the purposes of this response, we propose to focus on the relevant Principles that the FCA found Credit Suisse to have breached. The Principles do not explicitly address bribery or corruption, or other forms of financial crime. However, the FCA may determine that an FCA-regulated firm has breached certain Principles through its involvement in, or failure to prevent, bribery and corruption. The Principles form part of the FCA Handbook (which is a consolidated guide to all FCA legal instruments which FCA-regulated firms and individuals must comply with). The Principles are deliberately broad and provide an overarching governance structure for FCA-regulated firms. As previously noted, Credit Suisse was not prosecuted under BA 2010 in this case as its employees had received (not paid) bribes. The section 7 offence under BA 2010 (which specifically refers to an associated person of a commercial organisation bribing another person) was therefore not applicable. In this case, the FCA determined that Credit Suisse had breached Principles 2 and 3 and had also breached SYSC 6.1.1R (this being one of the rules forming part of the larger FCA Handbook). For reference, the SYSC is intended to encourage directors and senior managers of an FCA-regulated firm to take appropriate practical responsibility for their firm's arrangements on matters which are likely to be of interest to the FCA and to amplify Principle 3 (under which a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems). FCA penalties issued in relation to financial criminal misconduct generally refer to breaches of Principles 2 and 3 and other relevant sections of the FCA Handbook. On that basis, we have provided the following summary of the provisions of Principles 2 and 3 and SYSC 6.1.1R, which the FCA may refer to in future cases related to bribery and corruption. Principle 2 Under this Principle, Credit Suisse was required to conduct its business with due skill, care and diligence. The FCA determined that Credit Suisse had breached this Principle by failing to adequately assess the risks related to these transactions. Principle 3 and SYSC 6.1.1R SYSC 6.1.1R is complementary to Principle 3, and for the purposes of the FCA's decision was considered in tandem. Principle 3 required Credit Suisse to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. SYSC 6.1.1R required Credit Suisse to establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and appointed representatives with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime. The FCA determined that Credit Suisse had breached Principle 3 and SYSC 6.1.1R because: • It had failed to sufficiently prioritise the mitigation of financial crime risks, including corruption risks, within its emerging markets business; • It lacked an adequate financial crime strategy for the management of those risks; • On multiple occasions there was insufficient challenge and scrutiny in the face of important risk factors related to the transactions; and • Although Credit Suisse did consider relevant risk factors, it consistently gave insufficient weight to them individually and failed

		adequately to consider them holistically. **Calculation of penalty** The financial penalty which was levied against Credit Suisse was calculated by reference to Chapter 6 of its Decision Procedure and Penalties Manual ("DEPP"). Under section 66 of the Financial Services and Markets Act 2000 ("FSMA"), the FCA is entitled to take disciplinary action against firms and individuals who have breached the requirements of FSMA. It should be noted that the FCA also derives its rule-making powers from section 137A FSMA. Under DEPP 6.2.14G, a breach of a Principle will make a firm liable to disciplinary action. DEPP 6.2.15G further notes that, in determining whether a Principle has been breached, it is necessary to look to the standard of conduct required by the relevant Principle. The onus will be on the FCA to show that a firm has breached a Principle. DEPP 6.5A sets out the FCA's five steps for determining penalties to be imposed on firms which have engaged in misconduct. Each step is followed in turn when the FCA calculates its penalties (i.e., the figure arrived at in Step 2 is used in the Credit Suisse case as the starting figure at Step 3): 1. Step 1 – Disgorgement. The FCA will seek to deprive a firm of the financial benefit derived directly from the breach. 2. Step 2 – The seriousness of the breach. This figure is determined by the FCA. It considers that, in many cases, the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, and the figure will therefore be based on a percentage of the firm's revenue from the relevant products or business areas. The FCA will use an appropriate alternative where revenue is not an appropriate indicator of harm. a. The percentage of revenue which will form the basis of the penalty will be between 0% and 20%, divided into five fixed levels which represent the seriousness of the breach. These are: i. Level 1 – 0% ii. Level 2 – 5% iii. Level 3 – 10% iv. Level 4 – 15% v. Level 5 – 20% b. The FCA considers more serious factors (falling within Level 4 or Level 5) to include where financial crime was facilitated, occasioned or otherwise attributable to the breach, and where the breach created a significant risk that financial crime would be facilitated, occasioned or otherwise occur. 3. Step 3 – Mitigating and aggravating factors. The FCA may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach. 4. Step 4 – Adjustment for deterrence. If the FCA considers the Step 3 figure to be insufficient to deter the firm which committed the breach, or others, from committing further or similar breaches, it may increase the penalty. 5. Step 5 – Settlement discount. The FCA and the firm on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the FCA and the firm reached an agreement. It should be noted that the FCA is entitled to take additional or alternative action to the imposition of a financial penalty. • Under section 33 FSMA, the FCA may withdraw the authorisation of an individual or entity who was previously authorised under Part IV FSMA (Permission to Carry on Regulated Activities). • With regard to individuals, the FCA is entitled to issue a prohibition order under section 56 FSMA. A prohibition order can act as a general ban on that individual working within the financial services sector, or prohibit the

		individual from performing functions specified in the prohibition order.
	Case 5	Case Information: Glencore (2022) Outline of the case: In June 2022, Glencore pleaded guilty to seven counts of bribery, relating to bribes it had paid to maximise its oil trading profits in five African countries. An investigation by the SFO revealed that the company had paid bribes worth a total of US$29 million to secure its access to oil in Cameroon, Equatorial Guinea, Ivory Coast, Nigeria and South Sudan. Glencore used local agents to pay bribes to state-owned oil companies and government ministries, often disguising a bribe as an unspecified "service fee", "signing bonus" or "success fee" in financial reports. In one instance, Glencore employees transported US$800,000 in cash via private jet to South Sudan, which was paid to government officials. The cash was recorded as expenses for "opening [the] office in South Sudan". ☒ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Glencore was fined over £280 million following its guilty pleas. This was comprised of a penalty of £183 million, a confiscation order of £93 million and the investigation and prosecution costs of the SFO of £4.5 million. In his sentencing remarks, Fraser J gave reasons for the fines payable by Glencore: [63] • Although the Court had the power to make a compensation order, it chose not to make one, on the basis that: o the nature of the offences were not such that compensation could be readily and easily ascertained; o it would be very difficult to identify any third parties who had suffered loss; and o potential victims were entitled to pursue claims for compensation in the civil courts, and Fraser J asserted that those courts were more suitable for assessing the correct measure of compensation. • The Court did make a confiscation order, which had been calculated based on Glencore's benefit from its general criminal conduct. • The Court listed aggravating factors which applied to all seven counts[64] and included: o attempts made to conceal misconduct by using false invoices/descriptions of cash withdrawals; o substantial harm to the economic operations of other entities who were engaged in oil trading; o the international nature of the offences, which were committed across borders and jurisdictions; and o senior personnel being closely involved in criminal activity, with Glencore's anti-bribery and corruption policies ignored. • There were also mitigating factors in the sentencing, which were that Glencore had no previous convictions; it fully co-operated with the investigation and made early admissions.[65] • The level of corruption for one of the counts merited a multiplier above the top of the category range for fines.[66] Fraser J stated that the total of fines were significant and that other companies tempted to engage in similar corruption should be aware that similar sanctions lie ahead. This makes clear that effect of the sentence is to act as a deterrent. Applied laws and provisions: This case marked the first corporate conviction for the active authorisation of

[63] See Sentencing Remarks Glencore (judiciary.uk). See also Item 22 in the Supporting Documents Index.
[64] Paragraphs 31 and 32 of the sentencing remarks.
[65] Paragraph 33 of the sentencing remarks.
[66] Paragraph 44 of the sentencing remarks.

		bribery (rather than merely a failure to prevent bribery). The offences to which Glencore pleaded guilty were: • five substantive charges relating to 'active bribery' under section 1 BA 2010; and • two charges under the failure to prevent bribery offence (section 7 BA 2010). The reason why BA 2010 was applied to Glencore was because Glencore carries on a business in the UK. Entities and individuals carrying on a 'regulated activity' by way of business in the UK must either be duly authorised or exempt from such authorisation under section 19 FSMA. Exemptions are very limited, both in terms of the specific activities which are exempt, and the persons who can benefit from an exemption. Regulated activity is a broad term, which is defined in section 22 FSMA and in significant detail in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. Generally, a person will carry on a regulated activity if they operate in the financial services sector (for example, in insurance, dealing in investments or taking deposits). As Credit Suisse carries on certain regulated activities in the UK, it was duly authorised and regulated by the FCA. This meant that Credit Suisse was required to comply with the FCA Handbook, including the Principles. It additionally meant that the FCA was entitled to take disciplinary action against Credit Suisse when the firm's failure to prevent financial crime led to a breach of the Principles. The SFO's investigation found that a UK-based subsidiary of Glencore, Glencore UK Ltd and its wholly owned subsidiary Glencore Energy (UK) Ltd had engaged in the bribery activities. Specifically, the bribery offences were all linked to Glencore's West Africa oil trading desk in London (see paragraph 9 of the sentencing remarks). Unlike the Credit Suisse case, agents used by Glencore engaged in 'active' bribery rather than 'passive' bribery (i.e., they paid rather than received bribes, using funds paid to the agents by Glencore, in circumstances where Glencore failed to prevent the agents from using a portion of the funds to pay bribes). This triggered the offence under section 7 BA 2010, as this offence relates to active bribery.
2-2	**[for jurisdictions other than the US and the UK]** Please describe some of the leading cases of bribery of foreign public officials detected, if any. Three cases or less is fine, and if you would like to explain more than three cases, please add a line. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese).	

	Case 1	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 2	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 3	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
2-3	Please explain the current trends and developments in detection and sanctions in cases involving bribery of foreign public officials.	The recent successful prosecutions in the Petrofac and Glencore cases might indicate a deviation from the DPA trend seen in the UK regarding 'failure to prevent' offences over the past few years. However, it remains to be seen whether the SFO will continue to look to prosecute corporate offenders for bribery offences, or whether it will continue to enter into DPAs. In any event, the Glencore case is a stark reminder that the Courts have the power to impose significant fines and/or penalties on companies who are either actively engaged in bribery or otherwise remiss in ensuring that adequate procedures are in place to prevent bribery. In terms of 'failure to prevent' offences more generally, the SFO and Crown Prosecution Service have called for this offence to be extended to additional forms of economic crime in the UK, including fraud[67]. If the offence is extended, this may well trigger an increase in prosecutions for economic crime more generally. The rationale for including failure to prevent offences in the context of fraud is that, under the current system in England and Wales, only the acts of senior persons representing the company's "controlling mind and will" can be attributed to the company itself. In practice, this means larger organisations, with complex management and decision-making structures, are often more easily able to avoid criminal liability. In addition, the Law Commission published a paper in 2022, relating to failure to prevent offences. At present, there is a defence available to the section 7 BA 2010 offence, if a company can prove that it had in place 'adequate procedures' designed to prevent persons associated with it from committing bribery. A similar (but distinct) defence was introduced in the Criminal Finances Act 2017, where a company has a defence to the offence of failing to prevent the facilitation of tax evasion if it has in place 'reasonable procedures'. The Commission noted in its paper that "the meaning of adequate has generally been understood to mean "reasonable in all the circumstances"". However, commentary on the paper notes that: *…the increasing number of Deferred Prosecution Agreements entered into by companies under investigation for failing to prevent bribery suggests that organisations prefer the certainty afforded by reaching a settlement with the Serious Fraud Office to the risk of meeting the seemingly high threshold of proving at trial that adequate bribery prevention procedures were in place.*[68]

[67] The Serious Fraud Office and the Crown Prosecution Service call for failure to prevent offences to be extended - Lexology. See Item 23 in the Supporting Documents Index.

[68] Failure to prevent offences: the shift from 'adequate' to 'reasonable' procedures | DWF Group. See Item 24 in the Supporting Documents Index.

2-4	[Only for Australia, South Korea and France] (i) Have any of the cases of bribery of foreign public officials been subject to a sliding scale of fines?	☐Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please describe a typical case. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese). Note: If sanctions were imposed for the acts of a sales office, subsidiary, or agent, please also specify the laws, regulations and provisions on which they are based.	Case Information: Outline of the case: Type of sanction: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Fine amount: Factors considered in the calculation of the fine amount: How the amount of the fine was calculated: Laws and provisions on which they are based: Note: If you have more than one case that should be mentioned, please add them below.
2-5	(i) Have any of the cases of bribery of foreign public officials involved the extraterritorial application [69] of the local laws of the country under investigation?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please describe a typical case. In particular, if there are any cases of bribery by foreign employees, agents, etc., please give priority to such cases.	Case Information: Outline of the case: Key judicial decisions on governing law and jurisdiction: Note: If you have more than one case that should be mentioned, please add them below. Please note that all cases shared above involved the extraterritorial application of BA 2010, as the bribery of foreign public officials occurred outside the UK in each case. Few cases of domestic bribery in the UK (bribes paid within the UK) are investigated by the SFO, as they are more likely to be small sums paid between private individuals. At present, most domestic bribery cases go unreported in the English law reports.

[69] This is a case in which the laws of a country are applied to acts committed outside that country, whereas the general rule is that the laws of a country are applied within the territory of that country and their effect does not extend to foreign countries.

(3) ドイツ

NO.	Question	Answer
1	**System for Combating Bribery of Foreign Public Officials**	
1-1	(i) Are criminal penalties provided as sanctions against natural and juridical persons?	☒Yes for natural persons ☒No for juridical persons If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the statutory penalties (fine and/or imprisonment) and the relevant laws, regulations and provisions on which they are based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Details of the Statutory Penalties (Fine and/or Imprisonment) / Laws, Regulations, and Provisions on Which They Are Based: Under German law, criminal sanctions are only provided against natural persons. Regarding acts of bribery, three scales of criminal sanctions are provided for by the German Criminal Code (*Strafgesetzbuch*, StGB): **Section 334(1) Phrase 1 of the StGB** provides for a sanction comprised between 3 months and 5 years of imprisonment for any person who offers, promises, or grants to a public official an advantage for the latter or a third party in return for the fact that he has performed or will performed an official act and has hereby violated or will violate his official duties. **Section 334(3) of the StGB** provides that this sanction shall already apply if the offender offers, promises or grants the advantage in return for a future action if he attempts to lead the other person (i.e., the public official) to violate his duty in the course of the act or, insofar as the act is within his discretion, allow himself to be influenced by the advantage in the exercise of his discretion. **Section 334(1) Phrase 2 of the StGB** provides that in less serious cases ("*minder schwerer Fall"*), the penalty is imprisonment for up to two years or a fine. The decisive factor for the existence of a less serious offence is whether the entire offence, including all subjective elements and the personality of the offender, deviates from the average of the cases that usually occur according to experience to such a significant degree that the application of this sentencing range appears to be necessary. **Section 335(1) Nr. 1 (b) of the StGB** provides that in particularly serious cases ("*besonders schwere Fälle*"), the above-mentioned offence shall be punishable by imprisonment for a term of one to ten years. As a rule, such particularly serious case exists if (i) the offence relates to an advantage of great extent ("*Vorteil großen Ausmaßes*"), (ii) the offender continues to accept advantages which he has demanded in return for performing an official act in the future, or (iii) the offender acts commercially or as a member of a gang that has joined together to commit such acts on a continuous basis (Sec. 335(2) StGB). This rule only means that of one of the above-mentioned examples is realised, there is a rebuttable presumption that it is to be regarded as a particularly serious case of bribery. Finally, **Sec. 335a of the StGB** provides for the application of Sections 334 and 335 StGB to public officials of a foreign State and to a person charged with the exercise of public functions on behalf of a foreign State (Sec. 335a(1) Nr. 2 (a)), as well as to public officials of an international organisation (Sec. 335a(1) Nr. 2 (b)). The above-mentioned penalties are therefore applicable to both acts of bribery of national public officials and foreign public officials. Section 335a(1) No. 2 StGB provides for sanctions for offering, promising or giving bribes as an incentive to the recipient's future violation of his official duties to foreign public officials. Foreign public officials include public officials of any foreign state (including public officials of a member state of the European Union) or international organization, any person entrusted to exercise a public function with or for an authority of a foreign state or international organization, or soldiers of a foreign state or international organization. Natural persons committing the bribery against foreign public officials may

		face (i) imprisonment from three months to five years (giving and taking bribes as an incentive for the recipient's violation of his or her official duties), (ii) in aggravated cases, imprisonment for up to 10 years, or (iii) daily fine for up to 24 months. In the latter case, a judge will ultimately determine the daily penalty, taking the financial situation of the individual into account. Nevertheless, the minimum amount of the fine is EUR 5 (5 daily sentences of 1 euro), and the maximum amount is EUR 10.8m (360 daily sentences of 30,000 euros, Section 40 (1), (2) StGB). Moreover, administrative monetary fines may be imposed directly on companies if a company representative or representative body (e.g., member of the board of directors, general manager) commits a criminal or administrative offense, and the company hereby breaches a company duty or profits in an illegal manner (Section 30 of the German Administrative Offence Act). If a company representative violates his or her supervisory duties, that is, if for example no adequate safeguards to prevent corruption have been implemented, the company representative can be held liable. At the same time, the violation of a supervisory duty by the company representative can be attributed to the company and a monetary fine can be imposed on the company (Section 130 of the German Administrative Offence Act). The fines for a company can be up to EUR 10 million per offense in case of wilful acts, or EUR 5 million per offense in case of negligent acts (Section 130(2) of the German Administrative Offence Act).
1-2	(i) Are <u>administrative penalties</u> provided as sanctions against natural and juridical persons? Administrative penalties include fines and civil sanctions imposed by the administrative branch of government.	☒Yes for both ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the administrative penalties and the laws, regulations and provisions on which they are based. <u>Note:</u> Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Administrative penalties: **Legal persons:** As mentioned above, the German Criminal Code does not provide for criminal sanction towards legal persons. However, under **Sec. 30 of the German Code of Administrative Offences** ("*Gesetz über Ordnungswidrigkeiten*"), a fine may be imposed on **legal persons** if a person responsible for the management of the company has committed a criminal offence or an administrative offence. Sec. 30(1) alternative 1 OWiG mentions the infringement of duties which arise for the legal person from its particular sphere of activity, i.e., business-related duties ("*betriebsbezogene Pflichten*"). Offences under the German Criminal Code or administrative offences can be "business-related" in concrete cases if they affect the business and sphere of activity of the legal person, namely acts of bribery ("*Bestechungshandlungen*") under sections 299 or 331 and following of the StGB. An administrative fine is also possible, under Section 30(1) alternative 2 OWiG, even without a violation of a business-related duty if the act associated with the legal person has either led to an actual enrichment of said legal person (with needing for this enrichment to be intended) or an enrichment was intended. German administrative authorities may therefore inflict a fine to the legal person, should one of its legal representatives or one of its employees commit an act of bribery that falls under the scope of Sections 334 and 335 of the German Criminal Code. According to Sec. 30(2) OWiG, the fine shall amount to, in the case of an intentional offence, <u>up to ten million euros</u>, and in the case of an offence because of negligence, <u>up to five million euros</u>. However, OWiG also stipulates in its Section 17(4) that the fine shall exceed the economic benefit derived by the offender from the administrative offence, and that if the statutory maximum amount of fine is not sufficient for this purpose, it may

		be exceeded (according to the purpose of this provision, "may" should be interpreted as equalling "shall"). The Section 17(3) OWiG additionally provides that the basis for the assessment of the fine is the significance of the administrative offence and the charge against the offender. The economic circumstances of the offender shall also be taken into consideration. Under German law, an administrative fine consists of two components, a recovery component ("*Abschöpfungsanteile*") and a punitive component ("*Ahndungsanteile*"). The punitive component of the fine covers the economic advantage resulting from the associated offence. This advantage includes, in the case of orders obtained through bribes, further advantages with regard to the situation of the company on the market in addition to the pure profit. In order to quantify the benefit obtained, a comparison must be made between the actual financial situation and the situation that would have existed without the associated offence. If the economic benefit of the legal person from the act of the natural person cannot be determined exactly, this may be determined by (in individual cases even rough) estimation, whereby the hypothetical situation without the incriminated conduct is to be compared with the situation that actually occurred after the act. A punitive component may be added to this recovery part. In accordance with Section 17(3) OWiG, the assessment of the punitive component is primarily determined by the offence of the person responsible, its wrongfulness and its effects on the protected regulatory area. The (economic) advantage gained from the offence therefore establishes the lower limit of the fine to be imposed. It is important to note that if no criminal proceedings are conducted against the executive person regarding the act associated with the legal person, independent proceedings may still be initiated against the legal person, unless the criminal or administrative offence cannot be prosecuted for legal reasons (i.e., statute of limitations). The independent proceedings are then directed solely against the company, that is nevertheless designated as a secondary affected party and against which the administrative fine is to be imposed. **Natural and legal persons:** **Sec. 130 OWiG** provides for the obligation of the owner ("*Inhaber*") of a company or an undertaking (which could be a **natural or legal person**) to take the supervisory measures necessary to prevent infringement of duties imposed upon him. The duty to supervise relates primarily to the employed staff of the establishment, but also extends to temporary workers, self-employed commercial agents or third parties employed for business-related work. The sanction depends on the offence rendered possible by the missing supervisory measures (Sec. 130(3) OWiG). If the offence is punishable by: 1. a criminal sanction, the administrative offence may be punished by a fine up to one million euros; 2. a fine, the maximum fine for the breach of duty supervisory duty shall be determined by the maximum fine imposed for the offence; 3. a criminal sanction and a fine, the administrative offence may be punished as in situation (1), or as in situation (2) if the maximum fine threatened for the offence exceeds the maximum fine provided for under (1). Laws, regulations and provisions on which they are based: Sections 17, 30 and 130 of the German Administrative Offences Code in connection with Sections 331 and following of the German Criminal Code.
1-3	(i) Are there any sanctions against natural or juridical persons for which a sliding fine scale has been introduced? Sliding fine scale: A system that prescribes a maximum fine	☐Yes ☒No If Yes, please go to (ii)

	amount depending on/ linking to the amount of the wrongful business transaction and the amount of the gain.	
	(ii) [If Yes in (i)] Please explain the index factors (e.g., net income, loss, bribe amount, etc.) for calculating the sanction amount and how it is calculated.	Index factor: N/A How it is calculated: N/A
1-4	(i) Is there a statute of limitations period for prosecution against natural and juridical persons?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the limitations period for prosecution against natural and juridical persons and the laws, regulations and provisions on which it is based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Limitations period for criminal prosecution: **Section 78(3) of the StGB** provides for different periods of limitations – from 3 years to imprescriptible (i.e., murder) – depending on the penalty incurred. Regarding the commission of acts of bribery, the period of limitations is five years. The statute of limitations is based on the sentence foreseen by the law, whose constituent elements the offence fulfils, without regard to intensifications or mitigations provided for particularly serious or less serious cases (Sec. 78(4) StGB). Under Section 78a of the StGB, the limitation period begins as soon as the offence has ended. If a result that is part of the offence occurs at a later time, the limitation period begins at that time, so that if the offence is committed in such a way that the bribing party first grants the advantage and the bribed party then performs the unfairly preferential act, both offences are completed and the statute of limitations for their prosecution begins to run when the act is fully completed. In the even the preferential act consists of the conclusion and performance of a contract after the wrongful agreement has been made, case law determined that the act is fully completed (and the statute of limitations therefore begins to run) only when the bribed party performs the last services intended by him for the performance of the contract. Limitations period for administrative prosecution: Regarding sanctions under Sec. 30 OWiG, the period of limitations of Sec. 31(2) OWiG does not apply in the case of bribery, but the statute for the administrative fine is accessory to the statute of limitations for the offence associated with the legal person for which the legal person is liable. Therefore, if an offence committed by a natural person triggers the liability of a legal person under Section 30 OWiG, the provisions on the limitation period applicable to the offence committed by the natural person shall apply in the proceedings against the legal person. Sanctions under Sec. 130 OWiG are subject to the statute of limitations provided for under Sec. 31 OWiG. The statute of limitations is linked to the amount of the possible fine. As the incurred maximum sanction in the case of acts of bribery is always imprisonment, the incurred maximum sanction under Sec. 130 OWiG is a fine up to one million euros. The statute of limitation for prosecution on the basis of Sec. 130 OWiG is therefore three years (Sec. 31(2) Nr. 1).
	(iii) [If Yes in (i)] Is there a means to interrupt or suspend the limitations period for prosecution against natural and juridical persons?	☒Yes ☐No If Yes, please go to (iv)

	(iv) [If Yes in (iii)] Please explain the grounds for the interruption or suspension and the scope of persons (individual natural person/juridical person/both) to whom the interruption or suspension of the statute of limitations on prosecution extends. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Grounds for interruption[70] regarding criminal sanctions: **Natural persons:** Section 78c(1) StGB provides for a comprehensive list of grounds for the interruption of the statute of limitations. The period of limitations is interrupted by: 1. the first questioning of the accused, the announcement that preliminary proceedings have been instituted against him or her, or the ordering of such questioning or announcement, 2. any judicial interrogation of the accused or the ordering of such interrogation, 3. any commissioning of an expert by the judge or public prosecutor, if the accused has previously been questioned or the initiation of the preliminary investigation has been announced to him or her, 4. any judicial confiscation or search order and judicial decisions upholding the same, 5. the arrest warrant, the accommodation warrant, the summons to appear and judicial decisions upholding them, 6. the filing of the official lawsuit, 7. the opening of the main proceedings, 8. any scheduling of a main hearing, 9. the order of summary punishment or any other decision equivalent to a judgment 10. the provisional judicial discontinuation of the proceedings due to the absence of the accused as well as any order of the judge or public prosecutor issued after such a discontinuation of the proceedings or in proceedings against absent persons to determine the whereabouts of the accused or to secure evidence, 11. the provisional discontinuance of the proceedings by the court on the ground that the accused is unfit to stand trial, as well as any order made by the judge or public prosecutor after such discontinuance of the proceedings for the purpose of reviewing the accused's fitness to stand trial; or 12. any judicial request to conduct a pre-trial hearing abroad. It is furthermore specified, that in the case of a written order or decision, the limitation period shall be interrupted at the time when the order or decision is drawn up. If the document did not enter the course of business ("Geschäftsgang") immediately after it was drawn up, the time at which it was actually entered into the course of business shall be the relevant time. The German Criminal Code provides however for a maximum statute of limitations in the event of a ground for interruption. The prosecution will be subject to the statute of limitations at the latest when twice the statutory period of limitations has elapsed since the period of limitations started running (in general, from the moment the offence has ended, in accordance with Sec. 78a StGB). Should the period of limitations under specific law be less that three years, the prosecution will be subject to the statute of limitations at the latest when three years have elapsed. This maximum duration of the limitation period is absolute insofar as its occurrence cannot be prevented by grounds of interruption. However, it can be extended by suspension pursuant to Sec. 78b StGB. Grounds for suspension[71] regarding criminal sanctions: Section 78 StGB provides for different grounds for the suspension of the limitation period for prosecution against individuals. In accordance with Sec. 78(1) StGB, the period of limitations is thus suspended in the following cases:

[70] When the statute of limitations is interrupted, the limitations period that has been running until that point loses its effect. When the grounds for interruption are removed, the statute of limitations begins to run again from the beginning.

[71] Even if the statute of limitations is suspended, the limitations period that has been running up to that point does not lose its effect. Once the grounds for suspension are removed, the statute of limitations begins to run for the remainder of the limitations period.

		- until the victim reaches the age of 30 in the case of specific offences, i.e., sexual crimes against children and young adults; - for as long as prosecution cannot be initiated or pursued under the law. This disposition shall not apply if the offence cannot be prosecuted solely because the application ("*Antrag*"), authorisation ("*Ermächtigung*") or request for prosecution ("*Strafverlangen*") is lacking. In the event that the prosecution is prevented by the fact that the perpetrator is a member of the Bundestag or of a legislative body of a Land, the limitation period shall not begin to run until the end of the day on which (i) the public prosecutor's office or an authority or an official of the police service becomes aware of the offence and the person of the offender, or (ii) a criminal charge or a criminal complaint is filed against the offender under Sec. 158 of the German Criminal Procedure Code. Other grounds of suspension of the period of limitations are: - If a judgment of the first instance has been handed down before the expiry of the limitation period, said period of limitations shall not expire before the time when the proceedings have been declared final and enforceable (Sec. 78(3) StGB) - Where the law provides for an aggravated penalty of imprisonment of more than five years for particularly serious cases and the main proceedings have been opened before the Regional Court (Landgericht), the period of limitations shall be suspended – in the case of offences originally punishable by a maximum term of imprisonment of more than one year but not exceeding five years – from the opening of the main proceedings, but for a maximum period of five years (Sec. 78(4) StGB). Should the offender be in a foreign state and the competent authority makes a formal request for extradition to that state, the limitation period shall be suspended from the time of receipt of the request by the foreign state until the offender is handed over to the German authorities, until the offender has left the territory of the requested state by other means, until receipt by the German authorities of the refusal of this request by the foreign state, or until this request is withdrawn. (Sec. 78(5) StGB) If the date of receipt of the request by the foreign state cannot be determined, the request shall be deemed to have been received after the expiry of one month from the date of dispatch or delivery to the foreign state, unless the requesting authority becomes aware that the request was not actually received by the foreign state or was received at a later date. Grounds for interruption regarding administrative sanctions: **Legal persons:** It is important to note that the interruption is only effective against the person to whom the act mentioned by Sec. 78c(1) relates (Sec. 78c(4)). This means that if an investigation is conducted against "unknown", an interruption against the real offender is therefore out of the question from the outset. However, if a criminal offence committed by a natural person triggers the liability of a legal person under Sec. 30 OWiG (as it is the case with acts of bribery), the statute of limitations applicable to the offence committed by the natural person shall apply in the proceedings against the legal person. In the event that no independent proceedings are conducted against the legal person as secondary party, this means that actions against the natural person that interrupts the period of limitations also have an effect against the legal person. This also applies to interrupting actions against the natural person that take place before the independent proceedings against the legal person are initiated. **Natural and legal person:** In independent proceedings against the legal person, Sections 30(4) and 33(1) sentence 2 OWiG provide for a separate statute of limitations for prosecution for legal persons. Section 33(1) sentence 1 OWiG provides for a list of acts interrupting the limitation period for independent prosecution

		of legal persons based on Sec. 30 OWiG, namely: 1. the first hearing of the person concerned, the announcement that preliminary proceedings have been instituted against him or her, or the ordering of such hearing or announcement, 2. any judicial hearing of the person concerned or of a witness or the ordering of such hearing, 3. any commissioning of an expert by the prosecuting authority or the judge, if the person concerned has previously been questioned or the initiation of the preliminary proceedings has been announced to him/her, 4. any confiscation or search order issued by the prosecuting authority or the judge and judicial decisions upholding them 5. the provisional discontinuation of the proceedings due to the absence of the person concerned by the prosecuting authority or the judge, as well as any order issued by the prosecuting authority or the judge after such a discontinuation of the proceedings to determine the whereabouts of the person concerned or to secure evidence, 6. any request by the prosecuting authority or the judge to carry out an investigative act abroad, 7. the legally determined hearing of another authority by the prosecuting authority prior to the conclusion of the investigation, 8. the transfer of the case by the prosecuting authority to the administrative authority according to section 43, 9. the issuing of the penalty notice, provided it is notified within two weeks, otherwise its notification, 10. the receipt of the files by the district court pursuant to section 69(3), first sentence, and (5), second sentence, and the referral of the case back to the administrative authority pursuant to section 69(5), first sentence, 11. any scheduling of a main hearing, 12. the reference to the possibility to decide without a main hearing (Sect. 72(1) sentence 2), 13. the filing of the public complaint 14. the opening of the main proceedings 15. the penalty order or another decision corresponding to the judgment. These grounds for interruption also apply to prosecution on the basis of Sec. 130 OWiG. Finally, if a law in force at the time of the completion of the offence is amended before the judgment and the period of limitations is shortened as a result, acts of interruption that were performed before the new law came into force remain effective, even if at the time of the interruption the prosecution would already have been time-barred under the new law. Grounds for suspension regarding administrative sanctions: Regarding legal persons, the period of limitations of Sec. 31(2) OWiG (and the associated grounds for suspension provided for under Sec. 32 OWiG) does not apply in the case of bribery, but the statute for the administrative fine is accessory to the statute of limitations for the offence associated with the legal person for which the legal person is liable. Therefore, if an offence committed by a natural person triggers the liability of a legal person under Section 30 OWiG, the provisions on the limitation period applicable to the offence committed by the natural person shall apply in the proceedings against the legal person. Concerning prosecution on the basis of Sec. 130 OWiG, the period of limitations is subject to the grounds for suspension provided for under Sec. 32(1) OWiG. According to this section, the limitation period shall be suspended as long as the prosecution cannot be commenced or continued in accordance with the law. This does not apply if the act cannot be prosecuted only because the application (“Antrag”) or authorisation (“Ermächtigung”) is missing.

		Applicable to: Provisions regarding the suspension and interruption of the statute of limitations provided for in the German Criminal Code are applicable to natural persons. In the event that a legal person is prosecuted on the basis of the act of its employee as an accessory, these grounds of interruption and suspension are also applicable to the prosecution of this legal person. However, if a legal person is subject to independent proceedings, these proceedings are subject to the specific grounds of interruption provided by Sec. 33 OWiG. Applied laws and provisions: Sections 78b (suspension) and 78c (interruption) of the German Criminal Code; Sec. 30, 32 and 33 of the German Administrative Offences Code.
1-5	Please explain, for each of the following cases, the application of the local laws of the country under investigation. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	
	(i) Employee A (an individual who is not a citizen of the country under investigation) of a branch or sales office located outside the country under investigation of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the branch or sales office locates or any third country).	Applicable to Company X: ☒Yes ☐No Applicable to Employee A: ☒Yes ☐No Conditions under which the local law applies (e.g., conspiracy with an overseas office): Sec. 5 No. 15(c) of the German Criminal Code stipulates that German criminal law applies, irrespective of the law of the place of the offence, to the acts of bribery according to sections 331 and following of the StGB when the offence is committed against a public official. In the case where the bribery is offered to a public official of the country under investigation (who does not need the German nationality, may only a public official of the German State and located abroad or in Germany), Employee A will be subject to the provisions of the German Criminal Code and may be prosecuted for the acts of bribery. Sec. 3 StGB provides that German Criminal Law applies to acts committed within the country, while Sec. 7(2) Nr. 1 StGB provides that German Criminal Law shall apply to any offence committed abroad if the offender is German and if the offence is punishable at the place of the offence. (Sec. 30 of the German Criminal Code punishes the complicity or incitation to commit a crime. If Employee A conspired with an employee of the headquarters in the country of investigation, a part of the act of complicity or incitation to commit a crime was committed within Germany. Employee A may therefore be prosecuted under German law.) Company X can be sanctioned if its management did not have necessary supervisory measures to prevent acts of bribery by employees and a corruption offence is committed as a result. Company X itself falls under the application of German Criminal Law according to Sec. 5 No. 15a StGB, in connection with Sec. 30 and 130 OWiG. Applied laws and provisions: Sec. 5 No. 15(c) of the German Criminal Code; Sec. 3 and 9 of the German Criminal Code; Sec. 332, 334 and 335a of the German Criminal Code; Sec. 30 and 130 of the German Administrative Offences Code.

	(ii) Employee B (an individual who is not a citizen of the country under investigation) of a foreign subsidiary of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the foreign subsidiary locates or any third country). Note: If the scope of application varies depending on whether it is subsidiary or affiliate, please explain each.	Applicable to Company X: ☒Yes ☐No Applicable to Employee B: ☒Yes ☐No Conditions under which the local law applies (e.g., conspiracy with an overseas office): In the case where the bribery is offered to a public official of the country under investigation (who does not need the German nationality, may only a public official of the German State and located abroad or in Germany), Employee A will be subject to the provisions of the German Criminal Code and may be prosecuted for the acts of bribery. Sec. 3 StGB provides that German Criminal Law applies to acts committed within the country, while Sec. 7(2) Nr. 1 StGB provides that German Criminal Law shall apply to any offence committed abroad if the offender is German and if the offence is punishable at the place of the offence. (Sec. 30 of the German Criminal Code punishes the complicity or incitation to commit a crime. If Employee B conspired with an employee of the headquarters in the country of investigation, a part of the act of complicity or incitation to commit a crime was committed within Germany. Employee B may therefore be prosecuted under German law.) A supervisory duty of the group parent company is generally recognised under German law, as the controlling group parent company is considered having the legal possibility to intervene in the management of the subsidiaries. In accordance with Sec. 130 OWiG, the controlling parent company may therefore be liable for the offences committed by its subsidiaries. The subsidiary is liable in the event its management did not have necessary supervisory measures to prevent acts of bribery by employees and a corruption offence is committed as a result. Applied laws and provisions: Sec. 5 No. 15(c) of the German Criminal Code; Sec. 3 and 9 of the German Criminal Code; Sec. 332, 334 and 335a of the German Criminal Code, Sec. 130 of the German Administrative Offences Code.
	(iii) Employee C (an individual who is not a citizen of the country under investigation) of a foreign agent of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the foreign agent locates or any third country).	Applicable to Company X: ☒Yes ☐No Applicable to Employee A: ☒Yes ☐No Conditions under which the local law applies (e.g., conspiracy with an overseas office, if any): In the case where the bribery is offered to a public official of the country under investigation (who does not need the German nationality, may only a public official of the German State and located abroad or in Germany), Employee C will be subject to the provisions of the German Criminal Code and may be prosecuted for the acts of bribery. Sec. 3 StGB provides that German Criminal Law applies to acts committed within the country, while Sec. 7(2) Nr. 1 StGB provides that German Criminal Law shall apply to any offence committed abroad if the offender is German and if the offence is punishable at the place of the offence. (Sec. 30 of the German Criminal Code punishes the complicity or incitation to commit a crime. If Employee C conspired with an employee of the headquarters in the country of investigation, a part of the act of complicity or incitation to commit a crime was committed within Germany. Employee C may therefore be prosecuted under German law.) Sec. 130 OWiG provides for the obligation of the owner of a company to take the supervisory measures necessary to prevent infringement of duties imposed upon him. In order to avoid companies to transfer their duties to third party, it is understood that this provision is applicable if a third party violates a duty incumbent upon the owner in the performance of business affairs. Therefore, if the duty to supervise relates primarily to the employed staff of the establishment, it also extends to temporary workers, self-employed commercial agents or third parties employed for business-related work. The company may therefore be prosecuted for acts of bribery perpetrated by third parties employed for business-related work.

		Applied laws and provisions: Sec. 5 No. 15(c) of the German Criminal Code; Sec. 3 and 9 of the German Criminal Code; Sec. 332, 334 and 335a of the German Criminal Code, Sec. 130 of the German Administrative Offences Code.
2	**Actual situation regarding measures against the bribery of foreign public officials in the country under investigation**	
2-1	**[Only for the US and the UK]** Please describe up to five (5) cases of bribery of foreign public officials that were severely sanctioned. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese).	
	Case 1	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 2	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 3	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 4	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 5	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:

2-2	**[for jurisdictions other than the US and the UK]** Please describe some of the leading cases of bribery of foreign public officials detected, if any. Three cases or less is fine, and if you would like to explain more than three cases, please add a line. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese).	
	Case 1	Case Information: The MAN Ferrostaal case Outline of the case: After the sinking of an Argentinian submarine, a complaint filed by an Argentinian MP against three former defence ministers lead to a corruption investigation against the German company Ferrostaal. It was suspected that this company had been awarded contracts for the general overhaul of a submarine between 2005 and 2011 without tendering, after briberies of the Argentinian public officials by two managers. The Munich prosecutor's office brought charges of bribery of foreign public officials. ☒ Criminal penalty ☒ Administrative penalty ☐ Other ( ) Sanctions: A former board member and a former authorised signatory ("*Prokurist*") who had arranged the bribes were sentenced to two years' imprisonment on probation and fines of EUR 36,000 and EUR 18,000 respectively. (According to the prosecution, their age (73 years old at the time of the prosecution) was taken into consideration as a mitigating factor.) The company Ferrostaal was condemned to an administrative fine of almost EUR 140 million. Applied laws and provisions: N/A
	Case 2	Case Information: Decision of the German Federal Supreme Court from 13.02.2014 − 1 StR 336/13 (Regarding the decision of the Regional Court of Mannheim, 22 KLs 618 Js 4248/10) Outline of the case: According to the judgment, the defendant was a shareholder and managing director of the company. Between November 2003 and November 2009, he concluded 5 contracts for I. GmbH with government agencies of the Republic of K. These contracts mainly concerned the delivery of water cannon vehicles that could be equipped with irritant gas for the Gendarmerie Nationale C. as well as the equipment of the vehicles including spare parts and with irritant gas. In order to obtain these orders, the accused contacted, among others, high-ranking officials of the Republic of K., such as a (then) state secretary in the Ministry of Defence and high-ranking officers of the institution responsible for awarding the contract, but also other officials, and offered them the payment of bribes or the granting of other advantages in case the contract was awarded. With the knowledge of the officials he had

		bribed, the accused had included the bribes promised to them in the agreed remuneration for the delivery of the vehicles and their accessories as well as the other services to be rendered by I. Ltd. The K. government arranged for the transfer of a total of € 8,580,490 for the fulfilment of the contracts. Of this amount, € 855,229 in bribes flowed back to bribed public officials in K. ☒ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: The regional court of Mannheim sentenced the defendant to a total term of imprisonment of four years for five counts of bribery of foreign public officials in connection with international business transactions (as well as for tax evasion). The Court also ordered the forfeiture of its property in the amount of EUR 193,000. His wife was also sentenced to two years imprisonment on probation for aiding and abetting the offence from her husband. The regional court of Mannheim ordered the forfeiture of her property in the amount of almost EUR 192,000. Applied laws and provisions: Sec. 334(1) StGB in connection with Art. 2(1) Nr. 2 Letter a), b) and Art. 2(1) Nr. 3 Letter a) of the Law on the Convention of 17 December 1997 on Combatting Bribery of foreign public officials in International Business Transactions ("IntBestG") (Art. 2(1) IntBestG was used as a legal basis to combat acts of bribery of foreign public officials before the entry into force of Sec. 335a StGB in 2015) **The judgment of the German Federal Supreme Court** The judgment of the German Federal Supreme Court following the judgment of the regional court Mannheim (1st Criminal Senate, judgment of 13.02.2014 - 1 StR 336/13) confirmed the decision of the regional court Mannheim with respect to the main part, i.e. the bribery of foreign public officials in connection with international business transactions. Background: The German Federal Supreme Court does not address Section 335a StGB (German Criminal Code) in the decision, but this is because it did not yet exist at the time of the decision (13 February 2014). Section 335a Strafgesetzbuch (German Criminal Code) was only inserted on 20 November 2015 by the Gesetz zur Bekämpfung der Korruption (German Anti-Corruption Act). However, the German Federal Supreme Court addresses Art. 2. § 1 No. 2 lit. a Gesetz zur Bekämpfung internationaler Bestechung (Act to Combat International Bribery), which was valid until 25 November 2015 in the following version: "§ 1 Equal treatment of foreign and domestic public officials in acts of bribery. For the purposes of the application of section 334 of the Criminal Code, also in conjunction with sections 335, 336, 338(2) thereof, to a bribe which relates to a future judicial act or official act and which is committed in order to procure or secure for oneself or a third party a contract or an undue advantage in international commercial transactions, the following shall be treated equally: 1.a judge: (a) a judge of a foreign state, b) a judge of an international court; 2.another public official: (a) a public official of a foreign state b) a person appointed to perform public functions for or on behalf of a public authority of a foreign State, for a public enterprise established abroad or

		otherwise on behalf of a foreign State, c) an officer and other employee of an international organisation and a person charged with the performance of their duties; 3.a soldier of the armed forces: (a) a soldier of a foreign State, b) a soldier commissioned to perform duties of an international organisation." The German Federal Supreme Court makes statements on Art. 2 § 1 IntBestG in particular in paragraph 28 and paragraphs 45 to 54 (BeckRS 2014, 9500 - beck-online). For the interpretation of the term "foreign public official", the German Federal Supreme Court refers to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997 (BGBl. 1998 II, 2329) in particular to the definition in Art. 1 para. 4 letter a of the Convention. Therefore, the judgment took the same interpretation as this is done under Section 335a StGB.
	Case 3	Case Information: Siemens Corruption Case Outline of the case: At the beginning of the 2000s, it was discovered that the company Siemens had orchestrated a whole system consisting in bribing foreign public officials in several countries in order to obtain contracts. Several persons from company's management and accounting were arrested. After months of negotiations, Siemens has settled with the German authorities, the US Department of Justice and the US Securities and Exchange Commission (SEC) for a total amount of more than one billion euros. ☒ Criminal penalty ☐ Administrative penalty ☒ Other (Settlement) Sanctions: Siemens settled with the German and American authorities for a total amount of more than one billion euros. Several Siemens executives and accountants were condemned. For example, Rheinhard Siekaczek (accountant) was condemned to two years' probation and a 150.000 EUR fine. Applied laws and provisions: N/A
2-3	Please explain the current trends and developments in detection and sanctions in cases involving bribery of foreign public officials.	In the last years, clearly visible gaps in the enforcement of legal provisions regarding corruption led to a tightening of the criminal law, the effects of which cannot yet be assessed. For example, with the Act to Combat Corruption ("Gesetz zur Bekämpfung der Korruption"), which came into force on 26.11.2015, criminal liability in the area of public officials was extended to include acts of bribery of foreign public officials. To our knowledge, there has been no publicly available cases rendered on the basis of the new Section 335a of the German Criminal Code since its entry into force in 2015, so that its impact on detection and sanctions in cases involving bribery of foreign public officials is hard to evaluate. The reason for this may be that there is also a clear trend to more compliance in companies, avoiding the risk of sanctions and negative publicity.
2-4	[Only for Australia, South Korea and France] (i) Have any of the cases of bribery of foreign public officials been subject to a sliding scale of fines?	☐Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please describe a typical case. Note: Please clearly indicate	Case Information: Outline of the case: Type of sanction:

	laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese). Note: If sanctions were imposed for the acts of a sales office, subsidiary, or agent, please also specify the laws, regulations and provisions on which they are based.	☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Fine amount: Factors considered in the calculation of the fine amount: How the amount of the fine was calculated: Laws and provisions on which they are based: Note: If you have more than one case that should be mentioned, please add them below.
2-5	(i) Have any of the cases of bribery of foreign public officials involved the extraterritorial application[72] of the local laws of the country under investigation?	☐Yes ☒No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please describe a typical case. In particular, if there are any cases of bribery by foreign employees, agents, etc., please give priority to such cases.	Case Information: Outline of the case: Key judicial decisions on governing law and jurisdiction: Note: If you have more than one case that should be mentioned, please add them below.

[72] This is a case in which the laws of a country are applied to acts committed outside that country, whereas the general rule is that the laws of a country are applied within the territory of that country and their effect does not extend to foreign countries.

(4) フランス

NO.	Question	Answer
1	**System for Combating Bribery of Foreign Public Officials**	
1-1	(i) Are criminal penalties provided as sanctions against natural and juridical persons?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the statutory penalties (fine and/or imprisonment) and the relevant laws, regulations and provisions on which they are based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Details of the Statutory Penalties (Fine and/or Imprisonment) / Laws, Regulations, and Provisions on Which They Are Based: Details of the Statutory Penalties (Fine and/or Imprisonment) / Laws, Regulations, and Provisions on Which They Are Based: (i) Natural Persons Natural Persons may be punished by ten years imprisonment and a fine of EUR 1 million, which may be increased to twice the amount of the proceeds of the offence. The fine is increased to EUR 2 million or, if this amount is exceeded, to twice the proceeds of the offence, when the offences provided for in this article are committed in an organized gang (Article 435-3 of the French Criminal Code). (i) Juridical Persons Juridical persons are liable to a principal penalty of a maximum fine of EUR 5 million, which may be increased to ten times the proceeds of the offence (Articles 435-3 and 131-38 of the French Criminal Code). In the event of a repeat offence, the maximum fine is doubled, EUR 10 million or 20 times the proceeds of the offence (Articles 132-12 to 14 of the French Criminal Code). Besides, the so-called Sapin II law of 9th December 2016 has created a procedure allowing the public prosecutor to conclude a judicial agreement of public interest with a legal entity implicated for offences against probity and in particular corruption. This agreement extinguishes the public prosecution if the accused legal entity executes the obligations to which it has committed itself, which may consist of - the payment of a public interest fine to the State, the amount of which may not exceed 30% of the average annual turnover; - the implementation of a program to bring its anti-corruption procedures into compliance; - in compensating the victim's damages. (i) Penalties for accomplices The accomplice incurs the same penalties as the offender (article 121-6 of the French criminal code)
1-2	(i) Are administrative penalties provided as sanctions against natural and juridical persons? Administrative penalties include fines and civil sanctions imposed by the administrative branch of government.	☐Yes ☒No If Yes, please go to (ii)

	(ii) [If Yes in (i)] Please explain the administrative penalties and the laws, regulations and provisions on which they are based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Administrative penalties: N/A Laws, regulations and provisions on which they are based: N/A
1-3	(i) Are there any sanctions against natural or juridical persons for which a sliding fine scale has been introduced? Sliding fine scale: A system that prescribes a maximum fine amount depending on/ linking to the amount of the wrongful business transaction and the amount of the gain.	☒Yes ☐No If Yes, please go to (ii) See above. Articles 132-12 to 14 of the French Criminal Code
	(ii) [If Yes in (i)] Please explain the index factors (e.g., net income, loss, bribe amount, etc.) for calculating the sanction amount and how it is calculated.	Index factor: N/A How it is calculated: N/A
1-4	(i) Is there a statute of limitations period for prosecution against natural and juridical persons?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the limitations period for prosecution against natural and juridical persons and the laws, regulations and provisions on which it is based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Limitations period for prosecution: 6 years[73] Laws, regulations and provisions on which it is based: Article 8 of the French Criminal Code Article 8 of the Criminal Procedure Code concerns the prescription period and provides that "Public action for offenses is prescribed by 6 years from the day on which the offense was committed". Article 9-1 of the Criminal Code concerns the starting point in case of hidden offences (such as bribery) and provides that "the statute of limitations for public action in the case of a concealed or hidden offence shall run from the day on which the offence appeared and could be established under conditions allowing for the initiation or exercise of public action".
	(iii) [If Yes in (i)] Is there a means to interrupt or suspend the limitations period for prosecution against natural and juridical persons?	☒Yes ☐No If Yes, please go to (iv)
	(iv) [If Yes in (iii)] Please explain the grounds for the interruption or suspension and the scope of persons (individual natural person/juridical person/both) to whom the interruption or suspension of the statute of	Grounds for interruption[74]: The statute of limitations is interrupted by any act of investigation or prosecution (the purpose of which is to establish an offence, to gather evidence, and to seek out the culprits)

[73] applicable to both Judicial person and Natural person.

[74] When the statute of limitations is interrupted, the limitations period that has been running until that point loses its effect. When the grounds for interruption are removed, the statute of limitations begins to run again from the beginning.

	limitations on prosecution extends. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Grounds for suspension[75]: Any legal obstacle, provided for by law, or any insurmountable factual obstacle comparable to force majeure, which makes it impossible to initiate or exercise public action, suspends the statute of limitations. Applicable to: For the filing of a public prosecution, the individual natural person and juridical person. Applied laws and provisions: Articles 9-2 and 9-3 of the French Criminal Code
1-5	Please explain, for each of the following cases, the application of the local laws of the country under investigation. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	
	(i) Employee A (an individual who is not a citizen of the country under investigation) of a branch or sales office located outside the country under investigation of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the branch or sales office locates or any third country).	Applicable to Company X: ☒Yes ☐No Applicable to Employee A: ☐Yes ☒No Conditions under which the local law applies (e.g., conspiracy with an overseas office): Applied laws and provisions: French criminal law applies to offences committed on French territory (principle of territoriality) or also outside French territory when the perpetrator or the victim of the offence are French (principle of personality). French criminal law is applicable to offences committed on the territory of the Republic. The offence is deemed to have been committed on the territory of the Republic if one of its constitutive acts took place on this territory (Article 113-2 of the French Criminal Code). French criminal law is applicable to any crime committed by a French person outside the territory of the Republic (Article 113-6 of the French Criminal Code). French criminal law is applicable to any crime, as well as to any tort punishable by imprisonment, committed by a French citizen or by a foreigner outside the territory of the Republic when the victim is of French nationality at the time of the offense (Article 113-7 of the French Criminal Code). In the case at hand as the company is a French company, French law would apply even if the bribery act has been committed outside France. However, if the employee is not a French citizen, if the victim is not French, and if the act of bribery has been committed outside France, French law would not apply to the employee. Note however that we have assumed that as the act of bribery has been committed outside France, no constitutive acts took place in France.

[75] Even if the statute of limitations is suspended, the limitations period that has been running up to that point does not lose its effect. Once the grounds for suspension are removed, the statute of limitations begins to run for the remainder of the limitations period.

	(ii) Employee B (an individual who is not a citizen of the country under investigation) of a foreign subsidiary of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the foreign subsidiary locates or any third country). Note: If the scope of application varies depending on whether it is subsidiary or affiliate, please explain each.	Applicable to Company X: ☒Yes ☐No Applicable to Employee B: ☐Yes ☒No Conditions under which the local law applies (e.g., conspiracy with an overseas office): Applied laws and provisions: See above. Please note that French law applies to bribery acts committed abroad by French groups, irrespective of whether this is through foreign branch or foreign subsidiaries.
	(iii) Employee C (an individual who is not a citizen of the country under investigation) of a foreign agent of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the foreign agent locates or any third country).	Applicable to Company X: ☒Yes ☐No Applicable to Employee A: ☐Yes ☒No Conditions under which the local law applies (e.g., conspiracy with an overseas office, if any): Applied laws and provisions: See above. French criminal law applies to French groups which directly or indirectly commit bribery Act. A French group using an agent to indirectly offer bribes can be exposed to a risk under French law.
2	**Actual situation regarding measures against the bribery of foreign public officials in the country under investigation**	
2-1	**[Only for the US and the UK]** Please describe up to five (5) cases of bribery of foreign public officials that were severely sanctioned. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese).	
	Case 1	Case Information: N/A Outline of the case: N/A ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 2	Case Information: N/A Outline of the case: N/A ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 3	Case Information: N/A

		Outline of the case: N/A ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 4	Case Information: N/A Outline of the case: N/A ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 5	Case Information: N/A Outline of the case: N/A ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	[for jurisdictions other than the US and the UK] Please describe some of the leading cases of bribery of foreign public officials detected, if any. Three cases or less is fine, and if you would like to explain more than three cases, please add a line. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese).	
	Case 1	Case Information: TOTAL IRAN SOUTH PARS, judgement of 21 December 2018 Corruption of foreign public officials in connection with TOTAL's operation of the South Parsons oil field oil field in South Pars oil field in Iran Outline of the case: ☒ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Natural person: 4 years of imprisonment Juridical person: 500 000 € fine Applied laws and provisions:
	Case 2	Case Information: SOCIETE GENERALE, Judicial public interest agreement signed on 24 May 2018 regarding SOCIETE GENERALE Corruption of foreign public officials in connection with investments in financial products of SOCIETE GENERALE, through the recourse by SOCIETE GENERALE to the services of a Libyan business introducer Libyan business agent in order to propose these services to financial institutions financial institutions, in particular to the LIBYAN INVESTMENT AUTORITHY Outline of the case: ☐ Criminal penalty ☒ Administrative penalty ☐ Other ( ) Sanctions: 250 150 755 € fine Applied laws and provisions: SG's purpose was to sell its financial products to state-owned financial

		institutions and thatthe bribe was given to Libyan officials, throught Libyan business introducer/brokerwe. Société Générale made illicit payments through a Libyan intermediary (which is a broker) and provided various undue benefits to Libyan public officials in charge of the country's main financial institutions, to encourage these financial institutions to invest in Société Générale's structured financial products. The payments were made through a shell company in Panama via a Swiss bank account. Société Générale secured 13 investments and a restructuring of Libyan public institutions for a total amount of approximately USD 3.66 billion, with profits of approximately EUR 335 million.
	Case 3	Case Information: ARMEMENT 1 CAMEROUN, Decision in appeal of 6 June 2014 Corruption of foreign public officials in connection with the illicit brokering of war materials to Cameroonian authorities and the existence of a system of retrocessions[76] to Cameroonian officials. Outline of the case: ☒ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Natural Person: 6 months of imprisonment months in prison with a suspended sentence and a €30,000 fine Applied laws and provisions:
2-3	Please explain the current trends and developments in detection and sanctions in cases involving bribery of foreign public officials.	According to the OECD Phase 4 Report, the OECD assessed the following: - There are no guidelines in France on how these penalties can be calculated, particularly when it comes to imposing a fine calculated on the basis of ten times the proceeds of the infringement. The question of whether the proceeds of the infringement are whether the proceeds of the offence are considered to be the amount of the contract or the profits from the contract, and how these two amounts are likely to be calculated. Similarly, the factors taken into account to reduce or increase the fine are also not clarified in any guidelines. In the absence of case law, it is therefore impossible to know how these fines will be calculated (page 120, para. 351). - With the creation of the National Financial Prosecutor's Office and the Central Office for Combating Corruption and Financial and Tax Offences, France has a specialized prosecutor's office and investigation department capable of developing enhanced expertise in the fight against the corruption of foreign public officials (page 159). - The introduction of the Public Interest Judicial Agreement by the Sapin II law (in 2016) has allowed for a more efficient and rapid processing of proceedings against legal entities in 5 corruption cases and the imposition of public interest fines, the amounts of which are disproportionate to the correctional fines imposed until now following conviction (page 159).
2-4	[Only for Australia, South Korea and France] (i) Have any of the cases of bribery of foreign public officials been subject to a sliding scale of fines?	☐Yes ☒No If Yes, please go to (ii) The sliding scale provisions dating back to 2013 has never been applied by French Courts to date. The only case where the sliding scale fine has been considered is the above referred Société Générale case but it was a settlement agreement (Judicial public interest agreement).
	(ii) [If Yes in (i)] Please describe a typical case. <u>Note:</u> Please clearly indicate	Case Information: Outline of the case: Type of sanction: ☐ Criminal penalty ☐ Administrative penalty

[76] "retrocessions" here means paying kickback, please kindly confirm.

	laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese). Note: If sanctions were imposed for the acts of a sales office, subsidiary, or agent, please also specify the laws, regulations and provisions on which they are based.	☐ Other ( ) Fine amount: Factors considered in the calculation of the fine amount: How the amount of the fine was calculated: Laws and provisions on which they are based: Note: If you have more than one case that should be mentioned, please add them below.
2-5	(i) Have any of the cases of bribery of foreign public officials involved the extraterritorial application [77] of the local laws of the country under investigation?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please describe a typical case. In particular, if there are any cases of bribery by foreign employees, agents, etc., please give priority to such cases.	Case Information: In the decision "TSKJ" (Judgement of 30 January 2013 rendered by the criminal court of Paris) two former executives including the commercial director were condemned to a fine of €10,000 and €5,000. Outline of the case: Between 2001 and 2002, the TSKJ consortium, composed of a French company, Technip, and foreign companies, paid bribes in the range of USD 40 to 45 million to very high-ranking Nigerian officials in order to obtain their support in obtaining government contracts for the construction of a liquefaction plant in Nigeria, LNG. The payments were transferred through several intermediaries, including a shell company headed by a British lawyer, Mr. T. On January 30, 2013, the Paris Criminal Court sentenced the two former Technip executives to a fine. On June 24, 2014, the Paris Criminal Court acquitted Mr. T. in accordance with the principle of principle of *non bis in idem*, as the defendant had entered into a plea agreement with the US authorities in authorities in February 2011. Key judicial decisions on governing law and jurisdiction: Note: If you have more than one case that should be mentioned, please add them below.

[77] This is a case in which the laws of a country are applied to acts committed outside that country, whereas the general rule is that the laws of a country are applied within the territory of that country and their effect does not extend to foreign countries.

(5) イタリア

<table>
<tr><th>NO.</th><th>Question</th><th>Answer</th></tr>
<tr><td>1</td><td colspan="2">System for Combating Bribery of Foreign Public Officials</td></tr>
<tr><td>1-1</td><td>(i) Are <u>criminal penalties</u> provided as sanctions against natural and juridical persons?</td><td>☒Yes ☐No
If Yes, please go to (ii)</td></tr>
<tr><td></td><td>(ii) [If Yes in (i)] Please explain the statutory penalties (fine and/or imprisonment) and the relevant laws, regulations and provisions on which they are based.
<u>Note:</u> Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.</td><td>Details of the Statutory Penalties (Fine and/or Imprisonment) / Laws, Regulations, and Provisions on Which They Are Based:

DETAILS OF OFFENCES AND PENALTIES

As a premise: under Italian law, criminal liability and criminal sanctions are only applicable against natural persons. <u>Please refer to question 1-2 for juridical persons.</u>

On the natural-persons side, the crime of bribing foreign officials is governed under <u>article 322-bis of the Italian Penal Code</u> (“IPC”), which cross-references provisions on “domestic bribery” (articles 318 to 322 of the IPC). In short, article 322-bis provides for four offences that apply to “active foreign bribery”.
(a) The main foreign bribery offence applies when a bribe is given or promised to a foreign public official (article 321). The offence is subdivided into two categories, covering bribery of a foreign public official for:
(i) the performance of the official’s functions or powers (article 318); and
(ii) an omission or delay of an act related to the official’s office, or the performance of an act contrary to the duties of his/her office (article 319).
(b) Incitement to corruption offence applies when a bribe is offered or promised but not accepted by a foreign public official. This offence is also divided into the two subcategories:
(i) incitement to perform functions or powers (article 322, paragraph 1), and
(ii) to breach duties (article 322, paragraph 2).
(c) Inducement to bribery offence (article 319-quarter, paragraph 2), which was enacted in 2012, applies when the briber is somehow “induced” (but still not forced) to make an offer or promise to the foreign official.
(d) A separate offence applies to corruption in judicial proceedings (articles 319-ter, 321 and 322-bis, paragraph 2).

The above-mentioned offences are all punished with <u>imprisonment</u>, ranging from 3 to 12 years (without taking into accounts “aggravating circumstances” – please refer to question 1-3 for this aspect):

<table>
<tr><th>Offence</th><th>Sanctions (imprisonment)</th></tr>
<tr><td>Bribery for the performance of functions or powers</td><td>3 to 8 years</td></tr>
<tr><td>Bribery for an act in breach of duties</td><td>6 to 10 years</td></tr>
<tr><td>Incitement to bribery for the performance of functions or powers</td><td>2 to 5 years and 4 months</td></tr>
<tr><td>Incitement to bribery for an act in breach of duties</td><td>4 to 6 years and 8 months</td></tr>
<tr><td>Undue inducement</td><td>up to 3 years</td></tr>
</table>
</td></tr>
</table>

Corruption in judicial proceedings	6 to 12 years

In addition, the following sanctions apply:

- seizure of all assets constituting the price or profit of the offences (article 322-ter of the IPC);
- ancillary penalties, in particular temporary interdiction from executive offices of juridical persons (article 32-bis of the IPC).

PROVISIONS

Below is a transcription of article 322-bis (paragraph 2 specifically concerns foreign bribery) and articles 318-322 (concerning domestic bribery, but cross-referenced under article 322-bis, paragraph 2), with a description of the criminal offences and the corresponding penalties.

Article 322-bis of the IPC – Embezzlement, extortion, undue inducement to give or promise benefits, bribery and incitement to bribery of members of international courts or bodies of the European Communities or international parliamentary assemblies or international organisations and officials of the European Communities and foreign states

1. The provisions of articles 314, 316, 317 to 320 and 322, third and fourth paragraphs, shall also apply to:

1) members of the Commission of the European Communities, the European Parliament, the Court of Justice and the Court of Auditors of the European Communities;

2) officials and other employees recruited under contract in accordance with the staff regulations of officials of the European Communities or the conditions of employment of other employees of the European Communities;

3) persons commanded by the Member States or by any public or private body to the European Communities, who carry out functions corresponding to those of officials or agents of the European Communities;

4) members and employees of bodies set up on the basis of the Treaties establishing the European Communities;

5) persons who, within the framework of other Member States of the European Union, perform functions or activities corresponding to those of public officials and persons in charge of a public service.

5-bis) judges, public prosecutors, deputy public prosecutors, officials and agents of the International Criminal Court, persons commanded by States party to the Treaty establishing the International Criminal Court who perform functions corresponding to those of officials or agents of the Court, members and employees of bodies set up under the Treaty establishing the International Criminal Court;

5-ter) persons exercising functions or activities corresponding to those of public officials and persons in charge of a public service within public international organisations;

5-quater) members of international parliamentary assemblies or of an international or supranational organisation and to judges and officials of international courts;

5-quinquies) persons exercising functions or activities corresponding to those of public officials and persons in charge of a public service within States not belonging to the European Union, when the act affects the financial interests of the Union.

2. The provisions of articles 319-quater, second paragraph, 321 and 322, first and second paragraphs, if money or other benefits are given, offered or promised, shall also apply to:

1) the persons indicated in the first paragraph of this Article;

2) persons performing functions or activities corresponding to those of

		public officials and persons in charge of a public service within other foreign States or international public organisations. *3. The persons referred to in the first paragraph shall be assimilated to public officials, if they perform corresponding functions, and to persons in charge of a public service in other cases.* **Article 318 of the IPC – Corruption of persons performing a public service** *1. A public official who receives, either for himself or for a third party, money or other benefits or the promise of such, that are not his due, for carrying out an action that is part of his duties, is sanctioned with imprisonment of three to eight years.* **Article 319 of the IPC – Corruption in the performance of acts against official duties** *1. A public official who receives, either for himself or for a third party, money or other goods or the promise of such for omitting or delaying or for having omitted or delayed carrying out his official duties or for carrying out or having carried out actions that are contrary to his official duties, is sanctioned with imprisonment of six to ten years.* **Article 319-bis of the IPC – Aggravating circumstances** *1. The punishment is increased if the fact foreseen by article 319 refers to conferral of public money, salaries or pensions or the signing of contract which involves the public authority where the public official is employed, or the payment or refunding of taxes.* **Article 319-ter of the IPC – Bribery in judicial proceedings** *1. If the offences indicated in articles 318 and 319 are committed with the specific aim of favouring or damaging a party in criminal, civil or administrative proceedings, the penalty of imprisonment of six to twelve years shall apply.* *2. If the offence results in the wrongful conviction of a person to a term of imprisonment not exceeding five years, the penalty shall be imprisonment for a term of six to fourteen years; if the offence results in the wrongful conviction of a person to a term of imprisonment exceeding five years or to life imprisonment, the penalty shall be imprisonment for a term of eight to twenty years.* **Article 319-quater of the IPC – Improper inducement to give or promise benefits** *1. Unless the fact constitutes a more serious offence, the public official or public service officer who exploits his position or his powers to oblige or convince someone to give or promise to give him or other third parties, money or other benefits shall be punished with imprisonment of six to ten years and six months.* *2. In the cases provided for in the first paragraph, anyone who gives or promises money or other benefits shall be punished by imprisonment of up to three years* ***or*** *by imprisonment of up to four years if the act offends the financial interests of the European Union and the damage or profit exceeds EUR 100,000.* **Article 320 of the IPC – Corruption of persons performing public service** *1. The provisions of articles 318 and 319 are also applicable to persons in charge of a public service.* *2. In any case, the penalties shall be reduced by no more than one third.* **Article 321 of the IPC – Punishments for bribers** *1. The penalties laid down in the first paragraph of article 318, in article 319, article 319-bis, article 319-ter, and article 320 in relation to the situations referred to in articles 318 and 319 shall also apply to a person who gives or promises money or other benefits to a public official or a person in charge of a public service.* **Article 322 of the IPC – Incitement to bribery** *1. Anyone who offers or promises money or other benefits not due to a public official or a person in charge of a public service, for the exercise of*

		his functions or powers, shall be liable, if the offer or promise is not accepted, to the penalty provided in the first paragraph of article 318, reduced by one third. *2. If the offer or promise is made in order to induce a public official or a person in charge of a public service to omit or delay an act of his office, or to perform an act contrary to his duties, the offender shall be subject, if the offer or promise is not accepted, to the penalty provided in article 319, reduced by one third.* *3. The punishment provided for in the first paragraph shall apply to a public official or a person in charge of a public service who solicits a promise or giving of money or other benefits for the exercise of his functions or powers.* *4. The punishment envisaged in the second paragraph shall apply to a public official or a person in charge of a public service who solicits a promise or giving of money or other benefits from a private individual for the purposes indicated in article 319.* **Article 322-ter of the IPC – Seizure** *1. In the case of conviction, or plea bargaining pursuant to article 444 of the Code of Criminal Procedure, for one of the offences envisaged by articles 314 to 320, even if committed by the persons indicated in article 322-bis, paragraph one, the seizure of the assets constituting the profit or price of the offence is always ordered, unless they belong to a person extraneous to the offence, or, when this is not possible, the seizure of assets, which the offender has at his disposal, for a value corresponding to such price or profit.* *2. In the event of conviction, or plea bargaining pursuant to article 444 of the Code of Criminal Procedure, for the offence referred to in article 321, even if committed pursuant to article 322-bis, second paragraph, it is always ordered to seize the assets that constitute the profit of the offence unless they belong to a person extraneous to the offence, or, when this is not possible, the seizure of goods, of which the offender has the availability, for a value corresponding to that of said profit and, in any case, not less than that of the money or other benefits given or promised to the public official or to the person in charge of a public service or to the other persons indicated in article 322-bis, second paragraph.* *3. In the cases referred to in the first and second paragraphs, the court, with the conviction, determines the sums of money or identifies the assets subject to seizure insofar as they constitute the profit or the price of the offence or insofar as their value corresponds to the profit or the price of the offence.* **Article 32-bis of the IPC – Temporary interdiction from executive offices of juridical persons** *1. Interdiction from the executive offices of legal persons and enterprises deprives the convicted person of the ability to exercise, during the interdiction period, the office of director, auditor, liquidator, general manager and manager in charge of drafting corporate accounting documents, as well as any other office with power of representation of the legal person or entrepreneur.* *2. It follows any conviction to imprisonment of not less than six months for crimes committed with abuse of power or violation of the duties inherent in the office.*
1-2	(i) Are administrative penalties provided as sanctions against natural and juridical persons? Administrative penalties include fines and civil sanctions imposed by the administrative branch of government.	☒Yes ☐No If Yes, please go to (ii)

	(ii) [If Yes in (i)] Please explain the administrative penalties and the laws, regulations and provisions on which they are based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Administrative penalties: Under Italian law (namely, under Legislative Decree no. 231/2001), juridical persons may incur in administrative penalties as a consequence of crimes committed by directors, executives and their subordinates, agents and other individuals acting on behalf of the legal entity, if the crimes are committed in the interest or for the benefit of the entity. However, according to article 6 of Legislative Decree no. 231/2001, a company is exempted from liability if it can provide evidence that: - it has implemented an organisational model aimed at preventing the criminal offence from being committed; - it has appointed an internal supervising committee with independent powers of action and control, responsible for the supervision, implementation, effectiveness, and compliance of the organisational model; - the officer, manager, or any other subordinate that committed or attempted to commit the crime has fraudulently breached the rules set out in the organisational model; - it has identified the business activities in relation to which crimes may be committed and the kind of offences that could be committed; - it has designed and implemented procedures, policies, and protocols aimed at preventing offences of the kind to which the company is exposed; - it has introduced a sanctioning regime in the event of non-compliance with the organisational model; - it has adopted adequate training programmes for staff and high-level management. Under Legislative Decree no. 231/2001, administrative penalties may consist in (i) financial penalties; (ii) disqualification penalties[78]; (iii) the seizure of the price or profit of the offence; and (iv) the publication of the judgement convicting the judicial entity. Article 9 of Legislative Decree no. 231/2001 lists the abovementioned administrative sanctions, whereas the following provisions (articles 10, 13 and 14, plus articles from 16 to 19) set the criteria for the determination of the specifically applicable penalties. Namely, the following main rules shall be kept in mind: 1) the financial penalty always applies (**please refer to question 1-3** for an accurate description of how the pecuniary sanction is calculated); 2) in addition to the pecuniary sanction, disqualification penalties may apply exclusively in relation to offences for which they are expressly provided and only when at least one of the following conditions is met: (a) the entity has derived a significant profit from the offence and the offence was committed by persons in a managerial position or by persons subject to the direction of others and, in this case, the commission of the offence was determined or facilitated by serious organisational deficiencies; (b) in case of repetition of the offence (recidivism); 3) the court determines the type and duration of disqualification sanctions; 4) if necessary, disqualification sanctions may be applied jointly; 5) in any case, the prohibition of exercising the activity shall be applied only when the imposition of other disqualification sanctions is inadequate.

[78] Disqualification penalties are:
(a) disqualification from the exercise of the activity;
(b) suspension or revocation of any authorisation, licence or permit functional to the commission of the offence;
(c) prohibition to contract with the public administration, except to obtain the performance of a public service;
(d) exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted.

		Below a complete transcription of the mentioned provisions. That said, with specific regards to the crimes of bribery and corruption, articles 25 of Legislative Decree no. 231/2001 envisages the entity's administrative liability in case the said offences are committed in the interest or to the advantage of the entity itself. (Please note that corporate liability provided under Legislative Decree no. 231/2001 is considered a "third kind" of liability, between criminal and administrative liability, because of its peculiar nature, e.g. the competent Court for the entity's liability under Legislative Decree no. 231/2001 is the Criminal Court which is competent for the related crime committed by the individual). Laws, regulations and provisions on which they are based: Articles 25 of Legislative Decree no. 231/2001 read as follows (please note that we have omitted the sections not related to the specific crimes under analysis). **Article 25 – Embezzlement, extortion, undue inducement to give or promise benefits, bribery, and abuse of office** *1. In relation to the commission of the offences referred to in articles 318, 321, 322, first and third paragraphs [...] of the Penal Code, a financial penalty of up to two hundred quotas shall apply. [...]* *2. In relation to the commission of the offences referred to in articles 319, 319-ter, paragraph 1, 321, 322, paragraphs 2 and 4, of the Penal Code, a financial penalty of between two-hundred and six-hundred quotas is applied to the entity.* *3. In relation to the commission of the offences referred to in articles [...] 319, aggravated pursuant to Article 319-bis when the entity has obtained a significant profit from the offence, 319-ter, paragraph 2, 319-quater and 321 of the Penal Code, the entity is punished with financial penalty of between three-hundred and eight-hundred quotas.* *4. The monetary sanctions envisaged for the offences referred to in paragraphs 1 to 3 are applied to the entity even when such offences have been committed by the persons indicated in articles 320 and 322-bis.* *5. In cases of conviction for one of the offences indicated in paragraphs 2 and 3, the **disqualification penalties** provided for in article 9, paragraph 2[79], are applied for a duration of no less than four years and no more than seven years, if the offence was committed by one of the persons indicated in article 5, paragraph 1, letter a)[80], and for a duration of no less than two years and no more than four years, if the offence was committed by one of the persons indicated in article 5, paragraph 1, letter b)[81].* *5-bis. If, before the first instance sentence is passed, the entity has effectively taken steps to prevent the criminal activity from having further consequences, to ensure the evidence of the offences and the identification of those responsible, or to seize the sums or other benefits transferred, and has eliminated the organisational deficiencies that caused the offence by adopting and implementing organisational models capable of preventing offences of the type committed, disqualification penalties have the duration*

[79] Article 9 of Legislative Decree no. 231/2001 provides the following list of **disqualification penalties**: (a) disqualification from exercising the activity; (b) suspension or revocation of authorisations, licences or concessions functional to the commission of the offence; (c) prohibition to contract with the public administration, except to obtain the performance of a public service; (d) exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted; (e) prohibition to advertise goods or services.

[80] Meaning persons entrusted with the representation, administration, or management of the entity or of one of its organisational units with financial and functional autonomy as well as persons exercising the management and control thereof.

[81] Meaning persons subject to the direction or supervision of one of the persons referred to in Article 5, paragraph 1, letter a).

		established by article 13, paragraph 2[82]*.* Below also a transcription of articles 6, 10, 13, 14, 16, 17, 18 and 19 of Legislative Decree no. 231/2001. **Article 6 of Legislative Decree no. 231/2001 – Persons in executive positions and organizational models of the entity** *1. If the offence has been committed by the persons indicated in article 5, paragraph 1, letter a), the entity is not liable if it proves that:* *(a) the management body has adopted and effectively implemented, before the offence was committed, organisational and management models capable of preventing offences of the type committed;* *(b) the task of supervising the functioning of and compliance with the models and ensuring that they are updated has been entrusted to a body of the entity endowed with autonomous powers of initiative and control;* *(c) the persons have committed the offence by fraudulently circumventing the organisation and management models;* *(d) there has been no omission or insufficient supervision by the body referred to in point (b).* *2. In relation to the extent of the delegated powers and the risk of offences being committed, the models referred to in paragraph 1, letter (a) must meet the following requirements:* *(a) identify the activities within the scope of which offences may be committed;* *(b) provide for specific protocols aimed at planning the formation and implementation of the entity's decisions in relation to the offences to be prevented;* *(c) identify methods of managing financial resources suitable to prevent the commission of offences;* *(d) provide for information obligations vis-à-vis the body in charge of supervising the functioning of and compliance with the models;* *(e) introduce a disciplinary system capable of sanctioning non-compliance with the measures indicated in the model.* *2-bis. The models referred to in paragraph 1, letter (a), shall provide for:* *(a) one or more channels enabling the persons indicated in article 5, paragraph 1, letters a) and b), to submit, in order to protect the integrity of the entity, detailed reports of unlawful conduct, relevant under this Decree and based on precise and concordant factual elements, or of violations of the entity's organisation and management model, of which they have become aware by reason of the functions performed; these channels guarantee the confidentiality of the identity of the reporting person in the management of the report;* *(b) at least one alternative reporting channel capable of guaranteeing, by computerised means, the confidentiality of the identity of the reporter;* *(c) the prohibition of retaliatory or discriminatory acts, direct or indirect, against the whistle-blower for reasons directly or indirectly linked to the report;* *(d) in the disciplinary system adopted pursuant to paragraph 2, letter (e), sanctions against those who breach the measures for the protection of the reporter, as well as against those who make, with malice or gross negligence, reports that prove to be unfounded.* *2-ter. The adoption of discriminatory measures against the persons making the reports referred to in paragraph 2-bis may be reported to the National Labour Inspectorate, for the measures falling within its competence, not only by the person making the report, but also by the trade union organisation indicated by the same.* *2-quater. Retaliatory or discriminatory dismissal of the reporting person is null and void. A change of job within the meaning of Article 2103 of the*

[82] Meaning a duration no lower than three months and no higher than two years.

		Civil Code, as well as any other retaliatory or discriminatory measure taken against the whistle-blower shall also be null and void. The onus is on the employer, in the event of disputes related to the imposition of disciplinary sanctions, or to demotions, dismissals, transfers, or subjecting the whistle-blower to any other organisational measure having direct or indirect negative effects on working conditions, following the submission of the report, to prove that such measures are based on reasons extraneous to the report itself. *3. Organisational and management models may be adopted, guaranteeing the requirements set out in paragraph 2, on the basis of codes of conduct drawn up by the associations representing the entities, and communicated to the Ministry of Justice which, in agreement with the competent Ministries, may, within thirty days, formulate observations on the suitability of the models to prevent offences.* *4. In small-sized entities, the tasks indicated in paragraph 1, letter (b), may be carried out directly by the management body.* *4-bis. In joint-stock companies, the Board of Statutory Auditors, the Supervisory Board and the Management Control Committee may perform the duties of the supervisory body referred to in paragraph 1, letter (b).* *5. In any case the confiscation of the profit that the entity has gained from the offence is ordered, also in the form of equivalent proceeds.* **Article 10 – Financial penalty** *1. A pecuniary administrative sanction shall always be applied for administrative offences.* *2. The pecuniary sanction shall consist of not less than one hundred nor more than one thousand quotas.* *3. The amount of a quota ranges from a minimum of Euro 258 (five hundred thousand lire) to a maximum of Euro 1,549 (three million lire).* *4. Reduced payment shall not be allowed.* **Article 13 – Disqualification penalties** *1. Disqualification penalties are applied in relation to offences for which they are expressly provided for, when at least one of the following conditions is met* *a) the entity has gained a significant profit from the offence and the offence was committed by persons in a management position or by persons subject to the direction of others when, in this case, the commission of the offence was determined or facilitated by serious organisational deficiencies;* *b) in case of repetition of the offence.* *2. Without prejudice to the provisions of article 25, paragraph 5, disqualification sanctions shall have a duration of no less than three months and no more than two years.* *3. Disqualification sanctions shall not apply in the cases provided for in article 12, paragraph 1.* **Article 14 – Criteria for the selection of disqualification sanctions** *1. Disqualification sanctions refer to the specific activity to which the offence committed by the entity relates. The judge determines their type and duration on the basis of the criteria indicated in article 11 (please refer to question 1-3 below), considering the suitability of the individual sanctions to prevent offences of the type committed.* *2. The exclusion from contracting with the public administration may also be limited to certain types of contracts or to certain administrations. The prohibition from exercising an activity entails the suspension or revocation of authorisations, licences or concessions functional to the performance of the activity.* *3. If necessary, disqualification sanctions may be applied jointly.* *4. The disqualification from exercising an activity shall be applied only when the imposition of other disqualification sanctions is inadequate.* **Article 16 – Definitively applied disqualification sanctions** *1. A definitive disqualification from exercising the activity may be*

		ordered if the entity has made a significant profit from the offence and has already been sentenced, at least three times in the last seven years, to temporary disqualification from exercising the activity. *2. The court may impose the sanction of a definitive ban on contracting with the public administration or a ban on advertising goods or services on the entity if it has already been sentenced to the same sanction at least three times in the last seven years.* *3. If the entity or one of its organisational units is permanently used for the sole or prevalent purpose of enabling or facilitating the commission of offences for which it is held liable, a definitive ban on carrying out the activity is always ordered, and the provisions laid down in article 17 do not apply.* **Article 17 – Remedying the consequences of the offence** *1. Without prejudice to the application of pecuniary sanctions, disqualification sanctions shall not be applied when, prior to the declaration of the opening of the first-instance hearing, the following conditions are fulfilled.* *a) the entity has fully compensated for the damage and has eliminated the harmful or dangerous consequences of the offence or has in any case effectively done so;* *b) the entity has eliminated the organisational deficiencies that led to the offence through the adoption and implementation of organisational models capable of preventing offences of the kind committed;* *c) the entity has made available the profit obtained for the purposes of confiscation.* **Article 18 – Publication of the conviction** *1. Publication of the conviction may be ordered when a disqualification sanction is imposed on the entity.* *2. The publication of the conviction takes place in accordance with article 36 of the Penal Code and by means of a notice published in the municipality where the entity has its head office.* *3. The judgement is published by the court registry at the expense of the entity.* **Article 19 – Seizure** *1. When sentenced, the price or profit of the offence is always seized from the entity, except for the part that can be returned to the injured party. The rights acquired by third parties in good faith are not affected.* *2. When it is not possible to execute the seizure pursuant to paragraph 1, the same may target sums of money, goods, or other utilities with a value equivalent to the price or profit of the offence.*
1-3	(i) Are there any sanctions against natural or juridical persons for which a sliding fine scale has been introduced? Sliding fine scale: A system that prescribes a maximum fine amount depending on/ linking to the amount of the wrongful business transaction and the amount of the gain.	☐Yes ☒No[83] If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the index factors (e.g., net income, loss, bribe amount, etc.) for calculating the sanction amount and how it is calculated.	As it follows from the articles referred to above, the Italian legal system of both criminal and administrative offences is based on a sliding-fine-scale system depending on a case-by-case assessment of the specifically applicable penalty. Index factors:

[83] Although the amount of the wrongful business transaction and/or the amount of the gain might anyhow come into account in evaluating the seriousness of the offence. Additionally, those factors affect the assessment of damages from a civil law perspective. mes of the benefits.)

		On the natural-persons side, the specific sanction depends on (i) **the legal framework of the offence** and (i) the application of certain **objective and subjective factors** the courts evaluate to quantify the penalty. Namely, **articles 133, 61, 112, 62, 69 and 99 of the IPC** apply. According to article 133 of the IPC, the judge shall determine the specific applicable sanction on the basis of the seriousness of the offence, inferred from: a) the nature, kind, means, object, time, place, and any other manner of the offence; b) the seriousness of the damage or danger caused to the person injured by the offence; c) the intensity of the intent or degree of guilt in committing the offence. In addition, the judge shall also consider the offender's capacity to commit the offence, derived from: a) the offender's motives for committing the offence and its personal character; b) the offender's criminal and judicial record and, in general, his conduct and life prior to the offence; c) the individual, family, and social life conditions of the offender. Articles 61, 62 and 112 of the IPC contain a list of specific "aggravating" and "mitigating circumstances", whose existence at the time of committing the offence impact on the quantification of the penalty, either aggravating or reducing it. Below a transcription of the two articles. On its side, article 69 of the IPC provides how to determine a sanction in the event both aggravating and mitigating circumstances contextually occur. Finally, article 99 of the IPC governs the legal institution of the "repeated infringement" - or "recidivism". Generally speaking, recidivism occurs in the case of 'relapse' in the offence, i.e., when the person commits a new offence after having been convicted of committing another offence. This 'relapse' obviously affects the psychological assessment of the offender and leads to an increase in the penalty. Below a transcription of the article. Below is a transcription of the relevant articles. With specific regard to bribery offences, please refer to the transcriptions of the articles below where specific aggravating and mitigating circumstances are also mentioned (see highlights in grey). **Article 133 – Seriousness of the offence: assessment for sentencing purposes** *1. In exercising the discretion indicated in the preceding article, the court must take into account the seriousness of the offence, inferred from:* *1) the nature, kind, means, object, time, place and any other manner of the action;* *2) the seriousness of the damage or danger caused to the person injured by the offence;* *3) the intensity of the intent or the degree of guilt.* *2. The judge must also take into account the offender's capacity to commit offences, inferred from:* *1) the offender's motives for committing the crime and the offender's character;* *2) the offender's criminal and judicial record and, in general, his conduct and life prior to the offence;* *3) the conduct contemporaneous with or subsequent to the offence;* *4) the individual, family and social life conditions of the offender.* **Article 61 – Common aggravating circumstances**

		1. The following circumstances aggravate the offence, when they do not serve as constituent elements or special aggravating circumstances [i.e., circumstances aggravating a specific offence]*:* *1) having committed the offence for abject or futile motives;* *2) having committed the offence in order to execute or conceal another offence, or in order to obtain or ensure for oneself or others the product or profit or the price or the impunity of another offence;* *3) having, in the case of culpable offences, acted notwithstanding the foreseeability of the event;* *4) having used cruelty, or having acted with cruelty towards persons;* *5) having taken advantage of circumstances of time, place, or person, also with reference to age, such as to hinder public or private defence;* *6) having committed the offence during the time in which the offender voluntarily evaded the execution of a mandate or order for arrest or imprisonment, issued for a previous offence;* *7) having, in crimes against property, or which in any case damage property, or in crimes committed for profit, caused significant property damage to the person injured by the offence;* *8) having aggravated or attempted to aggravate the consequences of the offence committed;* *9) having committed the offence with abuse of power, or in breach of the duties inherent in a public function or a public service, or in the capacity of minister of a cult*; *10) having committed the offence against a public official or a person entrusted with a public service, or holding the office of minister of the Catholic religion or of a religion admitted in the State, or against a diplomatic or consular agent of a foreign State, in the act or by reason of the performance of functions or service;* *11) having committed the act with abuse of authority or domestic relations, or with abuse of relations of office, service, cohabitation, or hospitality;* *11-bis) having committed the offence while unlawfully on the national territory;* *11-ter) having committed an offence against a person to the detriment of a minor within or in the vicinity of educational or training institutions;* *11-c) having committed a non-culpable offence during the period in which he was admitted to an alternative measure to detention in prison;* *11-quinquies) having committed a non-culpable offence against life and personal safety and against personal liberty in the presence of or to the detriment of a person under the age of eighteen years or to the detriment of a pregnant person;* *11-sexises) having committed, in non-negligent offences, the act to the detriment of persons admitted to health facilities or to residential or semi-residential social-health facilities, whether public or private, or to social-educational facilities;* *11-septies) having committed the act at or on the occasion of sporting events or during transfers from or to places where such events are held;* *11-octies) having acted, in offences committed with violence or menace, to the detriment of persons exercising the health and social-health professions as well as of any person carrying out auxiliary care, health assistance or rescue activities, functional to the performance of such professions, on account of or in the exercise of such professions or activities.* **Article 112 – Aggravating circumstances** *1. The sanction to be imposed for the offence committed shall be increased* *1) if the number of persons, who have concurred in the offence, is five or more, unless the law provides otherwise;* *2) against anyone who, also outside the cases provided for in the following two points, has promoted or organised the cooperation in the offence, or directed the activities of the persons who participated in the offence;*

		3) against anyone who, in the exercise of his authority, direction or supervision, has caused persons subject to him to commit the offence *4) against whoever, outside the case provided for in article 111[84], has caused a minor younger than 18 years old or a person in a state of infirmity or mental deficiency to commit the offence, or has in any case availed himself of them or has participated with them in the commission of an offence for which arrest in flagrante delicto is provided for.* *2. The punishment is increased by up to half against those who have availed themselves of a person who cannot be charged or is not punishable, by reason of a condition or personal quality, or with the same have participated in the commission of a crime for which arrest in flagrante delicto is provided for.* *3. If the person who induced others to commit the offence or availed himself of others or participated with them in the commission of the offence is the parent exercising parental responsibility, in the case provided for in paragraph 1, point 4), the penalty shall be increased by up to half, and in the case provided for in paragraph 2, the penalty shall be increased by up to two-thirds.* *4. The penalty increases provided under letters 1), 2) and 3) of this article shall also apply if one of the participants in the offence is not imputable or is not punishable under applicable law.* **Article 62 – Mitigating circumstances** *1. The following circumstances, where they are not constituent elements or special mitigating circumstances, mitigate the offence:* *a) having acted for reasons of particular moral or social value;* *b) having acted in a state of anger, caused by an unjust act of another;* *c) having acted by suggestion of a crowd in an uproar, when it is not a matter of meetings or assemblies prohibited by law or by the Authority, and the offender is not a habitual or professional offender or a delinquent by tendency;* *d) having caused, in offences against property, or in any case offending against property, property damage of special tenuity to the person harmed by the offence, or, in offences determined for profit motive, having acted in order to obtain or having obtained a profit of special tenuity, when the harmful or dangerous event is also of special tenuity;* *e) having contributed to determining the event, together with the action or omission of the offender, the wilful act of the offended person;* *f) having, before trial, repaired the damage in full, through compensation for it, and, where possible, through restitution; or having, before trial and outside the case provided for in the last paragraph of article 56[85], spontaneously and effectively endeavoured to avoid or mitigate the harmful or dangerous consequences of the offence.* **Article 69 of the IPC – Combination of aggravating and mitigating circumstances** *1. When aggravating and mitigating circumstances are combined, and the former are considered by the court to prevail, the reductions in the penalty established for the mitigating circumstances shall not be taken into account, and only the increases in the penalty established for the aggravating circumstances shall be applied.* *2. If the mitigating circumstances are held to prevail over the aggravating circumstances, the sentence increases established for the latter shall not be taken into account, and only the sentence reductions established for the mitigating circumstances shall be applied.* *3. If the judge considers that there is equivalence between the*

[84] The provision – entitled "Determination to the crime of a person who cannot be charged or is not punishable" – regulates the hypothesis of someone who pushes a person not chargeable nor punishable to commit a crime. That person will respond and be convicted for the relevant crime.

[85] Article 56 of the IPC (entitled "Attempted crime") refers to the case of a person *attempting* to commit a crime (but in the end the offence does not occur). The last paragraph reads as follows: *"If* [the offender] *willfully prevents the offence from occurring, he shall be liable to the penalty laid down for the attempted crime, reduced by a third to half*".

		aggravating and mitigating circumstances, the penalty that would be imposed if none of those circumstances existed shall be applied. *4. The provisions of this Article shall also apply to the circumstances inherent in the person of the offender, with the exception of the cases provided for in Article 99 and articles 111 and 112, for which there is a prohibition on mitigating circumstances taking precedence over aggravating circumstances, and to any other circumstance for which the law establishes a penalty of a different kind or determines the measure of the penalty independently of the ordinary penalty for the offence.* **Article 99 of the IPC – Recidivism** *1. Whoever, after having been convicted of a non-negligent offence, commits another, may be subject to an increase of one third of the sentence to be imposed for the new non-negligent offence.* *2. The penalty may be increased by up to half if:* *1) the new non-negligent offence is of the same nature of the previous one;* *2) the new non-negligent offence is committed within five years of the previous conviction;* *3) the new non-negligent offence was committed during or after the execution of the sentence, or during the time in which the convicted person voluntarily evades execution of the sentence.* *3. If more than one of the circumstances listed in the second paragraph apply, the penalty shall be increased by half.* *4. If the recidivist commits another non-negligent offence, the increase in sentence, in the case referred to in the first paragraph, shall be half, and in the cases provided for in the second paragraph, it shall be two-thirds.* *5. If the offence is one of the offences indicated in article 407(2)(a) of the IPC[86], the increase in the penalty for recidivism is mandatory and, in the cases indicated in the second paragraph, cannot be less than one third of the penalty to be imposed for the new offence.* *6. In no case may the increase in sentence as a result of recidivism exceed the total of the sentences resulting from the convictions preceding the commission of the new non-negligent offence.* On the juridical-persons side, articles 10, 11 and 12 of Legislative Decree no. 231/2001 apply. Namely, the financial penalty against the legal entity is calculated according to a "quota mechanism", consisting in two phases: 1. In the first phase, according to article 10, the court determines the number of quotas, which is never less than 100 nor higher than 1000. Specifically, the minimum and maximum amount of quotas depends on the legal framework outlined for each individual offence. According to article 11, the specific determination of quotas is done through the assessment of (i) the seriousness of the fact, (ii) the degree of responsibility of the entity (has the entity adopted an organisational model, ethical code, or implemented a disciplinary system?), (iii) the restorative and reorganizational conduct carried out after the commission of the offence. 2. Second, the court determines the monetary value of the individual quota, ranging from a minimum of € 258 to a maximum of € 1,549, on the basis of the economic and patrimonial conditions of the legal person. The penalty is reduced by half (article 12) if (sort of mitigating circumstances): (i) the offender has committed the offence in his own interest or in the interest of third parties and the entity has not gained any advantage or has gained a minimal advantage;

[86] These are mostly offences against the person and offences committed through criminal conspiracy.

(ii) the pecuniary damage caused is of special tenuity.

The penalty is reduced by between a third and a half if, before the opening of the first instance hearing:

(i) the entity has fully compensated for the damage and eliminated the harmful or dangerous consequences of the offence or has in any case taken effective steps to do so;

(ii) an organisational model suitable for preventing offences of the kind committed has been adopted and made operational.

Where both conditions are met, the sanction shall be reduced by one half to two thirds.

With specific reference to the offences of foreign bribery provided under article 25 of Legislative Decree no. 231/2001, please find below the range of available base fines:

Offence	**Quotas**	**Base fines**
Bribery for the performance of functions or powers	100-200	EUR 25,800 – 309,800
Bribery for an act in breach of duties	200-600	EUR 51,600 – 929,400
Incitement to bribery for the performance of functions or powers	100-200	EUR 25,800 – 309,800
Incitement to bribery for an act in breach of duties	200-600	EUR 51,600 – 929,400
Undue inducement	300-800	EUR 77,400 – 1,239,200
Bribery for an act in breach of duties in cases where the legal person has gained a significant profit	300-800	EUR 77,400 – 1,239,200
Corruption in judicial proceedings	200-600	EUR 51,600 – 929,400

How it is calculated:

- On the natural-persons side, the determination of the penalty is left to the judge's discretion, taking into account the minimum and maximum applicable for that particular offence and the circumstances that may possibly come into consideration in the assessment of the penalty.
- On the judicial-persons side, the specific amount of the financial penalty comes from the multiplication of the monetary value of the individual quota to the total number of quotas determined by the court. The above implies that the minimum penalty (minimum number of quotas, minimum determination of quota) amounts to € 28,800, and the maximum penalty to € 1,549,000 (maximum number of quotas, maximum determination of quota). As mentioned above, the determination of the number of quotas and the value of the individual quota falls within the discretion of the court.

Below is a transcription of the relevant articles.

Article 10 of Legislative Decree no. 231/2001 – Administrative financial penalty

1. A financial penalty shall always apply for administrative offences.

2. The financial pecuniary shall be levied in instalments of not less than one hundred nor more than one thousand.

3. The amount of a quota ranges from a minimum of Euro 258 to a maximum of Euro 1,549.

4. Reduced payment shall not be allowed.

<table>
<tr><td></td><td></td><td>Article 11 of Legislative Decree no. 231/2001 – Criteria for the assessment of the financial penalty
1. In assessing the financial penalty, the court determines the number of quotas, taking into account the seriousness of the offence, the degree of the entity's liability and the activity carried out to eliminate or mitigate the consequences of the offence and to prevent the commission of further offences.
2. The amount of the quota is set on the basis of the entity's economic and patrimonial conditions in order to ensure the effectiveness of the sanction.
3. In the cases provided for in article 12, paragraph 1, the amount of the share is always Euro 103.
Article 12 of Legislative Decree no. 231/2001 – Cases in which the financial penalty is reduced
1. The financial penalty is reduced by half and cannot in any case exceed Euro 103,291 if:
(a) the offender has committed the offence mainly in his own interest or in the interest of third parties and the entity has not gained an advantage or has gained a minimal advantage;
(b) the financial damage caused is of particular tenuousness.
2. The sanction is reduced by between a third and a half if, before the opening of the first instance hearing:
(a) the entity has fully compensated for the damage and eliminated the harmful or dangerous consequences of the offence or has in any case effectively done so;
(b) an organisational model suitable for preventing offences of the kind committed has been adopted and made operational.
3. In the event of the concurrence of both conditions set out in the letters of the preceding paragraph, the sanction shall be reduced by one half to two thirds.
4. In any case, the fine cannot be lower than EUR 10,329.</td></tr>
<tr><td>.</td><td>(i) Is there a statute of limitations period for prosecution against natural and juridical persons?</td><td>☒Yes ☐No
If Yes, please go to (ii)</td></tr>
<tr><td></td><td>(ii) [If Yes in (i)] Please explain the limitations period for prosecution against natural and juridical persons and the laws, regulations and provisions on which it is based.
<u>Note:</u> Please clearly indicate laws and provisions on which they are based.
Please also share the wording of such provisions.</td><td>Limitations period for prosecution:

NATURAL PERSONS
On the natural-persons side, under <u>article 157 of the IPC</u> the statute of limitations extinguishes the offence after the lapse of a period of time corresponding to the highest statutory penalty (maximum years of imprisonment) and in any case not less than six years in the case of a felony and four years in the case of a misdemeanour.

With specific regard to foreign corruption offences, the base limitation periods are the followings:

<table>
<tr><th>Offence</th><th>Base limitation period (years)</th></tr>
<tr><td>Bribery for the performance of functions or powers</td><td>8</td></tr>
<tr><td>Bribery for an act in breach of duties</td><td>10</td></tr>
<tr><td>Incitement to bribery for the performance of functions or powers</td><td>6</td></tr>
<tr><td>Incitement to bribery for an act in breach of duties</td><td>6.7</td></tr>
</table>
</td></tr>
</table>

Undue inducement	6
Corruption in judicial proceedings	12

Articles 158 establishes the period from which the limitation period begins to run. In short, time begins to run when the offence is completed, e.g., with regard to corruption, when the last bribe payment is made.

JURIDICAL PERSONS

On the juridical-persons side, under article 22 of Legislative Decree no. 231/2001 administrative penalties are limited to five years from the date the offence was committed.

Laws, regulations and provisions on which it is based:
Below a transcription of the relevant mentioned provisions (please note that we have omitted non-relevant sections).

NATURAL PERSONS

Article 157 of the IPC – Limitation period

1. The statute of limitations extinguishes the offence after the lapse of a period of time corresponding to the maximum years of convictions prescribed as statutory penalty, and in any case not less than six years in the case of a felony and four years in the case of a misdemeanour, even if the latter is punishable only by fine.

2. To determine the period of time required for prescription, regard shall be had to the penalty established by law for the offence committed or attempted, without taking into account the reduction for mitigating circumstances and the increase for aggravating circumstances, except for aggravating circumstances for which the law establishes a penalty of a type different from the ordinary penalty and for those with special effects, in which case the maximum increase in penalty provided for the aggravating circumstance shall be taken into account.

3. The provisions of Article 69 shall not apply, and the time required to prescribe shall be determined in accordance with the second paragraph.

4. If the law prescribes jointly or alternatively a custodial sentence and a financial penalty for the offence, only the custodial sentence shall be taken into account in determining the period of prescription.

5. Where the law prescribes for the offence other than a custodial sentence and a financial penalty, the time limit of three years shall apply.

6. […]

7. The statute of limitations is always expressly waivable by the defendant.

8. The statute of limitations does not extinguish offences for which the law provides for life imprisonment, also as an effect of the application of aggravating circumstances.

Article 158 of the IPC – Commencement of the limitation period

1. The limitation period runs, for a committed offence, from the day of its commission; for an attempted offence, from the day on which the activity of the offender ceased; for a permanent or continuing offence, from the day on which permanence or continuation ceased.

2. When the law makes the offence punishable dependent on the occurrence of a certain condition, the limitation period runs from the day on which the condition is met. However, in offences punishable on complaint, application or request, the limitation period runs from the day the offence is committed.

3. […]

JURIDICAL PERSONS

Article 22 of Legislative Decree no. 231/2001 – Limitation period

1. Administrative sanctions shall be limited to a period of five years

<table>
<tr><td></td><td></td><td>from the date the offence was committed.
2. The statute of limitations is interrupted by the request for the application of disqualifying precautionary measures and the notification of the administrative offence pursuant to Article 59.
3. Upon interruption a new limitation period shall begin.
4. If the interruption occurred through the notification of the administrative offence, the limitation period shall not run until the moment when the judgement which defines the case becomes. final.</td></tr>
<tr><td></td><td>(iii) [If Yes in (i)] Is there a means to interrupt or suspend the limitations period for prosecution against natural and juridical persons?</td><td>☒Yes ☐No
If Yes, please go to (iv)</td></tr>
<tr><td></td><td>(iv) [If Yes in (iii)] Please explain the grounds for the interruption or suspension and the scope of persons (individual natural person/juridical person/both) to whom the interruption or suspension of the statute of limitations on prosecution extends.
<u>Note:</u> Please clearly indicate laws and provisions on which they are based.
Please also share the wording of such provisions.</td><td>Grounds for interruption[87]:

NATURAL PERSONS
On the natural-persons side, <u>article 160, 161, 161-bis of the IPC and article 344-bis of Italian Code of Criminal Procedure</u> (“ICCP”) apply.
– Under article 160 of the IPC, the limitation period is interrupted because of certain acts related to the opening or prosecution of a criminal proceeding.
– Under article 161 of the IPC, in no case the interruption of the limitation period may lead to an increase of the period of limitation up to a certain threshold (with regard to foreign corruption offences under article 322-bis, by more than a half).
– Under article 161-bis of the IPC, the limitation period is “definitively interrupted” when the Court of first instance issues a first level judgement.
– Notwithstanding article 161-bis of the IPC, under article 344-bis of the ICCP, the Italian Court of Appeal and the Supreme Court must conclude an appeal in 2 and 1 years respectively, and 3 years and 18 months in complex cases, otherwise the proceeding is “time barred” (so called “appeals time limits”).

With regard to foreign bribery under article 322-bis of the IPC, the ultimate limitation periods in case of interruption under article 161 of the IPC, and the “appeals time limits”, are the following:

<table>
<tr><th>Offences</th><th>Ultimate limitation period (years)</th><th>Appeals limits (years)</th></tr>
<tr><td>Bribery for the performance of functions or powers</td><td>12</td><td>4.5</td></tr>
<tr><td>Bribery for an act in breach of duties</td><td>15</td><td>4.5</td></tr>
<tr><td>Incitement to bribery for the performance of functions or powers</td><td>7.5</td><td>4.5</td></tr>
<tr><td>Incitement to bribery for an act in breach of duties</td><td>8.4</td><td>4.5</td></tr>
<tr><td>Undue inducement</td><td>9</td><td>4.5</td></tr>
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[87] When the statute of limitations is interrupted, the limitations period that has been running until that point loses its effect. When the grounds for interruption are removed, the statute of limitations begins to run again from the beginning.

Corruption in judicial proceedings	18	4.5

JURIDICAL PERSONS

On the juridical-persons side, always under article 22 of Legislative Decree no. 231/2001, the limitation period is interrupted upon (i) the request for the application of disqualifying precautionary measures and (ii) the indictment of the juridical persons by the public prosecutor, which ends the phase of "preliminary investigations" and starts the phase of the trial.

Below a transcription of the relevant provisions.

NATURAL PERSONS

Article 160 of the IPC – Interruption of the limitation period

1. The statute of limitations is interrupted by the order applying the personal precautionary measures and the order validating the detention or arrest, the interrogation made before the public prosecutor or the judicial police, on the delegation of the public prosecutor, or the judge, the invitation to appear before the public prosecutor to make the interrogation, the order of the judge fixing the hearing for the decision on the motion for dismissal the request for committal for trial, the decree fixing the preliminary hearing, the order ordering the abbreviated trial, the decree fixing the hearing for the decision on the request for the application of the penalty, the submission or summons for summary judgment, the decree ordering the immediate trial, the decree ordering the trial, the decree ordering the trial and the decree of conviction.

2. The interrupted limitation period begins to run again from the day of the interruption. If there are several interrupting acts, the limitation period starts to run from the last of them; but in no case may the time limits laid down in article 157 be extended beyond the limits laid down in article 161, paragraph 2 […].

Article 161 of the IPC – Effect of suspension and interruption of the limitation period

1. The interruption of the limitation period takes effect for all those who committed the crime. The suspension of the limitation period shall take effect limited to the defendants against whom the crime is being prosecuted.

2. Except when prosecuting for the offenses referred to in article 51, paragraphs 3a and 3c, of the Code of Criminal Procedure, in no case may the interruption of the limitation period result in an increase of more than one-fourth of the time required to prescribe, one-half for the offenses referred to in articles 318, 319, 319b, 319c, 320, 321, 322a, limited to the crimes referred to in this paragraph, and 640a, as well as in the cases referred to in article 99, second paragraph, by two-thirds in the case referred to in article 99, fourth paragraph, and by double in the cases referred to in articles 102, 103, 105.

Article 161-bis of the IPC – Termination of the course of the limitation period

1. The course of the limitation period of the offense finally ceases with the pronouncement of the first instance ruling. Nevertheless, in the event of annulment that results in regressing the proceedings to the first instance or to an earlier stage, the limitation period resumes its course from the date of the final pronouncement of annulment.

Article 344-bis of the ICCP – Unprocedibility due to exceeding the maximum time limit of the appeal judgment

1. Failure to settle the appeal within the maximum time limit of two years constitutes grounds for unprocedibility of prosecution.

2. Failure to finalize the Supreme Court case within the term of one year constitutes cause for unprocedibility of criminal prosecution.

3. The time limits referred to in paragraphs 1 and 2 of this article shall

		run from the 90th day following the expiration of the time limit provided for in article 544, as may be extended pursuant to article 154 of the implementation, coordination and transitional rules of this Code, for the filing of the grounds of the judgment. *4. When the appeal is particularly complex, by reason of the number of parties or charges or the number or complexity of the questions of fact or law to be dealt with, the time limits referred to in paragraphs 1 and 2 shall be extended, by reasoned order of the proceeding judge, for a period not exceeding one year in appeal proceedings and six months in cassation proceedings. Further extensions may be ordered, for the reasons and for the duration indicated in the previous period, when prosecuting for crimes committed for the purpose of terrorism or subversion of the constitutional order for which the law establishes the punishment of imprisonment of not less than a minimum of five years or a maximum of ten years, for the crimes referred to in articles 270, third paragraph, 306, second paragraph, 416-bis, 416-ter, 609 bis in the aggravated cases referred to in article 609-ter, 60-quater and 609-octies of the Criminal Code, as well as for aggravated crimes pursuant to article 416-bis, first paragraph, of the Criminal Code, and for the crime referred to in article 74 of the Consolidated Text of Laws on the regulation of narcotic drugs and psychotropic substances, prevention, treatment and rehabilitation of related drug addiction states, referred to in Presidential Decree No. 309/1990. Nevertheless, when prosecuting for aggravated crimes under article 416-bis, first paragraph, of the Criminal Code, the periods of extension may not exceed a total of three years in the appellate trial and one year and six months in the cassation trial.* *5. Against the order providing for the extension of the period provided for in paragraph 1, the defendant and his/her defense counsel may file an appeal in cassation, under penalty of inadmissibility, within five days of the reading of the order or, failing that, of its service. The appeal has no suspensive effect. The Supreme Court shall decide within thirty days of receipt of the documents observing the forms provided for in article 611. When the Supreme Court dismisses or declares the appeal inadmissible, the matter may not be raised again with the appeal of the judgment.* *6. The time limits referred to in paragraphs 1 and 2 shall be suspended, with effect for all defendants against whom proceedings are being brought, in the cases provided for in article 159, first paragraph, of the Criminal Code and, in the appeal case, also for the time required for the renewal of the trial instruction. In case of suspension for the renewal of the trial instruction, the period of suspension between one hearing and the next may not, however, exceed sixty days. When it is necessary to conduct new searches of the defendant, pursuant to article 159 of this Code, for the service of the summons for appeal or the notices referred to in article 613, paragraph 4, the time limits referred to in paragraphs 1 and 2 of this article shall also be suspended, with effect for all defendants against whom proceedings are being conducted, between the date on which the court orders the new searches and the date on which the service is made.* *7. The declaration of inadmissibility shall not take place when the defendant requests the continuation of the trial.* *8. Without prejudice to the provisions of article 624, the provisions of paragraphs 1, 4, 5, 6 and 7 of this article shall also be applied in the trial resulting from the annulment of the judgment with referral to the competent court for appeal. In this case, the maximum term of the trial shall commence from the 90th day following the expiration of the term provided for in article 617.* *9. The provisions of this article shall not apply in proceedings for crimes punishable by life imprisonment, including as an effect of the application of aggravating circumstances.* **JURIDICAL PERSONS**

		Article 22 of Legislative Decree no. 231/2001 – Prescription *1. Administrative penalties shall be time-barred within five years from the date on which the offence was committed.* *2. A request for the application of precautionary disqualification measures and the notification of the administrative offence pursuant to article 59 shall interrupt the prescription period[88].* *3. The interruption shall start a new limitation period.* *4. If the interruption is effected by the contestation of the administrative offence, the limitation period shall not run until the judgement defining the case has become final.* Grounds for suspension[89]: Suspension only applies on the natural-persons side. Please refer to article 159 of the IPC below. **Article 159 of the IPC – Suspension of the limitation period** *1. The running of the limitation period remains suspended whenever the suspension of the criminal proceedings or trial or of the terms of pre-trial detention is imposed by a particular provision of law, as well as in cases of:* *1) from the date of the act whereby the public prosecutor makes the request until the day on which the competent authority grants it;* *2) referral of the case to another court, until the day on which the case is decided;* *3) suspension of the criminal proceedings or trial for reasons of impediment of the parties and defence counsel or at the request of the defendant or his defence attorney. In the event of a suspension of the trial due to the impediment of the parties or defence attorney, the hearing may not be postponed beyond the sixtieth day following the foreseeable cessation of the impediment, whereby the time of the impediment increased by sixty days must be taken into account. This is without prejudice to the powers provided for in Article 71[90], paragraphs 1 and 5, of the Code of Criminal Procedure;*

[88] The "precautionary disqualification measures" have the very same nature of the "disqualifications sanctions" listed in article 9, paragraph 2, of the Legislative Decree, i.e:
- disqualification from the exercise of the activity;
- suspension or revocation of authorizations, licenses and concessions functional to the commission of the offense;
- ban on contracting with the public administration, except for obtaining the provision of public service;
- exclusion from facilitations, financing contributions or subsidies functional to the commission of the offense;
- ban on advertising goods and services.

However, the two of them differ in the following aspects:
- "disqualification sanctions" are applied pursuant to a final and binding judgement;
- "precautionary disqualification measures" are applied (by the court, upon request of the public prosecutor) during the preliminary investigation or during the trial, if there are serious elements that the juridical person is liable for an offence and that there is a concrete danger that offences of the same nature may be committed (Article 46 of Legislative Decree 231/2001).

"Precautionary disqualification measures" may last for a maximum of 1 year (except when they are applied during the appeal trial after a judgement of first instance: in such case, they may last for the same time of the equivalent "disqualification sanction" provided in the judgement).

Article 59, on the other hand, concerns the request for committal to trial, which must be made by the public prosecutor at the end of the preliminary investigation if there are factual and legal grounds on which to base the charge.

[89] Even if the statute of limitations is suspended, the limitations period that has been running up to that point does not lose its effect. Once the grounds for suspension are removed, the statute of limitations begins to run for the remainder of the limitations period.

[90] Article 71 of the Italian Code of Criminal Procedure refers to the case of suspension of the proceedings on grounds of incapacity of the defendant. Namely, the article provides that, if it appears that the defendant's state of mind is such as to prevent him/her from participating consciously in the proceedings and that this state of mind is reversible, the judge shall order the suspension of the proceedings.

		3-bis) suspension of criminal proceedings pursuant to Article 420-quater[91] of the Code of Criminal Procedure; *3-quarter) letters rogatory abroad, from the date of the order ordering the letters rogatory until the day on which the requesting authority receives the requested documentation, or in any case six months after the order ordering the letters rogatory.* *2. The limitation period resumes from the day on which the cause of suspension ceased to exist.*
1-5	Please explain, for each of the following cases, the application of the local laws of the country under investigation. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	
	(i) Employee A (an individual who is not a citizen of the country under investigation) of a branch or sales office located outside the country under investigation of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the branch or sales office locates or any third country).	Applicable to Company X: ☒Yes ☐No Applicable to Employee A: ☒Yes ☐No **Conditions under which the local law applies (e.g., conspiracy with an overseas office):** **EMPLOYEE A** Generally speaking, under article 10 of the IPC, the bribery of a foreign public official committed by a foreign citizen may be punished according to IPC if the following conditions are met: (i) the foreign citizen is located in the Italian territory; and (ii) no extradition to the foreign state involved has been granted. Below is a transcription of the article. Please note that usually, in Italian case law, crimes of "foreign bribery" by foreign citizens which are somehow linked to Italian companies is found to have been committed at least partially in the Italian territory (e.g. because the conspiracy took place in Italy). Given such condition, no other requirements shall be assessed to apply Italian law. **COMPANY X** According to article 4 of Italian Legislative Decree no. 231/2001, an Italian company is administratively responsible for the offences committed abroad by its representatives/officers/employees if: (a) the committed offences are punishable under national law even when committed abroad (see above under "EMPLOYEE A"), and (b) the Country where the offence has been materially committed does not start legal action against the offenders. **Applied laws and provisions: Article 10 of the IPC – Common crime of the foreigner abroad** *A foreigner who, outside the cases indicated in articles 7 and 8, perpetrates in a foreign country, to the detriment of the State or of a citizen, a crime for which Italian law prescribes life imprisonment or imprisonment of not less than one year, shall be punished in accordance with that law, provided that he is in the territory of the State and there is a request from the Minister of Justice, or an instance or complaint by the offended party.* *2. If the offence is committed against the European Communities, a foreign State or a foreign national, the offender shall be punished according to Italian law, at the request of the Minister of Justice, provided that:* *1) he is in the territory of the State;* *2) the offence is one for which the penalty is life imprisonment or*

[91] Article 420-quarter of the Italian Code of Criminal Procedure refers to the case of suspension of the proceedings in the absence of the defendant.

		imprisonment of not less than a minimum of three years; and *3) his extradition has not been granted, or has not been accepted by the Government of the State where he committed the offence, or by that of the State to which he belongs.* *The request of the Minister of Justice or the request or complaint of the injured party shall not be necessary for the offences provided for in articles 317, 318, 319, 319-bis, 319-ter, 319-quater, 320, 321, 322 and 322-bis.* **Article 4 of Legislative Decree no. 231/2001 – Offences committed abroad** *1. In the cases and under the conditions provided for in Articles 7, 8, 9 and 10 of the Penal Code, entities having their principal place of business in the territory of the State shall also be liable in respect of offences committed abroad, provided that the State of the place where the act was committed does not prosecute them.* *2. In cases where the law provides that the guilty party is punished at the request of the Minister of Justice, proceedings are brought against the entity only if the request is also made against the latter.*
	(ii) Employee B (an individual who is not a citizen of the country under investigation) of a foreign subsidiary of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the foreign subsidiary locates or any third country). Note: If the scope of application varies depending on whether it is subsidiary or affiliate, please explain each.	Applicable to Company X: ☒Yes ☐No Applicable to Employee B: ☒Yes ☐No **Conditions under which the local law applies (e.g., conspiracy with an overseas office):** **EMPLOYEE B** Same conditions relevant for Employee A under case (i). **COMPANY X** As a premise: while case (i) involves a mere branch/sales office, case (ii) involves a subsidiary, i.e., a juridical person separated from the Company X (although part of the same group). Having said that, according to Italian case law, a generic reference to the "group" is not sufficient to affirm the liability of the parent company for offences committed by representative of a subsidiary (foreign or domestic). The parent company may be liable under Legislative Decree no. 231/2001 only if the general requirements for administrative liability are met specifically for such parent company, in particular (i) a person acting on behalf of such parent company conspired in the commitment of the offence and (ii) the parent company retains an economic advantage from such offence. In this case, Company X may be held liable if a director/employee/representative of Company X conspired with Employee B of the foreign subsidiary. **Applied laws and provisions**: same as above.
	(iii) Employee C (an individual who is not a citizen of the country under investigation) of a foreign agent of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the foreign agent locates or any third country).	Applicable to Company X: ☒Yes ☐No Applicable to Employee A: ☒Yes ☐No **Conditions under which the local law applies (e.g., conspiracy with an overseas office, if any):** please see above case (ii). **Applied laws and provisions:** same as above.
2	**Actual situation regarding measures against the bribery of foreign public officials in the country under investigation**	

2-1	**[Only for the US and the UK]** Please describe up to five (5) cases of bribery of foreign public officials that were severely sanctioned. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese).	
	Case 1	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 2	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 3	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 4	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 5	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
2-2	**[for jurisdictions other than the US and the UK]** Please describe some of the leading cases of bribery of foreign public officials detected, if any. Three cases or less is fine, and if you would like to explain more than three cases, please add a line. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the	

	judgement (preferably in English or Japanese).	
	Case 1	**Case Information**: proceeding under article 25, paragraph 3, of Legislative Decree no. 231/2001 against SAIPEM S.p.A. (Italian company operating in the energy sector) before the Court of Milan. **Outline of the case:** In 1995-2004, an Italian engineering and construction company had a natural gas project in Nigeria as part of a joint venture that comprised the company's wholly-owned Dutch subsidiary and companies from France, Japan, and the United States. The joint venture paid over USD 180 million in bribes to Nigerian public officials to obtain contracts to build liquefied natural gas facilities valued at more than USD 6 billion. The payments were channelled through a shell company controlled by an individual from the United Kingdom and a Japanese trading company that acted as intermediaries. In 2006, Saipem S.p.A. acquired the Italian company involved in the scheme. In the context of the proceeding, Public Prosecutor's Office had made a request for precautionary disqualification penalty consisting in the prohibition to enter into contractual relations with NNPC [92] or its subsidiaries. The Public Prosecutor's Office subsequently waived this request in exchange for the deposit of a bail in the amount of € 24,530,580. Subsequently, the Court pronounced a judgment of dismissed charges for prescription against the defendants as natural person, ordering the continuation of the trial in relation to Saipem's position only. During 2013, at the outcome of the trial, the Court sentenced Saipem to pay a fine of € 600,000 and seizured the deposited bail of. Saipem appealed against the first instance ruling. In 2015, the Court of Appeal of Milan confirmed the first instance ruling declaring Saipem liable for the administrative offence pursuant to Legislative Decree no. 231/2001. Against this decision, the company appealed to the Court of Cassation, that, again, confirmed the courts decisions and condemned the company also to the payment of the litigation costs. ☐ Criminal penalty ☒ Administrative penalty ☐ Other ( ) **Sanctions:** financial penalty and seizure. **Applied laws and provisions:** Article 25 of Legislative Decree No. 231/2001 + article 322-bis of the IPC
	Case 2	**Case Information:** proceedings under article 25, paragraph 3, of Legislative Decree no. 231/2001, and art. 322-bis of the IPC against ENI S.p.A., its directors and agents before the Court of Milan. **Outline of the case:** This case concerned a protracted sale of an oil prospecting licence for an offshore oilfield in Nigeria. ENI S.p.A. and an Anglo-Dutch oil and gas multinational company allegedly engaged in foreign bribery to obtain the licence. In the late 1990s, the licence was awarded to a company controlled by the then OilMinister. Between 2001 and 2006, the licence was at some point revoked but a new government reaffirmed the decision in 2010. Meanwhile, the former Oil Minister began negotiations to sell the licence through two intermediaries. Eni S.p.A. and the Anglo-Dutch company carried out negotiations for the purchase, in which they also met and/or had exchanges with the Nigerian President, Attorney General, and Oil Minister. The sale was finally

[92] "NNPC" means that Nigerian public officials formed part of the NNPC (Nigerian National Petroleum Corporation), a state company involved in commercial activities in the petroleum industry/sector. They were among the public officials bribed by SAIPEM S.p.A., in conspiracy with other entities, to procure contracts for the construction of natural gas liquefaction facilities in the Bonny Island area of Nigeria.

		concluded in April 2011. The two companies paid approximately USD 1.3 billion in exchange for the licence free of all legal claims. The government would then transfer approximately USD 1 billion to the former Oil Minister's company. Italian prosecutors filed foreign bribery charges against the Italian and Anglo-Dutch companies, and 13 individuals including the companies' executives, several intermediaries, and the former Oil Minister. The prosecution alleged that the two companies had a corruption agreement with the Nigerian President, Attorney General, and Oil Minister. Other officials who were involved in the negotiations were considered intermediaries. According to the prosecutors' theory, part of the sum paid to the former Oil Minister's company was destined to these public officials as remuneration for the agreement. In March 2021, a first instance court acquitted all accused of foreign bribery. The court found no direct evidence that the companies negotiated a corrupt agreement with the Nigerian public officials. In July 2022, the prosecution conceded the appeal and the acquittals became final. In related proceedings, two alleged intermediaries were convicted in the first instance after opting for a "fast-track trial". They were also acquitted after the prosecution conceded the appeal in 2021. ☐ Criminal penalty ☐ Administrative penalty ☒ Other (the company was acquitted) **Sanctions:** N/A **Applied laws and provisions:** Article 25 of Legislative Decree No. 231/2001 + article 322-bis of the IPC
	Case 3	**Case Information:** criminal proceedings under article 25, paragraph 3, of Legislative Decree no. 231/2001, and art. 322-bis of the IPC against Agusta Westland S.p.A.., its directors and agents before the Court of Busto Arsizio. **Outline of the case:** Agusta Westland S.p.a., an Italian helicopter-manufacturing company, and subsidiary of one of the world's largest defence companies, allegedly paid approximately EUR 10.5 million in bribes through intermediaries to the former Chief of the Indian Air Force and his close relatives from 2005 to 2010 to obtain a EUR 556 million contract for the supply of twelve helicopters to the Indian Ministry of Defence. In April and August 2014 respectively, the Busto Arsizio Court approved two "patteggiamento" (plea bargain), one with a natural person who intermediated the bribery and another with two companies (Agusta Westland S.p.A: AgustaWestland ltd). The natural person was imprisoned for 1 year and 10 months, which he had already served. One company was fined € 80.000 and the other was ordered to pay a € 300.000 fine and € 7.5 million in confiscation. Following the offending both companies implemented compliance programmes, a factor that was taken into account in mitigation and was relevant to the non-imposition of interdictive sanctions including debarment. Two former company executives went to trial and were acquitted after lengthy judicial proceedings. A trial court in Busto Arsizio exonerated both of foreign bribery, but convicted them of related-tax fraud in 2014. The Milan Court of Appeal overturned the decision and entered convictions for foreign bribery and tax fraud in 2016. The following year, the Supreme Court quashed the convictions on procedural grounds and ordered a retrial. In 2018, the Milan Court of Appeal retried and acquitted both defendants, concluding that corruption was not proven. The Supreme Court rejected appeals of this decision in 2019. ☐ Criminal penalty ☐ Administrative penalty ☒ Other (the company was acquitted)

		Sanctions: N/A **Applied laws and provisions:** Article 25 of Legislative Decree No. 231/2001 + article 322-bis of the IPC
2-3	Please explain the current trends and developments in detection and sanctions in cases involving bribery of foreign public officials.	Difficulties in combating international bribery are noted by the OECD report on anti-bribery in Italy, published on 18 October 2022. Important difficulties have been reported particularly with regard to companies responsible for international corruption: disincentives to corrupt practices are not effective due to too low penalties and too short statutes of limitation, but also due to the incomplete application of whistle-blower protections. Further difficulties arise where most international bribery cases prosecuted in Italy are dismissed or acquitted and criminal penalties are applied by plea bargaining. The report argues that, in part, acquittals occur because the totality of circumstantial evidence is not taken into account simultaneously and the standard of proof is very high, as required in international bribery cases, resulting in the near impossibility of proving the crime of international bribery. The OECD therefore makes a number of further recommendations in this regard, calling on Italy for: – the implementation of a clear national strategy to fight international corruption; – increased Italian and foreign media monitoring of allegations of international bribery; – further strengthening the protection of whistleblowers in the public and private sector; – encouraging companies to adopt compliant anti-corruption programs; – increased awareness of the significance of international bribery and the value of the principles contained in the OECD Anti-Bribery Convention.
2-4	[Only for Australia, South Korea and France] (i) Have any of the cases of bribery of foreign public officials been subject to a sliding scale of fines?	☐Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please describe a typical case. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese). Note: If sanctions were imposed for the acts of a sales office, subsidiary, or agent, please also specify the laws, regulations and provisions on which they are based.	Case Information: Outline of the case: Type of sanction: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Fine amount: Factors considered in the calculation of the fine amount: How the amount of the fine was calculated: Laws and provisions on which they are based: Note: If you have more than one case that should be mentioned, please add them below.

2-5	(i) Have any of the cases of bribery of foreign public officials involved the extraterritorial application[93] of the local laws of the country under investigation?	☐Yes ☒No If Yes, please go to (ii) (Please note that Italian criminal proceedings on "foreign bribery" usually do involve foreign consultant/agents/intermediaries (see cases mentioned under No. 2.2); however, in such cases the crime is found to have been committed at least partially in the Italian territory (e.g. because the conspiracy took place in Italy). Given such condition, no other requirement shall be assessed to apply Italian law. Nevertheless, theoretically speaking, pure "extraterritorial application" of Italian criminal law is conceivable under article 10 of the IPC (see 1.5), according to which the bribery of a foreign public official committed by a foreign citizen may be punished under the IPC if the following conditions are met: (i) the foreign citizen is located in the Italian territory; (ii) no extradition to the foreign state involved has been granted).
	(ii) [If Yes in (i)] Please describe a typical case. In particular, if there are any cases of bribery by foreign employees, agents, etc., please give priority to such cases.	Case Information: Outline of the case: Nevertheless, "extraterritorial" application of Italian law Key judicial decisions on governing law and jurisdiction: Note: If you have more than one case that should be mentioned, please add them below.

[93] This is a case in which the laws of a country are applied to acts committed outside that country, whereas the general rule is that the laws of a country are applied within the territory of that country and their effect does not extend to foreign countries.

(6) オーストラリア

NO.	Question	Answer
1	**System for Combating Bribery of Foreign Public Officials**	
1-1	(i) Are criminal penalties provided as sanctions against natural and juridical persons?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the statutory penalties (fine and/or imprisonment) and the relevant laws, regulations and provisions on which they are based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Details of the Statutory Penalties (Fine and/or Imprisonment) / Laws, Regulations, and Provisions on Which They Are Based: **Statutory Penalties** *Individual* The penalty for an individual who is found guilty of bribing a foreign official is imprisoned for not more than 10 years and/or a fine of not more than 10,000 penalty units (AUD 2.222 million[94]). *Corporation* For a corporation, the maximum fine is the greater of: a. 100,000 penalty units (AUD 22.2 million); b. if the value of the benefit the body corporate directly or indirectly obtained can be determined – 3 times the value of that benefit; c. if the court cannot determine the value of that benefit – 10% of the annual turnover of the corporation and related bodies corporate during the 12 months ending at the end of the month in which the conduct constituting the offence occurred. **Laws, Regulations, and Provisions on Which They Are Based** In Australia, bribery is regulated by a combination of federal and state and territory legislation, which have broad jurisdictional reach. Specifically, the following: *Commonwealth* The *Criminal Code Act 1995* (Cth) (**Criminal Code**), which applies to individuals and corporations and criminalises: • bribery of foreign public officials (section 70.2, Criminal Code); • bribery of Commonwealth public officials (section 141.1, Criminal Code); and • false accounting (section 490.1, Criminal Code). Sections 70.2 and 490.1 of the Criminal Code give effect to Australia's obligations under the *OECD Anti-Bribery Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (**OECD Convention**). It requires parties to take measures to legislate against bribery of foreign public officials and the use of false documents (Articles 1 and 8, OECD Convention). *States and territories of Australia* The legislation is not uniform but generally prohibits the corrupt giving, offering or receiving of inducements or rewards to or from agents of companies and individuals, or public officials in the private and public sectors. *Extraterritorial reach* The above offences have broad jurisdictional reach and do apply to conduct occurring outside of Australia.
1-2	(i) Are administrative penalties provided as sanctions against natural and juridical persons? Administrative penalties include fines and civil sanctions imposed by the administrative branch of government.	☐Yes ☒No If Yes, please go to (ii)

[94] On 1 January 2023, the value of a penalty unit increased from AUD 222 to AUD 275. Accordingly, an individual can be fined not more than AUD 2.75 million.

	(ii) [If Yes in (i)] Please explain the administrative penalties and the laws, regulations and provisions on which they are based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Administrative penalties: Laws, regulations and provisions on which they are based: N/A
1-3	(i) Are there any sanctions against natural or juridical persons for which a sliding fine scale has been introduced? Sliding fine scale: A system that prescribes a maximum fine amount depending on/ linking to the amount of the wrongful business transaction and the amount of the gain.	☒Yes[95] ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the index factors (e.g., net income, loss, bribe amount, etc.) for calculating the sanction amount and how it is calculated.	Index factor: How it is calculated: In calculating the sanction amount, the Court must impose a sanction that is "of a severity that is appropriate in all of the circumstances of the offence": s 16A(1) *Crimes Act 1914* (Cth) (**Crimes Act**). The factors taken into account are myriad, but include the cooperation (if any) with law enforcement agencies in the investigation of the offence or of other offences, and if the individual or corporation has pleaded guilty to the charge, and the timing of that plea: see s 16A(2) Crimes Act. In addition to criminal penalties, any benefits obtained by foreign bribery can be forfeited to the Australian Government under Part 2.2 of the *Proceeds of Crime Act 2002* (Cth).
1-4	(i) Is there a statute of limitations period for prosecution against natural and juridical persons?	☐Yes ☒No If Yes, please go to (ii) The statute of limitations in Australia is set out in Section 15B of the Crimes Act. Other than for summary offences, there is no statute of limitations.
	(ii) [If Yes in (i)] Please explain the limitations period for prosecution against natural and juridical persons and the laws, regulations and provisions on which it is based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Limitations period for prosecution: Laws, regulations and provisions on which it is based: N/A
	(iii) [If Yes in (i)] Is there a means to interrupt or suspend the limitations period for prosecution against natural and	☐Yes ☐No If Yes, please go to (iv) N/A

[95] In determing the amount of the fine, the Court will impose a fine that is "appropriate in all the circumstances", which will have regard to the amount of the wrongful business transaction and the amount of the gain. Further, for companies, there is a sliding scale system and a fine for bribery is the greater of $27.5 million, 3 times the value of the benefit (if the Court can determine the value) and 10% of the annual turnover of the corporations and related bodies corporate (if the court cannot determine the value of the benefit). Unlike Korea, there is no minimum fine that will be imposed.

	juridical persons?	
	(iv) [If Yes in (iii)] Please explain the grounds for the interruption or suspension and the scope of persons (individual natural person/juridical person/both) to whom the interruption or suspension of the statute of limitations on prosecution extends. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Grounds for interruption[96]: Grounds for suspension[97]: Applicable to: Applied laws and provisions: N/A
1-5	Please explain, for each of the following cases, the application of the local laws of the country under investigation. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	
	(i) Employee A (an individual who is not a citizen of the country under investigation) of a branch or sales office located outside the country under investigation of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the branch or sales office locates or any third country).	Applicable to Company X: ☒Yes ☐No Applicable to Employee A: ☐Yes ☒No Conditions under which the local law applies (e.g., conspiracy with an overseas office): If Company X is incorporated under a law of Australia, the local laws[98] apply to bribes made by its agents outside of Australia. Company X will only be liable if Employee A was acting within their scope of authority (actual or apparent scope), and Company X expressly, tacitly or impliedly authorised or permitted the conduct. Applied laws and provisions: Sections 12.1 to 12.3, 70.2 and 70.5 of the Criminal Code.
	(ii) Employee B (an individual who is not a citizen of the country under investigation) of a foreign subsidiary of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the foreign subsidiary locates or any third country). Note: If the scope of application varies depending on whether it is subsidiary or affiliate, please	Applicable to Company X: ☒Yes ☐No Applicable to Employee B: ☐Yes ☒No Conditions under which the local law applies (e.g., conspiracy with an overseas office): If Company X is incorporated under a law of Australia, and the foreign subsidiary of Company X is considered to be acting as the agent of Company X, local laws apply to Company X. Local laws may also apply to Company X if it is an accessory to the conduct of its subsidiary, such as aiding, abetting, procuring or inciting the commission of the conduct. Applied laws and provisions: Sections 11.2 to 11.4, 12.1 to 12.3, 70.2 and 70.5 of the Criminal Code.

[96] When the statute of limitations is interrupted, the limitations period that has been running until that point loses its effect. When the grounds for interruption are removed, the statute of limitations begins to run again from the beginning.

[97] Even if the statute of limitations is suspended, the limitations period that has been running up to that point does not lose its effect. Once the grounds for suspension are removed, the statute of limitations begins to run for the remainder of the limitations period.

[98] "the local laws" mean Australian laws.

	explain each.	
	(iii) Employee C (an individual who is not a citizen of the country under investigation) of a foreign agent of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the foreign agent locates or any third country).	Applicable to Company X: ☒Yes ☐No Applicable to Employee A: ☐Yes ☒No Conditions under which the local law applies (e.g., conspiracy with an overseas office, if any): If Company X is incorporated under a law of Australia, the local laws apply to bribes made by its agents outside of Australia. Company X will only be liable if its foreign agent and Employee C were acting within their scope of authority (actual or apparent scope), Company X expressly, tacitly or impliedly authorised or permitted the conduct. Applied laws and provisions: Sections 12.1 to 12.3, 70.2 and 70.5 of the Criminal Code.
2	**Actual situation regarding measures against the bribery of foreign public officials in the country under investigation**	
2-1	**[Only for the US and the UK]** Please describe up to five (5) cases of bribery of foreign public officials that were severely sanctioned. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese).	
	Case 1	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions: N/A
	Case 2	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions: N/A
	Case 3	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:

		N/A
	Case 4	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions: N/A
	Case 5	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions: N/A
2-2	**[for jurisdictions other than the US and the UK]** Please describe some of the leading cases of bribery of foreign public officials detected, if any. Three cases or less is fine, and if you would like to explain more than three cases, please add a line. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese).	
	Case 1	Australian case summaries: https://www.ag.gov.au/crime/foreign-bribery/australias-enforcement-foreign-bribery-offence Case Information: Radiance International (2020), not published Outline of the case: In August 2020, Mr Bhojani, a director of Radiance International Pty Ltd (**Radiance**), was convicted of causing bribes to be paid to Nauruan foreign public officials in connection with the shipping of rock phosphate from Nauru to Australia. Specifically, Radiance made illegitimate payments to Nauruan foreign public officials to secure a timing advantage concerning the allocation of phosphate for shipment, which enabled Radiance to meet its customers' demands. ☒ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Custodial sentence of two years and six months, with an additional condition of 400 hours community service. Applied laws and provisions: Section 70.2(1) of the Criminal Code.
	Case 2	Case Information:

		Lifese (2017), NSW Supreme Court and Court of Criminal Appeal *R v Jousif; R v I Elomar; R v M Elomar* [2017] NSWSC 1299 *Elomar v R; Elomar v R* [2018] NSWCCA 224 Outline of the case: In September 2017, two directors of Lifese Pty Ltd (**Lifese**) and one of its employees were convicted of conspiring to bribe an Iraqi foreign public official to secure infrastructure contracts for Lifese. The employee, who was the middleman who facilitated the bribe, was sentenced to four years' imprisonment with a fixed non-parole period of two years. On appeal, the two directors of Lifese were sentenced to imprisonment for three years and four months with a fixed non-parole period of one year and eight months and fined $250,000 each. ☒ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Imprisonment, fines Applied laws and provisions: Sections 11.5(1) and 70.2(1) of the Criminal Code/
	Case 3	Case Information: Securency and Note Printing Australia (2011) Victorian Supreme Court *R v Note Printing Australia Ltd (Sentence)* [2012] VSC 302 Outline of the case: Securency International Pty Ltd (**Securency**) and Note Printing Australia Pty Ltd (**NPA**) each pleaded guilty to three charges to conspiring to bribe foreign public officials. Securency's conduct occurred in Indonesia, Malaysia and Vietnam, and NPA's occurred in Indonesia, Malaysia and Nepal. Securency was fined $480,000 and NPA was fined $450,000. The fines were heavily discounted because both companies pleaded guilty and cooperated with enforcement authorities in relation to the prosecutions. The companies also paid a combined total of $21.66 million in pecuniary penalties. Two employees of Securency, including its former CEO, and an agent of it were also convicted with conspiring to bribe foreign public officials. The CEO was also convicted of false accounting. Two further employees of Securency, including its former CFO, were also convicted of false accounting. ☒ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Fines Applied laws and provisions: Sections 11.5(1) and 70.2(1) of the Criminal Code
2-3	Please explain the current trends and developments in detection and sanctions in cases involving bribery of foreign public officials.	In February 2022, the OECD Work Group on Bribery released a follow-up report which comments on the progress made by Australia in detecting, investigating and prosecuting the bribery of foreign public officials. A link to that report, and prior reports, can be found here: https://www.oecd.org/australia/australia-oecdanti-briberyconvention.htm. In summary, Australia has: (a) improved its detection of foreign bribery through implementing whistleblower protections and restricting cash payments; and (b) significantly increased its budget relating to foreign bribery investigations, which has included the hiring of specialised, full-time staff into federal law enforcement agencies. However, these changes have not yet translated into an increase in foreign

		bribery referrals to the Commonwealth Director of Public Prosecution (**CDPP**) for prosecution. It is noted that the CDPP tends to bring charges for the easiest offences to prove, which tends to be the false accounting offences.
2-4	[Only for Australia, South Korea and France] (i) Have any of the cases of bribery of foreign public officials been subject to a sliding scale of fines?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please describe a typical case. <u>Note:</u> Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese). <u>Note:</u> If sanctions were imposed for the acts of a sales office, subsidiary, or agent, please also specify the laws, regulations and provisions on which they are based.	Case Information: *R v Jacobs Group (Australia) Pty Ltd* [2021] NSWSC 657[99] Outline of the case: An Australia consulting, engineering and project delivery firm was found guilty for its involvement in conspiracies in the Philippines and in Vietnam of conspiring to cause bribes to be offered to foreign public officials following the award of public infrastructure contracts. Type of sanction: ☒ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Fine amount: Approximately $1.5 million. Factors considered in the calculation of the fine amount: The company's early guilty pleas and its past and future assistance to law enforcement. How the amount of the fine was calculated: The maximum penalty was determined to be $11 million, and the sanction imposed was discounted by 25% for the company's early guilty pleas, and by a further 40% for the company's past and future assistance to law enforcement. The quantum of the discounts offered were criticised by the Court of Appeal, but were not altered. Laws and provisions on which they are based: Sections 11.5 and 70.2 of the Criminal Code. Section 16A of the Crimes Act. <u>Note:</u> If you have more than one case that should be mentioned, please add them below.
2-5	(i) Have any of the cases of bribery of foreign public officials involved the extraterritorial application[100] of the local laws of the country under investigation?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please describe a typical case. In particular, if there are any cases of bribery by foreign employees, agents, etc., please give priority to such cases.	Case Information: See above, for example: • Securency and Note Printing Australia (2011); and • *R v Jacobs Group (Australia) Pty Ltd* [2021] NSWSC 657.

[99] The maximum penalty was determined to be $11 million (being 100,000 times $110, which was the value of one penalty unit at the relevant time) because three times the net benefit was less than $11 million. The Judge, then having regarding to all of the circumstances, concluded that the fine which would have been imposed but for the plea of guilty and discount for assistance was $3 million. The discounts of 25% and 40% referred to were then applied, reducing the fine to $1.575 million.

[100] This is a case in which the laws of a country are applied to acts committed outside that country, whereas the general rule is that the laws of a country are applied within the territory of that country and their effect does not extend to foreign countries.

(7) 韓国

NO.	Question	Answer
1	**System for Combating Bribery of Foreign Public Officials**	
1-1	(i) Are criminal penalties provided as sanctions against natural and juridical persons?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the statutory penalties (fine and/or imprisonment) and the relevant laws, regulations and provisions on which they are based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Details of the Statutory Penalties (Fine and/or Imprisonment) / Laws, Regulations, and Provisions on Which They Are Based: (1) Penalties for Natural Persons A person convicted of bribery to a foreign public official[101] shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding 50 million won. If the benefits derived from such criminal act exceeds 10 million won, he or she shall be punished by imprisonment with labor for not more than five years or by a fine of not less than two but not more than five times of the benefits (Article 3 Paragraph 1 of the **Act on Combating Bribery of Foreign Public Officials in International Business Transactions**). Note: Where a person is punished by imprisonment with labor, the fine shall be concurrently imposed(Article 3 Paragraph 4 of the Act on Combating Bribery of Foreign Public Officials in International Business Transactions). (2) Penalties for accomplices A person who delivers money to a third party for the purpose of engaging in the activities referred to in paragraph (1) and a person who receives such money with the knowledge of such fact shall be subject to the same punishment as provided for in paragraph (1) (Article 3 Paragraph 2 of the Act on Combating Bribery of Foreign Public Officials in International Business Transactions). Note: Where a person is punished by imprisonment with labor, the fine shall be concurrently imposed(Article 3 Paragraph 4 of the Act on Combating Bribery of Foreign Public Officials in International Business Transactions). (3) Penalties for Juridical Persons If the representative of a corporation, or an agent or employee of, or any other person employed, by a corporation commits a violation under Article 3 (1) in connection with the business affairs of the corporation, not only shall such offender be punished, but also the corporation shall be punished by a fine not exceeding one billion won. In such cases, if the benefits derived from such criminal act exceed 500 million won, the corporation shall be punished by a fine of not less than two but not greater than five times of the benefits. Provided, That this shall not apply where such corporation has not been negligent in giving due attention and supervision concerning the relevant duties to prevent such violation. (Article 4 of the Act on Combating Bribery of Foreign Public Officials in International Business Transactions)

[101] The term "foreign public official" means any of the following persons:
1. Any person holding a legislative, administrative, or judicial office of a foreign government (including governments in all levels from central level to a local level; hereinafter the same shall apply), whether appointed or elected;
2. Any person exercising a public function for a foreign country and falling under any of the following persons:
(a) Any person conducting public affairs delegated by a foreign government;
(b) Any person holding office in a public organization or public agency established by the statutes or regulations to conduct specific public affairs;
(c) Any executive officer or employee of an enterprise in which a foreign government has invested in excess of 50 percent of its paid-in capital or over which a foreign government has de facto control as regards all aspects of its management, such as decision-making on important business operations and the appointment and removal of executive officers: Provided, That the same shall not apply to any enterprise engaging in a business in competition at arm's length with general private business entities without any privilege conferred thereon, such as discriminative subsidies;
3. Any person acting for a public international organization.

1-2	(i) Are administrative penalties provided as sanctions against natural and juridical persons? Administrative penalties include fines and civil sanctions imposed by the administrative branch of government.	☐Yes ☒No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the administrative penalties and the laws, regulations and provisions on which they are based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Administrative penalties: N/A Laws, regulations and provisions on which they are based: N/A
1-3	(i) Are there any sanctions against natural or juridical persons for which a sliding fine scale has been introduced? Sliding fine scale: A system that prescribes a maximum fine amount depending on/ linking to the amount of the wrongful business transaction and the amount of the gain.	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the index factors (e.g., net income, loss, bribe amount, etc.) for calculating the sanction amount and how it is calculated.	Index factor: the benefits derived from such criminal act (referring to the value offered if the value of the benefits is smaller than the value offered or is incalculable) How it is calculated: not less than two but not more than five times of the benefits, when the benefits derived from criminal act is more than 10 million Korean Won.
1-4	(i) Is there a statute of limitations period for prosecution against natural and juridical persons?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the limitations period for prosecution against natural and juridical persons and the laws, regulations and provisions on which it is based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Limitations period for prosecution: 7 years (for both natural persons and juridical persons) Laws, regulations and provisions on which it is based: Article 249, Paragraph 1, Item 4 of **Criminal Procedure Act**; Article 6 of the Act on Combating Bribery of Foreign Public Officials in International Business Transactions
	(iii) [If Yes in (i)] Is there a means to interrupt or suspend the limitations period for prosecution against natural and juridical persons?	☒Yes ☐No If Yes, please go to (iv)

	(iv) [If Yes in (iii)] Please explain the grounds for the interruption or suspension and the scope of persons (individual natural person/juridical person/both) to whom the interruption or suspension of the statute of limitations on prosecution extends. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Grounds for interruption[102]: N/A Grounds for suspension[103]: When a prosecution is filed, when the offender is out of the country. Applicable to: For the filing of a public prosecution, the individual natural person and juridical person. For other grounds, the individual person. Applied laws and provisions: Article 253 of the Criminal Procedure Act
1-5	Please explain, for each of the following cases, the application of the local laws of the country under investigation. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	
	(i) Employee A (an individual who is not a citizen of the country under investigation) of a branch or sales office located outside the country under investigation of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the branch or sales office locates or any third country).	Applicable to Company X: ☒Yes ☐No Applicable to Employee A: ☐Yes ☒No Conditions under which the local law applies (e.g., conspiracy with an overseas office): The **Criminal Act** shall apply to all Korean nationals who commit crimes outside the territory of the country under investigation(Article 3 of the Criminal Act). Note: usually, a branch or sales office is not considered as a Judicial Person by itself. Therefore any criminal action committed by the branch or sales office of Company X can be considered as the action of Company X. Applied laws and provisions: Article 3 of the Criminal Act
	(ii) Employee B (an individual who is not a citizen of the country under investigation) of a foreign subsidiary of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the foreign subsidiary locates or any third country). Note: If the scope of application varies depending on whether it is subsidiary or	Applicable to Company X: ☐Yes ☒No Applicable to Employee B: ☐Yes ☒No Conditions under which the local law applies (e.g., conspiracy with an overseas office): N/A Applied laws and provisions: N/A

[102] When the statute of limitations is interrupted, the limitations period that has been running until that point loses its effect. When the grounds for interruption are removed, the statute of limitations begins to run again from the beginning.

[103] Even if the statute of limitations is suspended, the limitations period that has been running up to that point does not lose its effect. Once the grounds for suspension are removed, the statute of limitations begins to run for the remainder of the limitations period.

	affiliate, please explain each.	
	(iii) Employee C (an individual who is not a citizen of the country under investigation) of a foreign agent of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the foreign agent locates or any third country).	Applicable to Company X: ☐Yes ☒No Applicable to Employee A: ☐Yes ☒No Conditions under which the local law applies (e.g., conspiracy with an overseas office, if any): N/A Applied laws and provisions: N/A
2	**Actual situation regarding measures against the bribery of foreign public officials in the country under investigation**	
2-1	**[Only for the US and the UK]** Please describe up to five (5) cases of bribery of foreign public officials that were severely sanctioned. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese).	
	Case 1	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 2	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 3	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions:

		Applied laws and provisions:
	Case 4	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 5	Case Information: Outline of the case: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
2-2	**[for jurisdictions other than the US and the UK]** Please describe some of the leading cases of bribery of foreign public officials detected, if any. Three cases or less is fine, and if you would like to explain more than three cases, please add a line. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese).	
	Case 1	Case Information: Judgement of Korean Supreme Court, dated 2019. 9. 10., case number 2019 도 9653 Outline of the case: In this case, three employees (who's nationality is the country under investigation) of the prosecuted company, who's head office is located in Busan, was prosecuted for, among other things, providing profits of approximately US$550,000 to three separate senior executives in charge of a Infrastructure construction works in Malaysia, who's nationality is Malaysia, on nine occasions for the purpose of, among other things, gaining benefits such as various conveniences in the process of obtaining construction contract works. ☒ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: The three accused were sentenced to 3 years imprisonment(suspended for 4 years) and a fine of KRW 3million, 1 year imprisonment(suspended for 2 years) and a fine of 2million, 2 years and 6 months imprisonment (suspended for 3 years) and a fine of KRW 1million, and the prosecuted company was sentenced to a fine of KRW 2 million. Applied laws and provisions: Defendant A: Article 4 (2) 2 and (1) of the **Act on the Aggravated Punishment, etc. of Specific Economic Crimes**, Article 30 (1) 2 of the Criminal Act, Article 3 (1) 2 of the Act on the Aggravated Punishment, etc. of Specific Economic Crimes, Articles 356 and 355 (1) of the Criminal Act, Article 3 (1) and (3) of the Act on Combating Bribery of Foreign Public Officials in International Business Transactions, and Article 30 of the Criminal Act. Defendant B: Article 3 (1) and (3) of the Act on Combating Bribery of Foreign Public Officials in International Business Transactions, and Article 30 of the Criminal Act.

		Defendant C: Article 4 (2) 2 and (1) of the Act on the Aggravated Punishment, etc. of Specific Economic Crimes, Article 30 of the Criminal Act (Points of Property Evasion), Article 3 (1) and (3) of the Act on Combating Bribery of Foreign Public Officials in International Business Transactions, and Article 30 of the Criminal Act. Defendant Company D: Articles 4 and 3 (1) of the Act on Combating Bribery of Foreign Public Officials in International Business Transactions.
	Case 2	Case Information: N/A(we could only find one publicly disclosed case in which the defendant was penalized under the Act on Combating Bribery of Foreign Public Officials in International Business Transactions) Outline of the case: N/A ☒ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: N/A Applied laws and provisions: N/A
	Case 3	Case Information: N/A Outline of the case: N/A ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: N/A Applied laws and provisions: N/A
2-3	Please explain the current trends and developments in detection and sanctions in cases involving bribery of foreign public officials.	N/A[104]
2-4	[Only for Australia, South Korea and France] (i) Have any of the cases of bribery of foreign public officials been subject to a sliding scale of fines?	☐Yes ☒No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please describe a typical case. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese). Note: If sanctions were imposed for the acts of a sales office, subsidiary, or agent, please also specify the laws, regulations and provisions on which they are based.	Case Information: N/A Outline of the case: N/A Type of sanction: N/A ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Fine amount: N/A Factors considered in the calculation of the fine amount: N/A How the amount of the fine was calculated: N/A Laws and provisions on which they are based: N/A Note: If you have more than one case that should be mentioned, please add them below.

[104] It could only find one publicly disclosed case of 2019, in which the defendant was penalized under the Act on Combating Bribery of Foreign Public Officials in International Business Transactions. Therefore information regarding the current trends and developments in detection and sanctions in cases involving bribery of foreign public officials was not available.

2-5	(i) Have any of the cases of bribery of foreign public officials involved the extraterritorial application [105] of the local laws of the country under investigation?	☐Yes ☒No If Yes, please go to (ii) Note: The Criminal Act shall apply to all nationals who commit crimes outside the territory of the country under investigation(Article 3 of the Criminal Act).
	(ii) [If Yes in (i)] Please describe a typical case. In particular, if there are any cases of bribery by foreign employees, agents, etc., please give priority to such cases.	Case Information: N/A Outline of the case: N/A Key judicial decisions on governing law and jurisdiction: N/A <u>Note:</u> If you have more than one case that should be mentioned, please add them below.

[105] This is a case in which the laws of a country are applied to acts committed outside that country, whereas the general rule is that the laws of a country are applied within the territory of that country and their effect does not extend to foreign countries.

3. 不正競争との関係（営業秘密に係る立証負担の軽減等）に関する公開情報調査

(1) アメリカ

NO.	Question	Answer
1	**Procedure for collection of evidence in cases involving the infringement of trade secrets**	
1-1	(i) Please explain the following regarding the procedures for collection of evidence in cases involving the infringement of trade secrets. Note: If the system is not available in civil litigation, but only in intellectual property litigation, please state as such.	
	(ii) Please provide an overview of the procedures for collection of evidence held by the adverse party in civil proceedings. Examples: information disclosure system, court evidence preservation procedures, commissioning of examinations, procedures for information disclosure through the court such as an order to submit documents (discovery system in the U.S., disclosure system in the UK), procedures to confirm the facts through court-appointed experts (investigation system in Germany)	Overview of the system / laws and regulations on which they are based: Both federal and state laws govern trade secret protection. The Uniform Trade Secret Act ("UTSA") has been adopted in various forms in 49 states, the District of Columbia, and the U.S. Virgin Islands. In New York, the sole holdout, courts define trade secrets using the first Restatement of Torts Section 757. The federal Defend Trade Secrets Act, 18 U.S.C. §§ 1831-1839, was enacted on May 11, 2016. A trade secret owner may pursue civil claims for misappropriation of trade secrets under federal and state law in federal *or* state court. In civil actions filed in federal court, the parties must provide initial disclosures of information pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, without awaiting a discovery request, including the names and contact information for witnesses, documents and electronically stored information that supports their claims and defenses, a computation of damages, and any insurance policies. Some federal and state courts (especially California and Massachusetts) require a plaintiff to identify the trade secrets at issue with reasonable particularity before they are allowed to request discovery from the defendant. Courts typically allow for each party to serve requests for the production of documents, requests for admissions, and interrogatories (*i.e.,* written questions that must be answered under oath). In addition, the parties are allowed to take depositions of individuals and of designated representatives of corporations. Courts may permit expedited discovery proceedings in connection with motions for the entry of a preliminary injunction. Courts typically enter confidentiality protective orders to govern the handling of confidential and trade secret information exchanged during discovery, and will permit such information to be filed under seal to avoid public disclosure.
	(iii) Please provide an overview of the procedures for collection of evidence held by the accused or any third party in criminal proceedings. Example: criminal investigation by a criminal investigation agency, seizure of evidence.	Overview of the system / laws and regulations on which they are based: [Non-compulsory investigations] Criminal trade secret theft is governed by state penal codes and the federal Economic Espionage Act of 1996 (the "EEA"), 18 U.S.C. §§ 1831-37. Generally, the EEA protects trade secrets by criminalizing two types of misappropriation: (1) economic espionage (which involves the misappropriation of a trade secret with the intent to benefit a foreign government, foreign instrumentality, or foreign agent), and (2) misappropriation of trade secrets with intent to injure the trade secret owner (when the information relates to a product in interstate or foreign commerce). Under the EEA, misappropriation can take many forms including stealing, copying, duplicating, taking photographs, downloading, uploading, altering, destroying; or receiving or possessing a trade secret knowing it was stolen or appropriated without authorization. The EEA also provides for the prosecution of conspiracies

		or attempts to misappropriate a trade secret. The EEA is not intended to criminalize every misappropriation of trade secrets for which civil remedies may exist under state or federal civil law. Criminal intent must be established. For example, a "defendant violates federal law when he 'steals' . . . a trade secret, 'intending or knowing that the offense will . . . injure any owner of that trade secret.'" *United States v. Howley*, 707 F.3d 575, 579 (6th Cir. 2013). Both organizations and individuals can be held criminally liable. 18 U.S.C. § 1831(b); 18 U.S.C. § 1832(b). In criminal actions, there are limits to maintaining the confidentiality of and safeguarding trade secret evidence. The strongest protection applies before trial when a criminal protective order may limit access to the trade secret evidence. The discovery obligations of federal prosecutors to the defendant, including with respect to forensic evidence, are generally established by Rules 16 and 26.2 of the Federal Rules of Criminal Procedure, 18 U.S.C. § 3500 (the Jencks Act), *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972). The prosecutor can obtain evidence through undercover investigations, confidential informants, cooperating witnesses, grand jury subpoenas, search warrants, border searches and requests under Mutual Legal Assistance Treaties with law enforcement in other countries. The prosecutor is obligated to disclose any exculpatory or impeachment evidence to the defendant when such evidence is material to guilt or punishment. Such information must be disclosed to the defendant with sufficient time to permit the defendant to use that information at trial. At trial, the Constitution ensures the trial is public. The trial court may take steps to limit access to the trade secret such as only allowing the jury to see certain trade secret evidence or providing for limited closures of the courtroom. The court will weigh these limitations against constitutional requirements. [Compulsory investigations] The prosecutor may compel the production of evidence through grand jury investigations which the government must protect through secrecy. The government can issue grand jury subpoenas to compel the production of trade secret evidence subject to Fifth Amendment rights of the defendant not to incriminate himself including through the act of producing the records. The government may also compel testimony of witnesses before the grand jury. The defendant may not be compelled to testify under the Fifth Amendment, however other witnesses may be called. The prosecutor has an obligation to maintain secrecy about the grand jury investigation. The secrecy obligations protect individuals who may be innocent from the fact that they were under investigation. It also protects against witness harassment or intimidation. Grand jury subpoenas may be used to obtain a variety of evidence, including records from financial institutions, businesses or individuals. Grand jury subpoenas may issue for witness testimony. Search warrants are often used to obtain email communications from an Internet Service Provider. The government may also obtain search warrants to seize and obtain evidence including at residence, corporate offices and other locations. Search warrants are usually sealed to maintain the confidentiality of the investigation until public proceedings are commenced on the case when the court may unseal the search warrant.
	(iv) Please provide an overview of the procedures for collection of evidence in administrative proceedings. Example: on-site inspections by administrative organs.	Overview of the system / laws and regulations on which they are based: If the defendant is a foreign entity, the plaintiff may consider filing an action before the International Trade Commission ("ITC"). Selecting the ITC requires that the misappropriated trade secrets were used in the manufacture of goods being imported into the U.S., and the claimant must produce evidence that the importation of the good produced using unfair practices threatens to "destroy or substantially injure" a domestic industry. An ITC action can be filed against a foreign entity even when

		the misappropriation both occurs and is practiced outside of the U.S. The ITC can issue both temporary and permanent exclusion orders prohibiting the importation of the product using the misappropriated trade secrets. The ITC can also issue a cease and desist order if a respondent has commercially significant inventory in the United States of the products alleged to violate the statute. In ITC actions, pursuant to 19 U.S.C. § 337, discovery proceeds quickly and commences the day after the Notice of Investigation is published in the federal Register (even before respondents answer the complaint), and operates on shorter deadlines than in federal district court. Discovery obligations of parties in an ITC investigation are subject to a different set of rules defined by the Code of Federal regulations (19 C.F.R. §§ 210.27–210.34). The Administrative Law Judge ("ALJ") assigned to the investigation may further refine discovery requirements in their Ground Rules. Although there are many similarities to discovery in federal court, (*e.g.*, document requests, interrogatories, depositions, facility inspections), more notable differences include that fact discovery opens *before* the parties begin to discuss case schedule and that responses to discovery must be provided within 10 days as opposed to the standard 30-day time period for responding in federal district court. The ALJ will typically enter a protective order to govern the handling of confidential and trade secret information produced in discovery. At the ITC, a foreign respondent is subject to discovery after the service of the complaint (which is done via FedEx or other priority mailing), and without going through the Hague convention or other tribunals to obtain discovery. A foreign respondent will be required to respond to the complaint, discovery, and participate fully in the investigation or that respondent will be found in default and an exclusion order will issue against that respondents' products. Third party discovery of foreign entities requires the issuance of letters rogatory in order to obtain discovery. This process is often not utilized and not successful given the time it takes to go through the process and the short duration of discovery at the ITC.
	(v) Are the procedures for collection of evidence applicable for evidence located outside the country under investigation?	The procedures for collection of evidence in civil proceedings: ☒Yes ☐No The procedures for collection of evidence in criminal proceedings: ☒Yes ☐No The procedures for collection of evidence in administrative proceedings: ☒Yes[106] ☐No In the United States, in order to enforce domestic intellectual property rights against a foreign entity or individual, a party seeking to enforce such rights frequently must (a) request a federal district court to impose procedural measures against the foreign defendant that ensures the foreign defendant will voluntarily comply with discovery demands; (b) attempt to obtain discovery from the defendant or relevant third parties in foreign courts via mechanisms such as letters rogatory and letters of request pursuant to the Hague Convention, *i.e.*, the Convention on Taking of Evidence Abroad in Civil or Commercial Matters (March 18, 1970); (c) initiate independent judicial proceedings involving the intellectual property rights in the foreign jurisdiction; or (d) in rare cases, employ the Walsh Act, 28 U.S.C. § 1783, and Federal Rule of Civil

[106] The procedures for collection of evidence located outside U.S. in administrative proceedings is ITC investigation (answered in 1-1 (iv)). At the ITC, a foreign respondent is subject to discovery after the service of the complaint (which is done via FedEx or other priority mailing), and without going through the Hague convention or other tribunals to obtain discovery. A foreign respondent will be required to respond to the complaint, discovery, and participate fully in the investigation or that respondent will be found in default and an exclusion order will issue against that respondents' products. Third party discovery of foreign entities requires the issuance of letters rogatory in order to obtain discovery. This process is often not utilized and not successful given the time it takes to go through the process and the short duration of discovery at the ITC.

		Procedure 45(b)(3) and ask a federal court to issue a subpoena for testimony or documents from a national or resident of the United States who is in a foreign country, if the evidence is "necessary in the interest of justice" and is "not possible to obtain . . . in any other manner." One fundamental issue that courts must assess is the set of international comity concerns outlined by the U.S. Supreme Court in the *Aerospatiale* decision. In that case, the U.S. Supreme Court admonished that foreign laws precluding disclosure of evidence "do not deprive American court of the power to order a party subject to its jurisdiction to produce evidence even though the act of production may violate that statute." With respect to criminal prosecutions, in the United States, law enforcement uses Mutual Legal Assistance Treaties (MLAT) to collect evidence outside the country of investigation. MLATs are bilateral treaties that establish the parameters for the countries to coordinate the collection of evidence. The MLAT process has been used to obtain evidence in other countries for the prosecution in the United States. The evidence can include requests to collect email communications, records, physical evidence or conduct witness interviews.
	(vi) Please explain the relationship between civil proceedings and criminal proceedings regarding the procedures for collection of evidence. Examples: Whether or not the parties may request the disclosure and submission of evidence collected in criminal proceedings in civil proceedings.	**Overview**: Criminal and civil trade secret can commence separately as parallel proceedings. The initiation of criminal proceedings can typically result in a stay of any parallel civil litigation pending the outcome of the criminal case. The public evidence used in the criminal case may be useful in the civil case[107]. A conviction in a criminal case may impact the civil case. Moreover, a defendant may opt to refuse to answer questions in depositions by asserting his or her right to remain silent under the Fifth Amendment to the U.S. Constitution. The trade secret owner does not have the ability to control the criminal proceedings. Parties can seek to obtain evidence in criminal or civil proceedings. However, an applicable protective order may limit what evidence may be obtained. **Relevant laws and provisions**: The traditional discovery rules may be used to obtain evidence. For grand jury information, Federal Rule of Criminal Procedure 6 governs the disclosure of grand jury evidence.
1-2	(i) Is there any system to reduce the burden of proof of the plaintiff (i.e. rights owners or infringed party) with respect to proving infringement of intellectual property rights in intellectual property litigation (especially in litigation involving the infringement of a patent)?	☐Yes ☒No If Yes, please go to (ii). In civil actions, a party claiming misappropriation of trade secrets bears the burden of proof on its claim, and the defendant bears the burden of proof on any affirmative defenses. The plaintiff may rely on direct or circumstantial evidence to prove its claim. The plaintiff must prove the defendant misappropriated trade secrets based on the "preponderance of the evidence," *i.e.*, the jury must believe that each element of the claim is more likely true than not. In order to obtain exemplary damages and an award of attorneys' fees, the plaintiff must typically establish the defendant engaged in "willful and malicious" misappropriation based on "clear and convincing evidence." In criminal proceedings, the prosecutor must establish elements of the criminal counts "beyond a reasonable doubt."
	(ii) [If Yes in (i)] Please provide an overview of the system.	Overview of the system: Relevant laws and regulations:
1-3	(i) Is there any system to reduce the burden of proof of the plaintiff (i.e. trade secret owners or infringed party) with respect to proving infringement of trade	☐Yes ☒No If Yes, please go to (ii).

[107] The public evidence used in the criminal case may use in the civil case.

	secrets in litigation involving the infringement of trade secrets?	
	(ii) [If Yes in (i)] Please provide an overview of the system.	Overview of the system Relevant laws and regulations:
2	**Calculation and Estimation System of the Amount of Damages in cases of the infringement of trade secrets**	
2-1	(i) In Intellectual Property Law in general (especially in litigation involving the infringement of a patent), who bears the burden of proving damage, the plaintiff or the defendant? Also, how is the amount of damage proven?	Burden of proving the amount of damages: Note: If Plaintiffs, please answer (ii) and 2-2. Methods to prove the amount of damage: A plaintiff may seek an emergency temporary restraining order, preliminary injunction and permanent injunction to prevent actual or threatened misappropriation of trade secrets. 18 U.S.C. § 1836(b)(3)(A). Under the DTSA, a plaintiff may, in extraordinary circumstances, also seek an *ex parte* seizure order. 18 U.S.C. § 1836(b)(2). However, there have only been a handful of instances in which courts have entered such seizure orders. In addition to equitable remedies, the plaintiff may seek under most state versions of the UTSA and the DTSA (i) damages for actual loss caused by the misappropriation of the trade secret; and (ii) damages for any unjust enrichment caused by the misappropriation of the trade secret that is not addressed in computing damages for actual loss; *or* (iii) in lieu of damages measured by any other methods, the damages caused by the misappropriation measured by imposition of liability for a reasonable royalty for the misappropriator's unauthorized disclosure or use of the trade secret. 18 U.S.C. § 1836(b)(3)(B). In addition, under federal law and most state versions of the UTSA, if the plaintiff can prove that the trade secret was willfully and maliciously misappropriated, the plaintiff may obtain an award of exemplary damages in an amount not more than two (2) times the amount of the damages and an award of reasonable attorneys' fees. However, if the claim is made in bad faith or a motion to termination an injunction is opposed in bad faith, the defendant may obtain an award of reasonable attorneys' fees. 18 U.S.C. § 1836(b)(3)(C), (D). The plaintiff typically has the burden of establishing causation and damages based on reasonable evidence and inferences not mere speculation. In performing an unjust enrichment analysis, the plaintiff bears the burden of showing that the defendant reaped ill-gotten sales from the use of the trade secrets. The defendant then has to establish what portion of those sales is unrelated to the trade secrets, and the appropriate costs associated with the subject sales. In other words, the defendant typically has the burden to prove deductions. The reasonable royalty measure of damages is typically used when there is insufficient information to establish all or only a portion of the plaintiff's lost profits or the defendant's unjust enrichment.
	(ii) [If Plaintiffs in (i)] If plaintiffs bear the burden of proving the amount of damage, is there any system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any)?	☐Yes ☐No If Yes, please go to (iii) If the plaintiff is unable to prove damages from actual loss, the plaintiff can seek damages in the form of unjust enrichment or a reasonable royalty. The plaintiff typically can seek exemplary damages of two (2) times the amount of damages or unjust enrichment if the plaintiff can establish the defendant engaged in willful and malicious misappropriation of trade secrets based on clear and convincing evidence.
	(iii) [If Yes in (ii)] Please provide an overview of the system to reduce the plaintiff's burden of proof (including statutory	Overview of the system: Relevant laws and regulations:

	damages, multiple damages, or punitive damages if any).	
2-2	(i) If plaintiffs bear the burden of proving the amount of loss or damage in litigation involving the infringement of trade secrets, is there any system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any)?	☐Yes ☐No If Yes, please go to (ii). See above.
	(ii) [If Yes in (i)] Please provide an overview of the system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any).	Overview of the system: Relevant laws and regulations:
2-3	Please provide the information of the leading decisions of trade secret cases that the court awarded high amount of damages.	Case Information: Appian Corp. v. Pegasystems, Fairfax County Circuit Court, Virginia. Date of Decision: May 2022. Awarded Amount The Virginia judge entered final judgment of a jury's verdict that awarded tech company Appian Corp. more than ***$2.09 billion*** in damages upon finding that software company Pegasystems willfully misappropriated Appian's trade secrets. The judgment includes an award of $23.6 million in attorneys' fees.
3	**Protection on Licensees involving Trade Secrets**	
3-1	(i) Is there any system to protect a licensee in Intellectual Property Law in general (especially patent rights or copyrights) where rights owners have assigned their intellectual property rights to a third party or become bankrupt?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please provide an overview of the system to protect licensees.	**Overview of the system:** If the licensee breaches the agreement, the licensor may bring an action for misappropriation of trade secrets and breach of contract. The licensor also may have a contractual right to terminate the license. The U.S. Bankruptcy Code includes express provisions protecting the rights of non-debtor licensees of defined intellectual property if the licensor files for bankruptcy. Under the Bankruptcy Code, a debtor-licensor may, in its business judgment, assume (take on), assume and assign (take on and assign to another), or reject (elect not to take on) an executory contract, such as an unexpired license agreement during the pendency of the bankruptcy. If the license agreement is assumed or assumed and assigned, then the agreement continues to be effective in accordance to its terms. However, if the debtor-licensor rejects the license agreement, then such rejection is deemed to be a breach of the agreement as of the date of the bankruptcy filing. Notwithstanding the rejection, a non-debtor licensee may elect to (1) treat the breach as termination of the agreement and assert damages against the debtor-licensor or (2) retain its rights as licensee for the duration of the remaining term (including any right to extend such term). If the licensee elects to retain its licensing rights, then the licensee must continue to make all royalty payments due under the license agreement and the debtor-licensor shall not interfere with the non-debtor licensee's use of the intellectual property rights. **Relevant laws and regulations**: Non-bankruptcy law and regulations:

		The DTSA and state versions of the UTSA, and claims for breach of contract. Bankruptcy law and regulations: • The Bankruptcy Code's definition of the term "intellectual property" includes "trade secret;" "invention, process, design, or plant protected under title 35;" "patent application;" "plant variety;" "work of authorship protected under title 17" or "mask work protected under chapter 9 of title 17;" to the extent protected by applicable nonbankruptcy law. 11 U.S.C. § 101(35A). Because the Bankruptcy Code does not include trademark in its definition of "intellectual property", the Bankruptcy Code's protections for intellectual property licensees do not extend to trademark licenses. *See Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652 (2019) (but holding that a debtor-licensor's rejection of a trademark license agreement did not deprive the licensee of its right to use the trademark post-rejection). • Section 365 of the Bankruptcy Code governs the treatment of executory contracts, where – • Subsection (d) governs the timing or assumption or rejection: 60 days from the bankruptcy filing (ch. 7) and until confirmation of a plan (ch. 11). • Subsections (e) and (f) provide that ipso facto clauses (a contract term providing for automatic termination upon bankruptcy) are generally non enforceable and that anti-assignment clauses are generally ineffective unless applicable law excuses a non-debtor from performance and such non-debtor does not consent to the assignment (this analysis varies by jurisdiction). • Subsection (n) provides for the non-debtor licensee's right to treat the debtor-licensor's rejection of the executory contract as termination or to retain its licensing rights for the duration of the term of the license agreement. 11 U.S.C.§ 365.
3-2	(i) Is there any system to protect licensees involving trade secrets if owners of the trade secrets assigned their business or became bankrupt?	☒Yes ☐No If Yes, please go to (ii).
	(ii) [If Yes in (i)] Please provide an overview of the system to protect licensees.	Overview of the system: See 3-1 above. Relevant laws and regulations: See 3-1 above.
4	**International jurisdiction and governing law in cases of transnational infringement of trade secrets**	
4-1	(i) Please explain the laws and regulations providing the basic rules on how to determine international jurisdiction and an overview thereof.	**Relevant laws and regulations**: Congress did not include specific language in the DTSA authorizing extraterritorial reach of the DTSA. However, some courts have concluded that under Section 1837 of the EEA, a claim for misappropriation under the DTSA can be based on "conduct occurring outside the United States" where (i) the "offender" is a natural person who is a citizen or permanent resident alien of the United States, or an "organization" organized under the laws of the United States or a State or political subdivision thereof; or (ii) "an act in furtherance of the offense was committed in the United States." In general, a state's adjudicative jurisdiction is limited by the Constitution's due process clause. Some states require that a state statute should not have extraterritorial effect absent clear statutory intent. The ITC provides a venue where trade secret claimants can seek a partial remedy for trade

		secret misappropriation outside of the United States. As confirmed in *TianRui Group Co. v. International Trade Commission*, 661 F.3d 1322 (Fed. Cir. 2011), 19 U.S.C. Section 337 provides a remedy even if the acts of misappropriation occurred entirely outside the U.S. Absent an express statutory provision, a federal court's personal jurisdiction in DTSA cases will be determined by Federal Rule of Civil Procedure 4(k)(1)(A), which allows federal courts to use the long-arm statute of the forum state. The touchstone of the constitutional analysis of whether a court can exercise personal jurisdiction over a defendant is whether the defendant has certain "minimum contacts" with the forum. When minimum contacts are lacking, courts can seek to rely on the *Calder* effects test for establish personal jurisdiction in tort cases.
	(ii) Is there any special provisions on torts regarding how to determine international jurisdiction. If any, please provide the overview.	☒Yes ☐No (If Yes) Overview: Under the *Calder* effects test, specific personal jurisdiction is established if: (1) the defendant committed an international tort, (2) the plaintiff felt the brunt of the harm in the forum such that the forum can be said to be the focal point of the harm suffered by the plaintiff as a result of that tort, and (3) the defendant expressly aimed its tortious conduct at the forum state such that the forum can be said to be the focal point of the tortious activity.
	(iii) Is there any difference in the method for determining international jurisdiction between claims for damages and injunctions?	☒Yes ☐No (If Yes) Overview: See above.
	(iv) Please provide an overview of special provisions on the infringement of trade secrets regarding the method for determining international jurisdiction.	☐Yes ☐No (If Yes) Overview:
4-2	(i) Please explain the laws and regulations providing the basic rules on how to determine applicable law and an overview thereof.	Relevant laws and regulations: State trade secret claims[108] that address acts of foreign misappropriation could be subject to choice of law challenges if a conflict exists between potentially applicable trade secret laws. That conflict of law could arise between the trade secret laws of different states or, as potentially relevant to actions involving foreign acts of misappropriation, could arise between state trade secret law and the laws of another country (*e.g.*, an international trade secret conflict). When presented with a potential choice of law challenge, in diversity cases, courts typically apply the choice of law principles of the forum state to determine the applicable law[109]. Where there is no substantive conflict among the laws of multiple jurisdictions, then the choice of law analysis is generally not necessary, and courts typically will apply the law of the forum state.

[108] The reference to "state trade secret claims" means claims for misappropriation of trade secrets that are brought under state versions of the Uniform Trade Secrets Act (such as the California Uniform Trade Secrets Act) as opposed to the federal Defend Trade Secrets Act of 2016.

[109] The choice of law analysis will depend on the jurisdiction where the case is pending and whether the parties have agreed upon a choice of applicable law in a contract. When a federal court sits in diversity, it must look to the forum state's choice of law rules to determine the controlling substantive law. If the court follows the Restatement (Second) of Conflict of Laws, under Section 187 of the Restatement, a court can and should enforce a contractual choice of law provision as long as (1) the chosen state has a substantial relationship to the parties or the transaction; and (2) the forum state has no fundamental policy that is inconsistent with the chosen state's law. Absent a clear agreement between the parties as to the governing law, Section 188 of the Restatement is the general provision under which choice of law is determined for a contract.

	(ii) Please provide an overview of any special provisions on the rules on how to determine applicable law with respect to tort liability.	☐Yes ☐No (If Yes) Overview: States have varying choice of law tests, although many are modeled after the Second Restatement of the Conflict of Laws. Some jurisdictions apply the traditional *lex loci* test which focuses on the state where the last act occurred giving rise to the injury, *i.e.*, where the tortious act of misappropriation and use of the trade secret occurred. Other courts focus on the jurisdiction that has the most significant relationship to the occurrence and the parties under the Restatement of the Conflict of Laws which is guided by (1) where the injury occurred; (2) the place where the conduct causing the injury occurred; (3) the parties' domicile, residence, nationality, place of incorporation, and place of business; and (4) where the parties' relationship, if any, is centered. Because courts apply different choice of law tests, interstate and international conflicts of law could have varying results, depending on a courts' chosen choice of law methodology and the underlying facts.
	(iii) Is there any difference in the method for determining an applicable law between claims for damages and injunctions? If yes, please provide an overview.	☐Yes ☒No (If Yes) Overview:
	(iv) Please provide an overview of any special provisions on the rules on how to determine applicable law with respect to the infringement of trade secrets.	☐Yes ☒No (If Yes) Overview: See above
4-3	Please explain the relationship between the rules of governing law and international jurisdiction. Examples: The law of the forum applies if the forum has jurisdiction, the forum has jurisdiction if the law of the forum should apply, the applicable law (the law of the forum or a foreign law) is determined after determining whether the forum has jurisdiction.	The choice of law analysis is typically performed after any challenge to a court's jurisdiction is resolved.
4-4	Please provide overviews of some leading cases and summaries of the judgments in relation to the rules of methods for determining international jurisdiction and the governing law.	*See Micron Technology, Inc. v. United Microelectronics Corp.*, 2019 WL 266518, at *3 (N.D. Cal. Jan. 18, 2019) (motion to dismiss granted where complaint did not allege facts to support a finding that recruitment efforts in the United States were made in furtherance of any act of misappropriation); *Vendavo, Inc. v. Price f(x) AG*, 2018 WL 1456697 (N.D. Cal. Mar. 23, 2018) (granting motion to dismiss given the territorial and temporal limits of the DTSA). In some cases involving foreign defendants and conduct, courts address personal jurisdiction without discussing if the DTSA even applies extraterritorially. *See, e.g., Genentech, Inc. v. JHL Biotech, Inc.*, No. C 18-06582 WHA, 2019 WL 1045911, at *4-8 (N.D. Cal. Mar. 5, 2019) (analyzing personal jurisdiction over foreign defendant JHL

		without addressing extraterritorial reach of the statute itself)[110].
4-5	Please explain some leading cases which found extraterritorial application in international and transnational litigation involving the infringement of trade secrets.	*T&S Brass & Bronze Works, Inc. v. Slanina*, 2017 WL 1734362, at *12 (D. S.C. May 4, 2017) (applying section 1837 to DTSA claim without analysis); *Micron Tech., Inc. v. United Microelectronics Corp.*, No. 17-CV-06932-MMC, 2019 WL 1959487, at *4, 8 (N.D. Cal. May 2, 2019) (summarily stating that section 1832 and 1836 apply if "an act in furtherance of the [misappropriation] was committed in the United states" and citing section 1837 when noting that "federal law provides for jurisdiction over misappropriation occurring outside the United States"); *Luminati Networks Ltd. v. BI Science Inc.*, No. 2:18-CV-00483-JRG, 2019 WL 2084426, at *9 (E.D. Tex. May 13, 2019) (summarily finding that the DTSA "applies to conduct occurring outside the United States if … an act in furtherance of the offense was committed in the United States"). In the *Micron Tech* case, for example, the court found that section 1837 applied despite significant acts of misappropriation which allegedly occurred overseas because the manufacture of trade secret memory devices abroad would not have occurred but for the alleged offender's seeking the support and assistance of equipment vendors at a job fair in the United States.
4-6	(i) For determining the governing law, is there any legislation that (a) provide for an "overriding mandatory rule" applicable to international/cross boarder civil disputes overriding the general rules (international private law) of governing laws; (b) does not explicitly provides such overriding mandatory rules but are interpretated as such by the court; or (iii) provides any extraterritorial effects * Overriding mandatory rule: The legislation in the jurisdiction directly without application of the general rules of the governing laws in the jurisdiction. * Extraterritorial effects: The law applies to the act conducted out of the jurisdiction.	(a) ☐Yes ☐No (b) ☐Yes ☐No (c) ☐Yes ☐No [If Yes] Overview:
	(ii) Please provide overviews of some court cases where the court judged that a specific provision was an "overriding mandatory rule" in resolving international and transnational civil disputes.	Precedent: ☐Yes ☐No [If Yes] Case Information: Overview of the case: Summaries of the judgment:
	(iii) Is there any possibility that overriding mandatory rules would apply to trade infringement cases?	☐Yes ☐No ☐Not Clear [If Yes] Reason (precedents or arguments):

[110] These cases were brought under the federal Defend Trade Secrets Act of 2016 in federal courts in the United States.

(2) EU

NO.	Question	Answer
1	**Procedure for collection of evidence in cases involving the infringement of trade secrets**	
1-1	(i) Is there any system to reduce the burden of proof of the plaintiff (i.e. trade secret owners or infringed party) with respect to proving infringement of trade secrets in litigation involving the infringement of trade secrets?	☒Yes ☐No If Yes, please go to (ii).
	(ii) [If Yes in (i)] Please provide an overview of the system.	Overview of the system: **A. *Descrizione*** The Italian legal system provides a peculiar judiciary measure called *"descrizione"* (Art. 129 of the Italian Intellectual Property Code - *"IP Code"*) for the owners of intellectual property rights, including trade secrets (which fall into the definition of intellectual property rights set forth by Art. 1, Italian IP Code), to collect evidence of the suspected infringement of their rights. To this purpose, the trade secrets owner shall file an application before the competent Intellectual Property Specialized Division sitting before certain Italian Civil Courts (having exclusive jurisdiction on trade secrets), requesting the seizure of any evidence of the infringement. To obtain such measure, the trade secrets owner shall prove: (a) the likelihood of the existence of the enforced trade secrets (i.e. the requirements provided by the law for their existence: secrecy, economical value and exploitation of adequate secrecy measures) and the likelihood of the infringement (so called *fumus boni iuris*). (b) the urgency to obtain the requested measure in order to acquire the evidence of the infringement which will be then used in further proceedings, not otherwise traceable (so called *periculum in mora*). Quite often the *descrizione* is granted *ex parte* (i.e. without prior notice to the counterpart) when there is the risk that the counterpart could compromise the execution of the measure (e.g., hide the evidence). The *descrizione* is executed by the Bailiff and, if needed, with the assistance of Court-appointed technical experts (Court Technical Expert - *"CTE"*). The Bailiff accesses the defendant's premises where the alleged infringing devices or production means are supposed to be located and then drafts a report in which describes what has been found (attaching pictures, copy of documents, etc.). Italian Judges usually also outline the measures to be adopted to guarantee the confidentiality of the collected information (Art. 121-*ter*, Italian IP Code). The evidence collected through the *descrizione* can be used in following precautionary proceedings and / or main proceedings on the merits about the concerned trade secrets. **B. Court Technical Expert phase** Provided that they submitted initial evidence supporting their arguments, trade secrets owners or alleged infringers can request Italian Courts to order a Court Technical Expert phase (*"CTE"*) both in precautionary proceedings and in main proceedings on the merits to examine the technicalities of the matter (Art. 62 and 191, Italian Civil Procedural Code; Art. 121, par. 5 and 132, par. 5, Italian IP Code). Indeed, since Italian Judges do not have a technical qualification, they can appoint an independent expert skilled in the field at issue to assess whether the concerned trade secrets meet the relevant legal requirements (secrecy, economical value and exploitation of adequate secrecy measures) and/or are infringed. During the CTE phase the parties exchange written submissions and then

		the CTE provides a report to the Court outlining her / his conclusions. Italian Judges generally tend to follow the conclusions reached by the CTE, unless clear mistakes or misinterpretations are highlighted by the parties. Relevant laws and regulations: **Art. 1, Italian Intellectual Property Code - Intellectual property rights**: *"For the purposes of the present code, the term industrial property includes trade marks and other distinctive signs, geographical indications, designations of origin, designs, inventions, utility models, topographies of semiconductor products, trade secrets and new plant varieties"*. **Art. 121, par. 5, Italian Intellectual Property Code - Distribution of the burden of proof**: *"In matters covered by the present code, the Court Technical Expert may receive the documents relating to the Judge's questions even if they have not yet been filed in the case, making them known to all the parties. Each party may appoint more than one consultant"*. **Art. 121-*ter*, Italian Intellectual Property Code - Protecting the confidentiality of trade secrets during judicial proceedings**: *"1. In judicial proceedings concerning the unlawful acquisition, use or disclosure of trade secrets referred to in Article 98, the Judge may prohibit the persons appointed or delegated by her/him, the parties and their representatives and consultants, defence counsel, administrative staff, witnesses, and other persons having access in any capacity whatsoever to the decisions, briefs and documents included in the case-file, from using or disclosing the trade secrets which are the subject-matter of the proceedings and which she/he considers confidential. The prohibition order referred to in the first sentence shall be issued upon request of a party and shall remain in force even after the conclusion of the proceedings in the course of which it was issued.* *2. The measure referred to in paragraph 1 shall cease to have effect:* *(a) if it is established by a judgment which has the force of res judicata that the trade secrets at issue did not meet the requirements of Article 98;* *(b) if the trade secrets become generally known or easily accessible to experts and practitioners.* *3. In the judicial proceedings referred to in paragraph 1 the Judge, upon request of a party, may adopt such measures as, in compliance with the principles governing due process of law, appear most appropriate to protect the confidentiality of the trade secrets which are the subject-matter of the proceedings, and in particular:* *(a) limit to a restricted number of persons access to the hearings and to the documents in the case-file;* *(b) provide, in the decisions concluding the proceedings referred to in paragraph 1, which are also made available to persons other than the parties, for the obscuring or omission of the parts containing trade secrets.* *4. For the purposes of paragraph 3(b), the Judge shall indicate in the order the parts thereof which the clerk is required to obscure or omit when making copies available to persons other than the parties. For the same purposes, the Court shall order the clerk to make a note at the time of lodging the decision that the parties are not to be allowed to distribute the full wording of the decision"*. **Art. 129, Italian Intellectual Property Code - *Descrizione* and seizure**: *"1. The owner of an industrial property right may request the descrizione or the seizure, and also the seizure subject to the descrizione, of some or all of the items constituting an infringement of that right, as well as the means used to produce them and the evidence concerning the alleged infringement and its extent. Appropriate measures shall be taken to ensure the protection of confidential information.* *2. The Judge, having heard the parties and having taken, when necessary, summary information, shall issue an order and, if she/he orders the descrizione, she/he shall authorize the taking of samples of the objects referred to in paragraph 1. In cases of special urgency, and in particular when any delay could cause irreparable harm to the holder of the rights or when summoning the other party could jeopardize the execution of the*

		descrizione or seizure order, the Judge shall decide on the application by grounded decree. *3. Subject to the needs of the criminal justice, objects suspected of infringing industrial property right may not be seized, but only subject to descrizione, as long as they appear in the precincts of an exhibition, official or officially recognized, held in the territory of the State, or are in transit to or from the same.* *4. Descrizione and seizure proceedings are governed by the rules of the Civil Procedural Code concerning precautionary proceedings, insofar as they are compatible and not derogated from by the present code. For the purposes of confirming, amending or revoking the descrizione and possible granting any provisional measures requested together with or subject to the descrizione, the Judge shall schedule the hearing taking into account the descrizione for the purpose of assessing its result".* **Art. 132, par. 5, Italian Intellectual Property Code - Anticipation of *interim* protection and the relationship between the precautionary proceedings and proceedings on the merits**: *"In all precautionary proceedings, the Judge, for the purpose of obtaining summary technical information, may order a Court Technical Expert phase".* **Art. 62, Italian Civil Procedural Code - Activities of the Expert**: *"The Court Expert shall make such enquiries as are ordered by the Court and shall give, at the hearing and in chambers, such explanations as the Judge requires pursuant to Articles 194 et seq. and Articles 441 and 46".* **Art. 191, Italian Civil Procedural Code - Appointment of the Technical Expert**: *"In the cases provided for in Article 61 et seq., the investigating Judge, by order pursuant to Article 183, par. 7 or by another subsequent order, appoints a Technical Expert, formulates the questions and schedules the hearing at which the Expert must appear.* *Several Experts may be appointed only in cases of serious need or when the law expressly so provides".*
2	**Calculation and Estimation System of the Amount of Damages in cases of the infringement of trade secrets**	
2-1	(i) If plaintiffs bear the burden of proving the amount of loss or damage in litigation involving the infringement of trade secrets, is there any system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any)?	☒Yes ☐No If Yes, please go to (ii).
	(ii) [If Yes in (i)] Please provide an overview of the system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any).	Overview of the system: According to general principles of the Italian law, the right holder must: (a) Prove the existence of the damage. (b) Prove that the damage is a direct consequence of the infringing acts. (c) Prove that it was intentionally caused or due to the negligence of the infringer. Then Art. 125, Italian IP Code sets out the criteria for the quantification of damages, which might be identified in the loss of profits suffered by the owner of the intellectual property right, including trade secrets (which fall into the definition of intellectual property rights set forth by Art. 1, Italian IP Code) and/or involve the restitution of the infringer's profits. If the damage is difficult or complex to quantify, the compensation may be determined by the Judge applying the laws of equity. Very frequently, Italian Courts order an accounting Court Technical Expert phase to quantify the damages suffered by the owner of trade secrets. Upon the trade secrets owner's request, during or before this phase - having similar structure to the CTE phase mentioned under marg. 1-1 above - the Judge may also order the alleged infringer to file or exhibit accounting, contractual or other documents needed to perform such quantification (Art.

		121, par. 1 - 2, and 121-*bis*, Italian IP Code). Relevant laws and regulations: **Art. 1, Italian Intellectual Property Code - Intellectual property rights**: see marg. 1.1. **Art. 121, par. 1 - 2, Italian Intellectual Property Code - Distribution of the burden of proof**: *"1. Except in the case of revocation for non-use, the burden of proving the invalidity or revocation of an industrial property right shall in all cases be on the person who challenges the right. Subject to Article 67, the burden of proving infringement shall rest on the proprietor. In every case where revocation for non-use is claimed or opposed, the proprietor shall provide proof of use of the trade mark in accordance with Article 24.* *2. Where a party has provided serious indications as to the validity of its claims and has identified documents, items or information held by the other party which support those indications, it may obtain that the Judge orders their exhibition or requests the information from the other party. It may also obtain that the Judge orders the other party to provide elements for the identification of the persons involved in the production and distribution of the infringing goods or services"*. **Art. 121-*bis*, Italian Intellectual Property Code - Right of information**: *"1. The judicial authorities in both precautionary proceedings and proceedings on the merits may order, upon a justified and proportionate request of the applicant, that information concerning the origin and distribution networks of infringing goods or the provision of infringing services be provided by the infringer and by any other person who:* *(a) has been found in possession of infringing goods, on a commercial scale; has been caught using infringing services, on a commercial scale;* *(b) was caught using infringing services on a commercial scale;* *(c) has been identified by the person referred to in points (a) or (b) as being involved in the production, manufacture or distribution of such goods or the provision of such services.* *2. The information referred to in paragraph 1 may, inter alia, include the names and addresses of producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as wholesalers and retailers, as well as information on the quantities produced, manufactured, delivered, received or ordered, and on the price of the goods or services in question.* *3. The information shall be acquired by questioning the persons referred to in paragraph 1.* *4. The applicant shall provide a specific indication of the persons to be questioned and the facts about which each of them is to be questioned.* *5. The Judge, having admitted the witness examination, shall request from the persons referred to in paragraph 1 the information indicated by the party; she/he may also ask them, ex officio or at the request of the party, any questions deems useful to clarify the circumstances on which the testimony is to take place.* *6. Articles 249, 250, 252, 255 and 257, par. 1, of the Civil Procedural Code shall apply"*. **Art. 125, Italian Intellectual Property Code - Damages and restitution of infringer's profits**: *"1. The damages compensation due to the damaged party shall be liquidated in accordance with the provisions of Articles 1223, 1226 and 1227 of the Italian Civil Code, taking into account all relevant aspects, such as the negative economic consequences, including loss of profits, of the affected right's holder, the benefits realized by the infringer and, in appropriate cases, elements other than economic ones, such as the moral prejudice caused to the right holder by the infringement.* *2. The judgement awarding damages may set the damages at an overall amount determined on the basis of the documents in the case and the presumptions arising therefrom. In this case the loss of profits shall in any case be determined in an amount not less than that of the royalties which*

		the infringer would have had to pay had he obtained a license from the holder of the right infringed. *3. In any event, the right holder whose rights have been infringed may claim restitution of the profits realized by the infringer as an alternative to or in excess of the compensation for lost profit".* **Art. 62, Italian Civil Procedural Code - Activities of the Expert**: see marg. 1.1. **Art. 191, Italian Civil Procedural Code - Appointment of the Technical Expert**: see marg. 1.1.
3	**Protection on Licensees involving Trade Secrets**	
3-1	(i) Is there any system to protect licensees involving trade secrets if owners of the trade secrets assigned their business or became bankrupt?	☒Yes ☐No If Yes, please go to (ii).
	(ii) [If Yes in (i)] Please provide an overview of the system to protect licensees.	Overview of the system: According to Italian law (Art. 2558, Italian Civil Code), the purchaser of a company / branch of company succeeds in the contracts concluded for the operation of the company that are not personal in character. Therefore, if the licensor of trade secrets should sell / assign the whole company or the branch thereof holding trade secrets, the licensee would have a different licensor of trade secrets. To avoid this outcome, in case it should be its interest, the licensee should previously include in the license agreement a clause providing its right of termination in the event of a transfer of contract and if the new licensor should not be approved by the licensee. As per the second scenario, the clauses making the termination of an agreement dependent on the bankruptcy of a party are ineffective according to the Italian law (Art. 72, par. 6, Italian Bankruptcy Law). Therefore, in theory, the agreement survives in this case but any decision on how to deal with the license will be upon the receiver appointed by the Italian Court to manage the bankruptcy. Relevant laws and regulations: **Art. 2558, Italian Civil Code - Succession in contracts**: *"1. Unless otherwise agreed, the purchaser of the business succeeds in contracts concluded for the operation of the business that are not personal in character.* *2. The third party may, however, terminate the contract within three months of the notice of transfer if there is a just cause, subject in this case to the liability of the transferor.* *3. The same provisions shall also apply to the usufructuary and tenant for the duration of the usufruct and tenancy".* **Art. 72, par. 6, Italian Bankruptcy Law - Pending relations**: *"Clauses that make the termination of the contract dependent on bankruptcy are ineffective".*

(3) ドイツ

NO.	Question	Answer
1	**Procedure for collection of evidence in cases involving the infringement of trade secrets**	
1-1	(i) Please explain the following regarding the procedures for collection of evidence in cases involving the infringement of trade secrets. Note: If the system is not available in civil litigation, but only in intellectual property litigation, please state as such.	
	(ii) Please provide an overview of the procedures for collection of evidence held by the adverse party in civil proceedings. Examples: information disclosure system, court evidence preservation procedures, commissioning of examinations, procedures for information disclosure through the court such as an order to submit documents (discovery system in the U.S., disclosure system in the UK), procedures to confirm the facts through court-appointed experts (investigation system in Germany)	Overview of the system / laws and regulations on which they are based: [Available for civil litigation in general] **Claim to inspection of an object (Sec. 809 German Civil Code [*Bürgerliches Gesetzbuch – BGB*]):** - If a claimant has a claim in respect of an object (e.g. software) or if it is uncertain whether such a claim exists, the potential defendant[111] may be required to produce the object for inspection or to tolerate inspection in preparation for litigation. **Claim to inspection of documents (Sec. 810 BGB):** - In preparation for litigation, inspection of documents in the possession of the potential defendant may be requested if these are intended to serve the legal position of the claimant according to their purpose and content. **Independent evidence proceedings (Sec. 485 (2) German Rules for Civil Procedure [*Zivilprozessordnung - ZPO*]):** - Before litigation is pending, the claim under Sec. 810 BGB (see above) can be enforced by way of independent evidence proceedings. For preservation of evidence, the presentation of the document for appraisal by an expert may be requested. **Order for the presentation of documents by the court (Sec. 142 (1) ZPO):** - During the proceedings, the court may, at its discretion, order the defendant or a third party to produce the documents in their possession and other documents to which the plaintiff has referred. **Order of visual inspection/visit of an object by the court (Sec. 144 (1) ZPO):** - During the proceedings, the court may, at its discretion, order the inspection of an object. As a result, the defendant or a third party may be ordered to produce an object in their possession. The court may also order that the object be examined by an expert. **Obligation of the defendant to produce documents (Sec. 371 (2) and Secs. 421 – 432 ZPO):** - If the plaintiff provides evidence by inspection, but the document it refers to is – according to its allegations – in the hands of the defendant, the court itself may order production under Sec. 144 (1) ZPO. Otherwise, evidence shall be taken by the application to order the defendant to produce the document (Sec. 421 ZPO). The defendant must produce the document only if the plaintiff has a civil claim to it (Sec. 422 ZPO). The court shall then order the production of the document if it considers the fact to be proven to be material and the motion to be founded (Sec. 425 ZPO). If the defendant claims that it is not in the possession of the document, it shall be questioned as to the whereabouts of the document. The defendant is obliged to

[111] the "potential defendant" would be the alleged infringer.

		search thoroughly for the whereabouts of the document (Sec. 426 ZPO). If the defendant does not fulfil its obligations, a copy of the document submitted by the plaintiff may be considered correct. **Inspection and copying of case records (Sec. 299 (1), (2) ZPO):** - The parties may inspect the case records of the proceeding and have copies made, Sec. 299 (1) ZPO. - Inspection of the case records of another case as an uninvolved third party may be requested if a legal interest is shown to be credible, Sec. 299 (2) ZPO. - - [**Comment:** The following is only available for litigation involving the infringement of a patent] **Production of a document/inspection of an object (Sec. 140c German Patent Act [*Patentgesetz - PatG*]):** If it is reasonable likely that a patented invention is being used, the right holder or another entitled person may require the production of a document or inspection of an object which is in possession / at the disposal of the potential defendant, if it is necessary to substantiate the claim. **Claim to production of, or reasonable access to, banking, financial and commercial documents (Sec. 140d PatG):** In the case of an infringement committed on a commercial scale, there is a claim for the production or provision of appropriate access to bank, financial or commercial documents in the infringer's possession or at its disposal to enforce a claim for damages, if without these documents the fulfilment of the claim would be questionable.
	(iii) Please provide an overview of the procedures for collection of evidence hold by the accused or any third party in criminal proceedings. Example: criminal investigation by a criminal investigation agency, seizure of evidence.	Overview of the system / laws and regulations on which they are based: **Interrogation and interview (Sec. 163a and Sec. 161a German Rules for Criminal Procedure [*Strafprozessordnung - StPO*]):** - Criminal investigation agencies may interrogate the accused or witnesses. **Securing (Sec. 94 (1) StPO):** - Objects that may be of importance as evidence may be secured if they are voluntarily surrendered. **Search (Sec. 102 and Sec. 103 StPO):** - The accused's home, as well as the business premises of the company, may be searched for evidence based on a court order. Under certain circumstances, third party premises may also be searched by order of the court. **Taking documents for review (Sec. 110 StPO**): - Criminal investigation agencies may also take documents and electronic storage media to the premises of the authority and continue the review there. **Seizure (Sec. 94 (2) StPO):** Objects that may be of importance as evidence may be seized by order of the court.
	(iv) Please provide an overview of the procedures for collection of evidence in administrative proceedings. Example: on-site inspections by administrative organs.	Overview of the system / laws and regulations on which they are based: N/A
	(v) Are the procedures for collection of evidence applicable for evidence located outside the country under investigation?	The procedures for collection of evidence in civil proceedings: ☐Yes ☒No Within the EU, Regulation (EU) 1783/2020 applies (Sec. 1072 ZPO), according to which the taking of evidence in another Member State is possible upon request. However, the procedure is governed by the *law of the respective Member State*, Art. 19 (4) Regulation (EU) 1783/2020.

		The procedures for collection of evidence in criminal proceedings: ☐Yes ☒No The procedures for collection of evidence in administrative proceedings: ☐Yes ☒No
	(vi) Please explain the relationship between civil proceedings and criminal proceedings regarding the procedures for collection of evidence. Examples: Whether or not the parties may request the disclosure and submission of evidence collected in criminal proceedings in civil proceedings.	Overview: The files [112] of criminal proceedings, including the criminal judgement, can be used as documentary evidence in civil proceedings pursuant to Secs. 415, 417 ZPO. According to Sec. 474 StPO Civil Courts can inspect files of the criminal procedure. Relevant laws and provisions: **Sec. 474 (1) StPO:** According to this provision, courts are granted access to case records if this is necessary for the purposes of administration of justice.
1-2	(i) Is there any system to reduce the burden of proof of the plaintiff (i.e. rights owners or infringed party) with respect to proving infringement of intellectual property rights in intellectual property litigation (especially in litigation involving the infringement of a patent)?	☒Yes ☐No If Yes, please go to (ii).
	(ii) [If Yes in (i)] Please provide an overview of the system.	Overview of the system: There is a facilitation of evidence if the subject-matter of the patent is a process for the manufacture of a new patent. In addition, the claims of the injured party to produce certain documents or inspection of an object exist as set out above. Relevant laws and regulations: **Facilitation of evidence (Sec. 139 (3) PatG):** If the subject-matter of the patent is a process for the manufacture of a new product, the same product manufactured by another shall be deemed to have been manufactured by the patented process until the contrary is proven. **Production of a document/inspection of an object (Sec. 140c PatG):** Described in 1-1 (ii) **Claim to production of, or reasonable access to, banking, financial and commercial documents (Sec. 140d PatG):** Described in 1-1 (ii)
1-3	(i) Is there any system to reduce the burden of proof of the plaintiff (i.e. trade secret owners or infringed party) with respect to proving infringement of trade secrets in litigation involving the infringement of trade secrets?	☐Yes ☒No If Yes, please go to (ii).
	(ii) [If Yes in (i)] Please provide an overview of the system.	Overview of the system Relevant laws and regulations:
2	**Calculation and Estimation System of the Amount of Damages in cases of the infringement of trade secrets**	
2-1	(i) In Intellectual Property Law in general (especially in litigation involving the infringement of a patent), who bears the burden of proving damage, the plaintiff or the	Burden of proving the amount of damages: Plaintiff <u>Note:</u> If Plaintiffs, please answer (ii) and 2-2. Methods to prove the amount of damage:

[112] "files" means all documents regarding the criminal proceedings which are contained in the official criminal file.

	defendant? Also, how is the amount of damage proven?	Methods to prove the amount of damage (plaintiff has the right to choose between): 1. lost profit (Sec. 139 (2) sentence 1 PatG) 2. 2. infringer's profit (Sec. 139 (2) sentence 2 PatG) 3. 3. fictional royalty (Sec. 139 (2) sentence 3 PatG)
	(ii) [If Plaintiffs in (i)] If plaintiffs bear the burden of proving the amount of damage, is there any system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any)?	☒Yes ☐No If Yes, please go to (iii)
	(iii) [If Yes in (ii)] Please provide an overview of the system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any).	Overview of the system: All three of the above-mentioned methods of calculation provide for reduction of the burden of evidence in favour of the plaintiff: 1. lost profit → presumption pursuant to Sec. 252 sentence 2 BGB 2. infringer's profit → presumption, that the plaintiff, if he had used his patent himself, would have obtained the profit that the infringer obtained by using his right 3. fictional royalty → fiction of a licence agreement and damage in the amount of the fictional royalty Relevant laws and regulations: **Lost profit (Sec. 252 sentence 2 BGB)[113]:** The loss of profit is deemed to be the profit which could be expected with probability according to the ordinary course of events or according to the particular circumstances. **Sec. 139 (2) sentence 2 und 3 PatG:** These provisions provide for the calculation of damages according to the methods of infringer's profit and fictional royalty. **Production of a document/inspection of an object (Sec. 140c PatG):** - Described in 1-1 (ii) **Claim to production of, or reasonable access to, banking, financial and commercial documents (Sec. 140d PatG):** - Described in 1-1 (ii) **Estimation of the amount of damage by the court (Sec. 287 ZPO):** If it is unclear whether damage has occurred and how much it amounts to, the court may estimate the damage if the data provided by the plaintiff form a sufficient factual basis.
2-2	(i) If plaintiffs bear the burden of proving the amount of loss or damage in litigation involving the infringement of trade secrets, is there any system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any)?	☒Yes ☐No If Yes, please go to (ii).
	(ii) [If Yes in (i)] Please provide an overview of the system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any).	Overview of the system: The German Trade Secrets Act (*Geschäftsgeheimnisgesetz – **GeshGehG***) also provides for the possibility of calculating damages in three ways at the plaintiff's choice: lost profit, infringer's profit, or fictional royalty. Relevant laws and regulations: **Presumption of amount of damage (Sec. 10 (1) and (2) GeschGehG:** Under Sec. 10 (1) GeschGehG, a concrete calculation of damages is

[113] The regulation reduces the burden of proof insofar as the plaintiff does not have to prove which profit he has actually lost. Sec. 252 sentence 2 BGB allows and regulates the abstract calculation of the loss of profit. The calculation is based on the profit which could be expected with probability according to the ordinary course of events or according to the particular circumstances.

		required. Here, the law does not provide for any facilitation of proof in favour of the plaintiff. Sec. 10 (2) sentence 1 GeschGehG provides for the calculation of the amount of damages according to the infringer's profit. It is presumed that the plaintiff would have made the same profit as the infringer made. Sec. 10 (2) sentence 2 GeschGehG provides for the calculation of the amount of damages according to a fictional royalty. On the basis of a fictitious licence agreement, it is presumed that damage in the amount of the fictional royalty has occurred. **Estimation of the amount of damage by the court (Sec. 287 ZPO):** If it is unclear whether damages occurred and to what extent, the court may estimate the amount of damages if the data provided by the plaintiff form a sufficient factual basis.
2-3	Please provide the information of the leading decisions of trade secret cases that the court awarded high amount of damages.	Case Information: Date of Decision: Awarded Amount The decisions in German trade secret infringement litigation in which courts have ordered the payment of high damages are as follows (please note that these cases still relate to the previous German regulations in place before the entry into force of the new German Trade Secrets Act in April 2019): - Theft of records: € 7.045.940,48 (judgement of the Higher Regional Court Frankfurt, 28 November 2006 - 11 U 57/03) - Disclosure of data for the manufacture of a product: € 166.677,36 (this was only a part of the damages, for the rest the information of the defendant was still missing) (judgement of the State Labour Court Düsseldorf, 28 June 2018 – 8 Sa 379/17) In this case the award of damages was based on the violation of a trade secret.
3	**Protection on Licensees involving Trade Secrets**	
3-1	(i) Is there any system to protect a licensee in Intellectual Property Law in general (especially patent rights or copyrights) where rights owners have assigned their intellectual property rights to a third party or become bankrupt?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please provide an overview of the system to protect licensees.	Overview of the system: **[In the event that rights owners have assigned their intellectual property rights to a third party]** - The problem does not arise in copyright law, as the copyrights as such is not transferable under German law (Sec. 29 (1) German Copyright Act [*Urhebergesetz* – ***UrhG***]) - Sec. 15 (3) PatG provides that an assignment of the patent right does not affect previously granted licences. **[In the event that rights owners have become bankrupt]** There is no statute providing that licence agreements continue in the event of the licensor's bankruptcy. The licence is not bankruptcy-proof insofar as the contract has not yet been mutually fulfilled. The bankruptcy administrator has the freedom to choose whether to continue such an agreement and determines on a case-by-case basis whether the continuation of the licence agreement is economical sensible or not (Sec. 103 German Bankruptcy Act [*Insolvenzordnung* – ***InsO***]).

3-2	(i) Is there any system to protect licensees involving trade secrets if owners of the trade secrets assigned their business or became bankrupt?	☒Yes ☐No If Yes, please go to (ii).
	(ii) [If Yes in (i)] Please provide an overview of the system to protect licensees.	Overview of the system: **[In the event that the owner of the trade secrets assigned their business]** There is no explicit provision that licences granted remain in force in the event of the sale of the business. However, Sec. 4 GeschGehG provides that a person who uses a trade secret based on a licence agreement has not unlawfully obtained it. The new owner therefore has no possibility to prohibit the use of the trade secret by the licensee. **[In the event that the owner of the trade secrets became bankrupt]** Sec. 103 InsO also applies here (see 3-1 (ii)). Relevant laws and regulations: **Sec. 4 (1), (2) GeschGehG:** This provision stipulates that a trade secret may be used if it has been lawfully obtained (e.g. through a licence agreement). **Sec. 103 InsO:** The bankruptcy administrator can decide whether or not to adhere to the licence agreement.
4	**International jurisdiction and governing law in cases of transnational infringement of trade secrets**	
4-1	(i) Please explain the laws and regulations providing the basic rules on how to determine international jurisdiction and an overview thereof.	Relevant laws and regulations: Regulation (EU) No 1215/2012 (generally applies if the defendant is resident in an EU Member State), otherwise: ZPO (The German legislator has only expressly regulated international jurisdiction in a few instances. In all other respects, international jurisdiction follows from the rules on local jurisdiction). How to determine : If any of the following applies, plaintiffs may file an action in German Courts: - The defendant's domicile or head office is in Germany (Art. 4 (1) Regulation (EU) No 1215/2012; Secs. 12, 13, 17 ZPO) - In addition to this general venue, special venues in Germany exist under certain conditions, e.g.: • legal disputes about contractual claims to be fulfilled in Germany (Art. 7 No. 1 Regulation (EU) No 1215/2012; Sec. 29 ZPO) - There are also exclusive jurisdictions. Notably, only the responsible German court has jurisdiction in • proceedings regarding immovable property located in Germany (Art. 24 No. 1 Regulation (EU) No 1215/2012, Sec. 24 ZPO) - The parties have agreed on the jurisdiction of a German court (Art. 25 Regulation (EU) No 1215/2012, Sec. 38 ZPO) - The defendant does not raise that the German courts lack jurisdiction (Art. 26 Regulation (EU) No 1215/2012, Sec. 39 ZPO)
	(ii) Is there any special provisions on torts regarding how to determine international jurisdiction. If any, please provide the overview.	☒Yes ☐No (If Yes) Overview: Art. 7 No. 2 Regulation (EU) No. 1215/2012 provides that actions in conjunction with torts shall be brought before the courts at the place

		where the harmful event occurred[114] or is likely to occur. Pursuant to Sec. 32 ZPO, the Court in whose district the act was committed has jurisdiction for actions in tort.
	(iii) Is there any difference in the method for determining international jurisdiction between claims for damages and injunctions?	☐Yes ☒No (If Yes) Overview:
	(iv) Please provide an overview of special provisions on the infringement of trade secrets regarding the method for determining international jurisdiction.	☐Yes ☒No (If Yes) Overview: There is no explicit provision in the GeschGehG on international jurisdiction. However, international jurisdiction is to be affirmed if a domestic court has local jurisdiction. Regulation (EU) No. 1215/2012 shall prevail. If it doesn't apply, the following shall apply: Sec. 15 (2) GeschGehG provides that the court in whose district the defendant has his general place of jurisdiction has exclusive jurisdiction. If the defendant has no general place of jurisdiction in the country, only the court whose district the act was committed has jurisdiction.
4-2	(i) Please explain the laws and regulations providing the basic rules on how to determine applicable law and an overview thereof.	Relevant laws and regulations: Art. 3 – Art. 46 Introductory Act to the German Civil Code [*Einführungsgesetz zum Bürgerlichen Gesetzbuch – **EGBGB***] **For matters that take place within the EU:** Rome-I Regulation [Regulation (EC) No 593/2008] (contractual obligations), Rome-II Regulation [Regulation (EC) No 864/2007] (non-contractual obligations) How to determine: Pursuant to Art. 3 EGBGB, the European regulations take precedence over the rules of the EGBGB. The most common link is the nationality of a person, Art. 5 EGBGB.
	(ii) Please provide an overview of any special provisions on the rules on how to determine applicable law with respect to tort liability.	☒Yes ☐No (If Yes) Overview: Art. 40 (1) EGBGB provides that, in principle, the law of the country in which the tortfeasor acted is applicable. Alternatively, the injured party can demand that the law of the country in which the success occurred be applied. Art. 40 (2) EGBGB: If, at the time of the occurrence of the damage, the injuring party and the person sustaining the damage have their habitual residence in the same country, the law of that country shall apply. **For matters relating to the EU applies:** Art. 4 (1) Rome II Regulation: In principle, the law of the state in which the damage occurs is decisive. Art. 4 (2) Rome II Regulation: If, at the time of the occurrence of the damage, the injuring party and the person sustaining the damage have their habitual residence in the same country, the law of that country shall apply.
	(iii) Is there any difference in the method for determining an applicable law between claims for damages and injunctions? If yes, please provide an overview.	☐Yes ☒No (If Yes) Overview:

[114] According to the case law of the ECJ, the harmful event occured both at the place of action (place where the incriminated act occured and from which the damaging event was triggered) and at the place of success (place where the result on the legal asset occured). Ultimately the aggrieved party has the choice of where he brings in action.

	(iv) Please provide an overview of any special provisions on the rules on how to determine applicable law with respect to the infringement of trade secrets.	☐Yes ☒No (If Yes) Overview:
4-3	Please explain the relationship between the rules of governing law and international jurisdiction. Examples: The law of the forum applies if the forum has jurisdiction, the forum has jurisdiction if the law of the forum should apply, the applicable law (the law of the forum or a foreign law) is determined after determining whether the forum has jurisdiction.	If an action with foreign implications is brought before a German court, the first step is to determine whether the court seized has international jurisdiction in accordance with the ZPO or the Regulation (EU) No. 1215/2012. If this is the case, the next step is to determine which substantive law is applicable based on the EGBGB or the Rome Regulations.
4-4	Please provide overviews of some leading cases and summaries of the judgments in relation to the rules of methods for determining international jurisdiction and the governing law.	**[leading case regarding international jurisdiction]** **Judgement of the Higher Regional Court Düsseldorf, 25 November 2021 - 15 SA 1/21:** Overview of the case: The plaintiff manufactured stirring devices for the needs of pharmacists. The plaintiff claimed to be the owner of the trade secrets concerning the development and manufacture of the stirrers. It brought an action for alleged trade secret infringement against several defendants. The first defendant was the plaintiff's domestic competitor, and the action was also directed against the first defendant's parent company and its legal representatives. Some of the defendants had their place of residence or business in Germany, others in the Netherlands or Spain. Contents of the judgement: Regarding the defendants domiciled in the Netherlands and Spain, international jurisdiction follows from Art. 7 No. 2 Regulation (EU) No. 1215/2012. Tortious acts within the meaning of this provision also include trade secret infringements. The phrase "place where the harmful event occurred or is likely to occur" within the meaning of Art. 7 No. 2 Regulation (EU) No. 1215/2012 means both the place where the harmful event occurred ("place of occurrence") and the place where the event causing the harmful event occurred ("place of action"). If the defendant is a company, the place of action is the place of establishment of the company. **Judgement of the Higher Regional Court Karlsruhe, 31 March 2022 – 6 W 15/22:** Overview of the case: The managing director of the German-based applicant improperly shared files containing trade secrets of the applicant with the US-based respondent 1, who was the managing director of the US-based respondent 2. Contents of the judgement: The international jurisdiction of the German court was denied. Regulation (EU) No. 1215/2012 was not applicable here, as the defendants did not have their place of residence or business in a member state of the EU. Instead, international jurisdiction was based on § 15 (2) sentence 2 Trade Secrets Act, according to which the court in whose district the act was committed has jurisdiction. This provision also includes the place where the harmful event occurred and the place of action. However, the place of action is only the place where a harmful event belonging to an act prohibited under § 4 of

		the Trade Secrets Act occurred. In this case, the place of occurrence is not automatically the seat of the owner of the trade secret. **[leading case regarding the governing law]** **Judgement of the Higher Regional Court Düsseldorf, 21 November 2019 – 2 U 34/19:** Overview of the case: The applicant is an Irish-based company that has medical devices, in particular syringes, manufactured and distributed in China. The respondent also distributes medical devices, in particular syringes. The applicant alleges that these syringes were manufactured using its know-how unlawfully. The applicant therefore claims that the respondent should cease and desist from distributing the syringes and bases this claim, inter alia, on the infringement of trade secrets. Contents of the judgement: The court could ultimately leave the question of the applicable law open here, as it was clear that the European Trade Secrets Directive was applicable in any case. In doing so, the Higher Regional Court leaved open whether it follows the prevailing opinion in the literature, according to which Art. 6 Rome II Regulation is no longer applicable to acts of infringement under the Trade Secrets Act due to the lack of "unfair competitive behaviour". The question of whether the general rule of jurisdiction for tortious acts in Art. 4 of the Rome II Regulation should be used or whether it is superseded by the more specific Art. 8 of the Rome II Regulation for the "infringement of intellectual property rights" could also be left open. For the relevant places according to all these provisions were either Ireland or Germany. An application of Chinese law due to an obviously closer connection to China pursuant to Art. 4 III Rome II Regulation was ruled out due to the choice of Irish law.
4-5	Please explain some leading cases which found extraterritorial application in international and transnational litigation involving the infringement of trade secrets.	Case Information: Overview of the case: N/A Summary of the judgment: Applied laws and regulations that permit extraterritorial application:
4-6	(i) For determining the governing law, is there any legislation that (a) provide for an “overriding mandatory rule” applicable to international/cross boarder civil disputes overriding the general rules (international private law) of governing laws; (b) does not explicitly provides such overriding mandatory rules but are interpretated as such by the court; or (iii) provides any extraterritorial effects * Overriding mandatory rule: The legislation in the jurisdiction directly without application of the general rules of the governing laws in the jurisdiction. * Extraterritorial effects: The law applies to the act conducted out of the jurisdiction.	(a) ☒Yes ☐No (b) ☒Yes ☐No (c) ☐Yes ☐No [If Yes] Overview: Art. 9 Rome-I Regulation and Art. 16 Rome-II Regulation generally regulate that so-called "overriding mandatory provisions" remain unaffected by the Regulations. These are therefore mandatory provisions, compliance with which is considered essential by the respective state for the protection of its public interest. Under German law, these are individual regulations from foreign trade law, competition law, consumer protection and employee protection. There are no express provisions. The classification as a overriding mandatory rule results from the nature and purpose of law.
	(ii) Please provide overviews of some court cases where the court judged that a specific provision was an “overriding mandatory rule” in	Precedent: ☒Yes ☐No [If Yes] Case Information: Secs. 1 (1) and 20 of the German Minimum Wage Act

	resolving international and transnational civil disputes.	**Judgement of the Federal Labour Court, 24 June 2021 – 5 AZR 505/20:** Overview of the case: The plaintiff was a Bulgarian national. She concluded an employment contract with the defendant, a company also based in Bulgaria. She was subsequently posted to Germany where she provided care services in the household of a 90-year-old person. After the end of the employment relationship, the plaintiff demanded payment of the outstanding minimum wage. Summaries of the judgment: The Federal Labour Court ruled that Secs. 1 (1) and 20 of the Minimum Wage Act have mandatory effect internationally. They are overriding mandatory rules that are applicable irrespective of whether German law is otherwise applicable to the employment relationship.
	(iii) Is there any possibility that overriding mandatory rules would apply to trade infringement cases?	☐Yes ☐No ☒Not Clear [If Yes] Reason (precedents or arguments):

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NO.	Question	Answer
1	**Procedure for collection of evidence in cases involving the infringement of trade secrets**	
1-1	(i) Please explain the following regarding the procedures for collection of evidence in cases involving the infringement of trade secrets. Note: If the system is not available in civil litigation, but only in intellectual property litigation, please state as such.	
	(ii) Please provide an overview of the procedures for collection of evidence held by the adverse party in civil proceedings. Examples: information disclosure system, court evidence preservation procedures, commissioning of examinations, procedures for information disclosure through the court such as an order to submit documents (discovery system in the U.S., disclosure system in the UK), procedures to confirm the facts through court-appointed experts (investigation system in Germany)	Overview of the system / laws and regulations on which they are based: **[Available for civil litigation in general]** ・ **Evidence investigation by the court (Article 67(2) of the Civil Procedure Law (Amended in 2021); Article 94 of the Interpretations of the Supreme People's Court ("SPC") on the Application of the Civil Procedure Law (Amended in 2022) (SPC's Interpretations on Civil Procedure Law); Article 20-24 of the Provisions of the SPC on Evidence in Civil Procedures (Amended in 2019) ("Civil Evidence Rule"))** The court may, upon the request of the party or its agent ad litem, investigate and collect evidence, or under specific circumstances, investigate and collect the evidence on an ex officio basis. Article 94 of the SPC's Interpretations on Civil Procedure Law set out the circumstances when the parties can apply to the court for evidence investigation and collection: (i) evidence are kept by government departments that the party and its agent ad litem cannot review and retrieve; (ii) Evidence involving state secrets, trade secrets, or personal privacy; (iii) the party and its agent ad litem cannot collect for reasons beyond their control. To request the court to investigate and collect evidence, any party or its agent ad litem may submit a written application before the expiration of the time limit for adducing evidence, specifying the particulars of the individual or entity to be investigated, the to-be-collected evidence and the to-be-proved facts, as well as providing explicit clues thereof (Article 20-24 of the Civil Evidence Rule). ・ **Evidence preservation by the court (Article 84 of the Civil Procedure Law; Article 98 of the SPC's Interpretations on Civil Procedure Law; Article 25-29 of the Civil Evidence Rule)** When the evidence may be destroyed, lost or difficult to collect later on, the court can preserve the evidence voluntarily or upon the application of the party (Article 84 of the Civil Procedure Law). The parties shall, prior to the expiration of the time limit for adducing evidence, submit a written application to the court for evidence preservation, indicating, inter alia, the particular of the evidence to be preserved, the reasons, and the preservation measures (Article 25 of the Civil Evidence Rule). If the preservation measures may cause losses to evidence holder, the court may require the applicant to provide guarantee (Article 98 of the SPC's Interpretations on Civil Procedure Law and Article 26 of the Civil Evidence Rule). The preservation measures including but not limited to seizing, detention, sound recording, video recording, reproducing, appraisal, inspection and et al (Article 27 of the Civil Evidence Rule). ・ **Evidence submission order (Article 111-113 of the SPC's Interpretations on Civil Procedure Law; Article 45-48 of the Civil Evidence Rule)** Where the documentary evidence is under the control of the evidence holder, the party with burden of proof may apply to the court to order the

		evidence holder to present the evidence prior to the expiration of the time limit for adducing evidence. If the evidence holder refuses to do so without justifiable reasons, the court may presume that the documentary evidence asserted by the applicant is authentic (Article 112 of the SPC's Interpretations on Civil Procedure Law). The Civil Evidence Rule expanded the evidence scope from documentary evidence to audio-visual materials and electronic data (Article 99 of the Civil Evidence Rule). The application shall specify the following issues: the name or content of the evidence; the facts to be proved by the evidence and the importance of such evidence; the proof that the evidence is under the control of the evidence holder and the reason why to present. And the court will make a comprehensive judgment considering relevant laws, regulations, customs, facts, and evidence etc. (Article 45 of the Civil Evidence Rule). · **Appraisal (Article 79-82 of the Civil Procedure Law; Article 121 and 122 of the SPC's Interpretations on Civil Procedure Law; Article 30-42 of the Civil Evidence Rule)** A party may apply to the court for the appraisal on a specialized issue for ascertaining the facts. The appraisal can be initiated by the parties' application or by the court on an ex officio basis. (Article 121 of the SPC's Interpretations on Civil Procedure Law). The appraisal opinion is an important reference for ascertaining the facts by the judge. · **Expert witness (Article 82 of the Civil Procedure Law; Article 122 and 123 of the SPC's Interpretations on Civil Procedure Law; Article 83 and 84 of the Civil Evidence Rule)** The parties may engage expert with specialized knowledge to present at the court and opine on professional issues. · **Evidence Inspection (Article 83 of the Civil Procedure Law; Article 124 of the SPC's Interpretations on Civil Procedure Law; Article 43 of the Civil Evidence Rule)** Where a court deems it necessary, it may inspect the physical evidence or conduct the onsite inspection upon the application of a party or on an ex officio basis. · **Obstructing the investigation and collection of evidence (Article 114 of the Civil Procedure Law; Article 113 of the SPC's Interpretations on Civil Procedure Law)** A party may be subject to fine and detention in case of forging, destroying, and obstructing the court from investigation and collection of evidence. · **Lawyer investigation order (provincial level: e.g., Provisions of the Guangdong High People's Court and the Guangdong Department of Justice on the Implementation of Lawyer Investigation Order in Civil Procedures)** The court may grant an investigation order and authorize the attorney of the party to investigate and collect evidence. The system has yet been prevailed nationwide, courts in various regions including but not limited to Beijing, Guangdong and Chongqing have promulgated relevant guidelines of the lawyer investigation order. In practice, the party being investigated may disregard and challenge the lawyer investigation order and request the court officer to investigate and collect the evidence in person. **[System available only for litigation involving the infringement of intellectual property]** · **Technical investigator (Article 15 and 29 of the Provisions of the SPC on Evidence in Civil Litigation involving Intellectual Property Rights ("IP Evidence Rule") and Several Provisions of the SPC on the Participation of Technical Investigators in Litigation Activities Related to Intellectual Property Cases)** The court may appoint a technical investigator to participate in the pre-trial conference or trial. The technical investigator may question the parties, the attorneys in law, expert with specialized knowledge, witness,

		appraisal expert, inspectors, and et al about the technical issues involved in the case. The technical investigator may also participate in the evidence preservation (Article 15 and 29 of the IP Evidence Rule).
	(iii) Please provide an overview of the procedures for collection of evidence hold by the accused or any third party in criminal proceedings. Example: criminal investigation by a criminal investigation agency, seizure of evidence.	Overview of the system / laws and regulations on which they are based: [Non-compulsory investigations] · **Apply to the authority for investigation and collection of evidence (Article 41, 43 of the Criminal Procedure Law (Amended in 2018) and Article 57, 59, 60, 61 and 65 of the Interpretation of the SPC on the Application of the Criminal Procedure Law (Amended in 2021) ("SPC's interpretations on Criminal Procedure Law"))** Where the advocate opines that the public security bureau ("PSB") or the procuratorate fails to submit certain evidence gathered during the investigation or examination before prosecution while such evidence can prove that the criminal suspect or defendant is innocent or the crime involved is a petty offense, the advocate shall be entitled to apply with the procuratorate, or the court to obtain such evidence, or to request the court to inform the witness to present in the courtroom and give testimony. [Compulsory investigations] · **Investigation and inquiry (Article 115 and 116 of the Criminal Procedure Law and Article 106 and 107 of the SPC's interpretations on Criminal Procedure Law)** The PSB shall carry out investigation, collecting and obtaining evidence after a criminal case has been filed. After investigation, the PSB shall start preliminary inquiry into a case for which there is evidence that supports the facts of the crime, in order to verify the evidence which has been collected and obtained. · **Interrogation of the criminal suspect (Article 118-123 of the Criminal Procedure Law and Article 93-96 of the SPC's interpretations on Criminal Procedure Law)** Investigators of the procuratorate or PSB may interrogate a criminal suspect. No fewer than 2 investigators must be present during the interrogation. The criminal suspect shall answer the investigators' questions truthfully but shall have the right to refuse to answer any questions that are irrelevant to the case. · **Questioning of the witness (Article 124-127 of the Criminal Procedure Law and Article 87-91 of the SPC's interpretations on Criminal Procedure Law)** Investigators may question a witness. When a witness is questioned, he/she shall be instructed to provide evidence and give testimony truthfully and shall be informed of the legal responsibility that shall be incurred for intentionally giving false testimony or concealing criminal evidence. · **Inquest and examination (Article 128-135 of the Criminal Procedure Law and Article 102-107 of the SPC's interpretations on Criminal Procedure Law)** Investigators shall conduct an inquest or examination of the sites, objects, people and corpses relevant to a crime. When necessary, experts may be assigned or invited to conduct an inquest or examination under the direction of the investigators. · **Search (Article 136-140 of the Criminal Procedure Law and**

		Article 86 of the SPC's interpretations on Criminal Procedure Law) In order to collect criminal evidence and track down an offender, investigators may search the person, belongings and residence of the criminal suspect and anyone who might be hiding a criminal or criminal evidence, as well as other relevant places. ・ **Seal up, seizure of material evidence and documentary evidence (Article 141-145 of the Criminal Procedure Law and Article 279 of the SPC's interpretations on Criminal Procedure Law)** All property and documents found during investigation that may prove a criminal suspect's guilt or innocence shall be sealed up or seized. When required by investigation, the procuratorate or PSB may access or freeze a criminal suspect's deposits, remittance, bonds, stocks, shares of funds or other property. ・ **Appraisal (Article 146-149 of the Criminal Procedure Law and Article 97-101 of the SPC's interpretations on Criminal Procedure Law)** When certain specialized problems relating to a case need to be solved in order to clarify the circumstances of the case, experts shall be assigned or invited to give an appraisal. ・ **Technical investigation measures (Article 150-154 of the Criminal Procedure Law and Article 116-122 of the SPC's interpretations on Criminal Procedure Law)** After a case filed, the PSB may, in accordance with the needs for criminal investigation, employ technical investigation measures if the case involves crimes endangering state security, crimes of terrorist activities, organized crimes committed by groups in criminal syndicates, major drug-related crimes or other crimes seriously endangering the society. ・ **Wanted orders (Article 155 of the Criminal Procedure Law)** Where a criminal suspect who should be arrested is a fugitive, the PSB may issue a wanted order and take effective measures to pursue him/her for arrest and bring him/her to justice. **[System available only for litigation involving the infringement of intellectual property]** ・ **Technical investigator (Several Provisions of the SPC on the Participation of Technical Investigators in Litigation Activities Related to Intellectual Property Cases)** See the corresponding section in above 1-1-(ii).
	(iv) Please provide an overview of the procedures for collection of evidence in administrative proceedings. Example: on-site inspections by administrative organs.	Overview of the system / laws and regulations on which they are based: **[Available for administrative proceedings in general]** ・ **Evidence investigation and collection (Article 21-26 of the Provisions on Administrative Penalty Procedures for Market Regulation (Amended in 2022))** The market regulatory authority may collect and obtain documentary evidence, audio-visual materials and electronic data. The market regulatory authorities may collect and preserve evidence of illegal acts by use of internet information systems or equipment and may designate or engage personnel with specialized knowledge to assist personnel handling cases in investigation and evidence collection of electronic data related to cases. ・ **Inspection (Article 28 of the Provisions on Administrative Penalty Procedures for Market Regulation)** The market regulatory departments may carry out inspection on the articles or sites suspected to be illegal. The party concerned shall be notified to be present. The officer handling the case shall make on-site records specifying the time, place, event, etc., and the records shall be signed or sealed by the officer handling the case and the party concerned. ・ **Testing, inspection, quarantine, and appraisal (Article 25 of the**

		Administrative Coercion Law and Article 32 of the Provisions on Administrative Penalty Procedures for Market Regulation) Where any testing, inspection, quarantine or appraisal is required for any special matter in a case to ascertain the facts of the case, the market regulatory authority shall entrust an agency with statutory qualification or may entrust any other qualified agency to conduct the testing, inspection, quarantine or appraisal. ・ **Evidence preservation (Article 33-35 of the Provisions on Administrative Penalty Procedures for Market Regulation)** Where the evidence is likely to be destroyed or lost or difficult to be obtained later, the market regulatory authorities may take advance registration and preservation measures for the evidence relating to the suspected illegal act. ・ **Seizure and detention (Article 22-28 of the Administrative Coercion Law, Article 36-44 of the Provisions on Administrative Penalty Procedures for Market Regulation, Article 6 of the Customs Law (Amended in 2021) and Article 12 of the Regulations on Customs Protection of Intellectual Property Rights (Amended in 2018))** The administrative law enforcement department such as market regulatory authority and customs may take administrative compulsory measures such as seizure and detention. **[System available for intellectual property administrative proceedings]** ・ **Technical investigator (Several Provisions of the SPC on the Participation of Technical Investigators in Litigation Activities Related to Intellectual Property Cases)** See the corresponding section in above 1-1-(ii).
	(v) Are the procedures for collection of evidence applicable for evidence located outside the country under investigation?	The procedures for collection of evidence in civil proceedings: ☐Yes ☒No The procedures for collection of evidence in criminal proceedings: ☐Yes ☒No The procedures for collection of evidence in administrative proceedings: ☐Yes ☒No That said, some judicial assistance procedures are applicable in China. For example, China is a party to the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. Article 1 of the Convention provided that in civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act. In accordance with the international treaties which China has concluded or acceded to or on the principle of reciprocity, the judicial organs of China and that of foreign countries may request judicial assistance from each other in criminal affairs (Article 18 of the Criminal Procedure Law).
	(vi) Please explain the relationship between civil proceedings and criminal proceedings regarding the procedures for collection of evidence. Examples: Whether or not the parties may request the disclosure and submission of evidence collected in criminal proceedings in civil proceedings.	Overview: In trade secret infringement cases, the evidence collected and used in a corresponding criminal proceeding may be used in civil litigation unless it will affect the outcome of the criminal trial. Relevant laws and provisions: Article 22 of the Provisions on Several Issues Concerning the Application of Law in Trial of Civil Cases of Infringement of Trade Secrets: When trying a civil case involving trade secret infringement, the court shall comprehensively and objectively examine the evidence formed during the criminal proceedings for an offence of trade secret infringement under statutory procedures. With regard to the evidence related to the sued infringement which is kept by a public security organ, procuratorial organ or court, if the party to a civil case concerning trade secret infringement or the attorney at law

		thereof fails to collect the evidence by himself/herself due to objective reasons and applies for investigation and collection, the court shall grant permission, unless the investigation and collection may affect the outcome of the criminal trial.
1-2	(i) Is there any system to reduce the burden of proof of the plaintiff (i.e. rights owners or infringed party) with respect to proving infringement of intellectual property rights in intellectual property litigation (especially in litigation involving the infringement of a patent)?	☒Yes ☐No If Yes, please go to (ii).
	(ii) [If Yes in (i)] Please provide an overview of the system.	Overview of the system / Relevant laws and regulations: ・ **Shifted burden of proof in patent infringement claim (Article 66 of the Patent Law)** In the case of patent infringement of patented manufacturing process, the burden of proof is shifted to the accused infringer. Where a patent infringement dispute involves an invention patent for a manufacturing method of a new product, organisations or individuals manufacturing the same product shall provide proof to prove that their product manufacturing method is different from the patented method. The reversal of the burden of proof relates only to the method of manufacture of the new product (the processing of raw materials, the operation of raw materials, the method of manufacture into various products, etc. Such as mechanical, chemical, biological methods, etc.) and does not cover the method of use, the method of work or the patent. For the patented manufacturing process does not relate to the new product, the infringer should prove that its manufacturing process is different to the patented manufacturing process in the event that the patentee proves following: (1) The product manufactured by the infringer is the same product as that manufactured by the patented method; (2) there is a great likelihood that the product manufactured by the infringer is manufactured by the patented method; and (3) the patentee has made all reasonable efforts to prove that the infringer used the patented method. (Article 3 of the Several Provisions of the Supreme People's Court on Evidence in Civil Litigation Involving Intellectual Property Rights).
1-3	(i) Is there any system to reduce the burden of proof of the plaintiff (i.e. trade secret owners or infringed party) with respect to proving infringement of trade secrets in litigation involving the infringement of trade secrets?	☒Yes ☐No If Yes, please go to (ii).
	(ii) [If Yes in (i)] Please provide an overview of the system.	Overview of the system / Relevant laws and regulations: ・ **Shifted burden of proof in trade-secret misappropriation claims (Article 32 of the Anti-Unfair Competition Law (Amended in 2019) (“AUCL”))** The burden of proof is mainly on the plaintiff in civil proceedings. The 2019 amended AUCL created a burden-shifting mechanism once a prima facie case has been made. Article 32 of the AUCL provides that “where the trade secrets owner provides prima facie evidence that it has taken measures to protect the

		confidentiality of the claimed trade secrets and that the trade secrets have been infringed, the alleged infringer must prove that the trade secrets claimed by the owner do not constitute trade secrets." Such prima facie evidence may be (i) Evidence showing that the alleged infringer had access to the trade secrets or had an opportunity to obtain the trade secrets and that the information used is substantially the same as the trade secrets; (ii) Evidence showing that the trade secrets have been disclosed or used or are at risk of being disclosed or used by the alleged infringer; and (iii) other evidence showing that the trade secrets have been infringed.
2	**Calculation and Estimation System of the Amount of Damages in cases of the infringement of trade secrets**	
2-1	(i) In Intellectual Property Law in general (especially in litigation involving the infringement of a patent), who bears the burden of proving damage, the plaintiff or the defendant? Also, how is the amount of damage proven?	Burden of proving the amount of damages: Plaintiffs Note: If Plaintiffs, please answer (ii) and 2-2. Methods to prove the amount of damage: For the cases of technology infringement, Article 71(1) of the Patent Law provide the legal grounds for damage determinations. Article 14 of the SPC's Several Provisions on the Application of Law in the Trial of Patent Disputes (Amended in 2020) ("SPC's interpretations on Patent Dispute") and Article 16 of the Interpretations of the Supreme People's Court Concerning Certain Issues on the Application of Law for the Trial of Cases on Disputes over Infringement on Patent Rights further specifies the methodology where the formulae could be summarized as follows: ・ Damages = the right owner's actual losses or the infringer's gains ・ Right owner's actual losses = units of reduced patented product/units of infringing goods sold × reasonable profits of patented product ・ Infringer's gains = units of infringing goods sold ×reasonable profits of the infringing goods ・ Reasonable profits = sales price × profit margin × contribution rate of the patent If the Plaintiff failed to prove the damage through above method, it could also adduce the evidence regarding the licensing fees of the asserted patent. The court will then reasonably determine the damage by reference to a multiple of the patent licensing fees. (Article 71(1) of Patent Law and Article 15 of the SPC's interpretations on Patent Dispute)
	(ii) [If Plaintiffs in (i)] If plaintiffs bear the burden of proving the amount of damage, is there any system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any)?	☒Yes ☐No If Yes, please go to (iii)
	(iii) [If Yes in (ii)] Please provide an overview of the system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any).	Overview of the system / Relevant laws and regulations: ・ **Court's order asking the infringer to submit documents that are needed to calculate the damage caused by the infringement (Article 65 and 71(4) of the Patent Law; Article 27 of the Interpretation of the SPC on Several Issues Concerning the Application of Law in the Trial of Patent Infringement Dispute (II) (Amended in 2020) ("SPC's interpretations on Patent Infringement (II)"))** Where the patentee has made best efforts to adduce evidence, while the account books or materials related to the infringement are controlled by the infringer, the court may order the infringer to provide such account books and materials. The infringer's refusing to comply may result in the court's award of damages by reference to the claims and the evidence provided by the patentee. Where it is difficult to determine the actual losses incurred to the patentee as a result of the infringement, the court shall require the patentee to show proof of the gains derived by the infringer from the infringement;

		where the patentee has provided prima facie evidence of gains derived by the infringer, if the relevant accounts books and materials relating to the patent infringement are held by the infringer, the court may order the infringer to provide the said accounts books and materials; where the infringer refuses to provide without a proper reason or provides false accounts books and materials, the court may ascertain the gains derived by the infringer from the infringement based on the patentee's claim and the evidence provided (Article 27 of the SPC's interpretations on Patent Infringement (II)). ・ **Punitive damages (Article 71(1) of the Patent Law; The Interpretation on the Application of Punitive Damages to the Trial of Civil Cases involving Infringement of Intellectual Property Rights)** In case of serious circumstances, the punitive damages of up to quintuple damages for wilful patent infringement will be granted. ・ **Statutory damages (Article 71(2) of the Patent Law)** In the event that it is difficult to ascertain either the losses incurred by the right holder, the profits made by the infringer or the patent licensing fees, a court may, upon consideration of the characteristics of the patent right, as well as the nature and circumstances of the infringement and other factors, fix the amount of damages to be paid between RMB30,000 and RMB5 million.
2-2	(i) If plaintiffs bear the burden of proving the amount of loss or damage in litigation involving the infringement of trade secrets, is there any system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any)?	☒Yes ☐No If Yes, please go to (ii).
	(ii) [If Yes in (i)] Please provide an overview of the system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any).	Overview of the system / Relevant laws and regulations: ・ **Court's order asking the trade secret infringer to submit documents that are needed to calculate the damage caused by the trade secret infringement (Article 24 of the Provisions of the SPC on Several Issues Concerning the Application of Law in the Trial of Civil Cases Involving Trade Secret Infringement)** Where the trade secret owner has provided prima facie evidence of the gains derived by the infringer from the infringement, but the accounts books and trade secret related materials are under the control of the infringer, the court may, upon the trade secret owner's application, order the infringer to provide such accounts books and materials. Where the infringer refuses to provide or fails to truthfully provide evidence without justified reasons, the court may determine the benefits obtained by the infringer as a result of the infringement based on the claims of the right holder and the evidence provided. ・ **Punitive damages (Article 17 of AUCL and the Interpretation on the Application of Punitive Damages to the Trial of Civil Cases involving Infringement of Intellectual Property Rights)** In case of serious circumstances, the punitive damages of up to quintuple damages for wilful patent infringement will be granted. ・ **Statutory damages under RMB 5 million (Article 17 of the AUCL;)** Where it is difficult to determine the actual losses suffered by the trade secret holder as a result of the infringement or the benefits obtained by the infringer from the infringement, the court shall award the trade secret holder less than RMB 5 million in damages, depending on the circumstances of the infringement.

2-3	Please provide the information of the leading decisions of trade secret cases that the court awarded high amount of damages.	Case Information: Date of Decision: Awarded Amount: **- Trade secret regarding technology:** In the "Vanillin" trade secret case in which the SPC awarded RMB 159 million which is remarkable in quantum. (Supreme People's Court, (2020) Zui Gao Fa Zhi Min Zhong No. 1667, 19 February 2021) In the "Carbomer" trade secret case, the SPC apportioned a 50% contribution to the trade secrets misappropriated by the defendants and reduced the amount of the estimated illegal profits to RMB 6 million. Notably, the SPC took a more nuanced look at the damage calculation, stressing that the contribution of the misappropriated trade secrets to the defendant's sales revenues should be considered (Supreme People's Court, (2019) Zui Gao Fa Zhi Min Zhong No. 562, 24 November 2020). **- Trade secret regarding business information:** RMB 3,500,000 (approximately USD 482439.21) for infringement of trade secret regarding business information (Beijing Intellectual Property Court, (2021) Jing 73 Min Zhong No. 3593, 25 July 2022).
3	**Protection on Licensees involving Trade Secrets**	
3-1	(i) Is there any system to protect a licensee in Intellectual Property Law in general (especially patent rights or copyrights) where rights owners have assigned their intellectual property rights to a third party or become bankrupt?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please provide an overview of the system to protect licensees.	Overview of the system / Relevant laws and regulations: **[In the event that rights owners have assigned intellectual property rights to a third party]** ・ **Such assignment shall not affect the validity of the license agreement already in force before such assignment** ➢ Based on the principle of privity of contract, the provisions in the assignment agreement shall not influence the validity of the prior license agreement. ➢ The patent right, patent application right or technical secret assignment agreements concluded between the assignor and the assignee shall not affect the validity of the prior pertinent patent or technical secret licensing agreements. (Article 24(2) of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Technology Contract Disputes) ・ **Patent Implementation license contract recordal** Recordal of a patent licensing agreement is not a compulsory element for the patent licensing agreement to come into effect. That said, the patent licensing agreement with recordal can resist a bona fide third party. **[In the event that rights owners have become bankrupt]** The bankruptcy administrator has the option to terminate or continue the performance of a contract that is concluded prior to the acceptance of the bankruptcy petition and has not been completed (Article 18 of the Bankruptcy Law). There is no special provision on intellectual property license agreement in relevant laws or regulations. Just like other "unperformed contracts", the bankruptcy administrator may exercise its unilateral option. However, we found one case (Case No. (2019) Jing 03 Min Zhong No. 16483) that the Beijing Third Intermediate People's Court determined that the right for the bankruptcy administrator to terminate the IP related license contract should be restricted.

		・ The relevant laws and regulations 1. Validity of a patent implementation license contract A contract formed in accordance with the law becomes effective upon its formation (Article 502 of the PRC Civil Code), unless it 1) forms on the basis of a false declaration of intent (Article 146 of the PRC Civil Code); 2) violates the mandatory provisions of laws or administrative regulations (Article 153 of the PRC Civil Code), such as that a technology contract that illegally monopolizes technologies or infringes upon the technological work product of others is invalid; or 3) forms through malicious collusion (Article 154 of the PRC Civil Code). A patent implementation license contract becomes effective on the date of signing (or as otherwise agreed) in the absence of any of the statutory invalidity circumstances mentioned above. Whether recordal or not, in another word, will not affect the validity of the contract. 2. Recordal of the patent implementation license contract before the CNIPA Recordal of the patent implementation license contract is not a mandatory requirement, but an administrative management method. According to Paragraph 2, Article 14 of the Implementing Rules of the Patent Law of the People's Republic of China (Amended in 2010) and Article 5 of the Measures for the Recordal of Patent Implementation License Contracts (effective, promulgated in 2011-06-27, CNIPA Order No. 62) ("Measures"), "A patent licensing contract concluded by the patentee and the other party shall be submitted to the patent administrative authority under the State Council for the recordal within 3 months of the date on which the contract comes into effect." From this provision, we can also read that the recordal will not affect the validity of the contract, as the premise of the recordal is that the contract shall take effect. The recordal will be served as a declaration to the public and be used against bona fide third parties. For example, for sole and exclusive patent implementation license, if no recordal was filed and the patentee licenses the patent to a bona fide third party, the licensee of the above sole or exclusive license contract may not prevent the above bona fide third party from continuing to implementing the patent. 3. Supplementary recordal Under the circumstance that the licensee failed to file the recordal within 3 months from the effective date of the contract, it may file for a supplementary recordal by submitting a statement on the validity of the original patent implementation license contract (executed by both parties), and a statement on the situation of failure to file for recordal within the prescribed 3-month period and an undertaking to bear the legal consequences of failure to file for recordal within 3 months.
3-2	(i) Is there any system to protect licensees involving trade secrets if owners of the trade secrets assigned their business or became bankrupt?	☒Yes ☐No If Yes, please go to (ii).
	(ii) [If Yes in (i)] Please provide an overview of the system to protect licensees.	Overview of the system / Relevant laws and regulations: Article 24(2) of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Technology Contract Disputes in above 3-1 (ii) would also prevail for the technical secret licensee. As for the scenario for the right owner went bankruptcy, the case in above 3-1 (ii) could be used for reference.
4	**International jurisdiction and governing law in cases of transnational infringement of trade secrets**	

4-1	(i) Please explain the laws and regulations providing the basic rules on how to determine international jurisdiction and an overview thereof.	Relevant laws and regulations: There is no substantial difference between the jurisdiction provisions of China on foreign-related cases and domestic civil and commercial cases, so the provisions on jurisdiction in the Civil Procedure Law and its judicial interpretations shall also apply to foreign-related cases. ・ Civil Procedure Law ・ SPC's Interpretations on Civil Procedure Law How to determine: A lawsuit shall be deemed a foreign-related civil case by the court if (Article 520 of the SPC's Interpretations on Civil Procedure Law): ・ One or both parties of the case is/are foreigners, stateless persons, foreign enterprises, or organizations. ・ The domicile of one or both parties of the case is outside of China. ・ The subject matter[115] is outside of China. ・ The legal facts that establish, change or terminate the civil relations occur outside of China. ・ Other circumstances that could be recognized as the foreign-related civil case. The lawsuit filed caused by tort shall come under the jurisdiction of the court of the place where the tort was committed or where the defendant is domiciled. (Article 29 of the Civil Procedure Law) The "place where the tort was committed" as prescribed in Article 29 of the Civil Procedure Law includes the place of the tort implementation and the place where the tortious consequence takes place. (Article 24 of the SPC's interpretations on Civil Procedure Law)
	(ii) Is there any special provisions on torts regarding how to determine international jurisdiction. If any, please provide the overview.	☐Yes ☒No (If Yes) Overview:
	(iii) Is there any difference in the method for determining international jurisdiction between claims for damages and injunctions?	☐Yes ☒No (If Yes) Overview:
	(iv) Please provide an overview of special provisions on the infringement of trade secrets regarding the method for determining international jurisdiction.	☐Yes ☒No (If Yes) Overview:
4-2	(i) Please explain the laws and regulations providing the basic rules on how to determine applicable law and an overview thereof.	Relevant laws and regulations: Law of the Application of Laws to Foreign-related Civil Relations How to determine: This Law shall govern the laws applicable to foreign-related civil actions. Other relevant regulations shall be applied if there are special regulations applicable to foreign-related civil actions. If there are no regulations in this law and others applicable to foreign-related civil relations, laws that are most related to foreign-related civil actions shall be applied (Article 2 of the Law). The law to be governed is stipulated for each type of legal relationship, including civil subjects, marriage and family, succession, property rights, creditors' rights, and intellectual property rights. Per Article 3 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Law of the People's Republic of China on Foreign-Related Civil Relations (I) (Amended in

[115] The "subject matter" is the "object of the litigation" to which the right and obligation in a legal relation direct. For example, in an action for repayment of a loan, the money to be repaid by the loanee is the "subject matter".

		2020), there are following two circumstances: 1. For the special regulations in the laws on commercial field such as the PRC Negotiable Instruments Law, the PRC Maritime Law and the PRC Civil Aviation Law and in the laws on intellectual property field, the special regulations shall be applied regardless of the Law of the People's Republic of China on Application of Law in Foreign-related Civil Relations ("PRC LALFCR"); 2. Where the PRC LALFCR and other laws have different provisions on applicable laws for the same foreign-related civil relation, the PRC LALFCR shall prevail. For example, the Article 51 of the PRC LALFCR provides that where the Articles 146 and 147 of the General Rules of the Civil Law of the People's Republic of China and the Article 36 of the Law of Succession of the People's Republic of China conflict with any provisions of the PRC LALFCR, such provisions of the PRC LALFCR shall prevail.
	(ii) Please provide an overview of any special provisions on the rules on how to determine applicable law with respect to tort liability.	☒Yes ☐No (If Yes) Overview: The tort liabilities claims shall be governed by laws of the place of the tort. However, if the parties concerned have common place of habitual residence, the laws of the common place of habitual residence shall apply. After the tort actions committed, the parties will negotiate and agree on the applicable laws, following an agreement on the applicable law (Article 44 of the Law of the Application of Laws to Foreign-related Civil Relations)
	(iii) Is there any difference in the method for determining an applicable law between claims for damages and injunctions? If yes, please provide an overview.	☐Yes ☒No (If Yes) Overview:
	(iv) Please provide an overview of any special provisions on the rules on how to determine applicable law with respect to the infringement of trade secrets.	☐Yes ☒No (If Yes) Overview: The infringement of intellectual property rights claims shall be governed by the laws of the place where the protection is requested. The parties concerned may also negotiate and choose the applicable law after the infringement conduct has committed (Article 50 of the Law of the Application of Laws to Foreign-related Civil Relations)
4-3	Please explain the relationship between the rules of governing law and international jurisdiction. Examples: The law of the forum applies if the forum has jurisdiction, the forum has jurisdiction if the law of the forum should apply, the applicable law (the law of the forum or a foreign law) is determined after determining whether the forum has jurisdiction.	These are separate two rules. The SPC explained in (2009) Min San Zhong Zi No. 4 judgment that the agreement to choose the applicable law and the agreement to choose the competent court are two separate legal acts and their effects should be judged separately according to the relevant legal provisions. At first, the Chinese courts will determine whether they have international jurisdiction in accordance with the pertinent provisions in PRC Civil Procedure Law. Once the international jurisdiction has been established, the Chinese courts shall then determine the governing law in accordance with the relevant provisions of the Law of the People's Republic of China on Application of Law in Foreign-related Civil Relations. The governing law may be domestic law or foreign law.
4-4	Please provide overviews of some leading cases and summaries of the judgments in relation to the rules of methods for determining international jurisdiction and the governing	**Wuxi Shifei v. Kosmek, Shanghai Pudong People's Court, (2015) Pu Min San (Zhi) Chu Zi No. 1880, dated April 28, 2017** **Overview of the case:** The plaintiff Wuxi Shifei was the sales agent of the defendant Kosmek (Japanese entity) in China. The Defendant unilateral terminate the sales agent contract with the Plaintiff in 2010, and the Plaintiff sued the

	law.	defendant for infringement of trade secret regarding business information. **Contents of the judgment:** According to the Law of the Application of Laws to Foreign-related Civil Relations, the laws of the place where the protection is requested will be applied in the infringement of intellectual property rights claims. The Plaintiff sought relief in Chinese courts for the infringement of trade secret regarding business information, the laws of China shall be applied. **MultiParts Supply USA v. Ruian Shengdian, Zhejiang Ruian People's Court, (2012) Wen Rui Zhi Chu Zi No. 48, dated October 23, 2013** **Overview of the case:** The Plaintiff MultiParts sued the Defendants for trade secret infringement regarding technical information. **Contents of the judgment:** The Plaintiff MultiParts is a US entity, and its litigation in China shall be viewed as foreign-related civil litigations as stipulated in the Civil Procedure Law. The court of the place of infringement or the place of residence of the defendant shall have jurisdiction over the infringement lawsuit (Article 28 of the Civil Procedure Law). The infringing act was committed in Ruian, therefore, the court has jurisdiction over the case. As the place where the protection was requested, laws of China shall be applied to this infringement of intellectual property rights lawsuit (Article 50 of the Law of the Application of Laws to Foreign-related Civil Relations)
4-5	Please explain some leading cases which found extraterritorial application in international and transnational litigation involving the infringement of trade secrets.	Case Information: Overview of the case: Summary of the judgment: Applied laws and regulations that permit extraterritorial application: N/A
4-6	(i) For determining the governing law, is there any legislation that (a) provide for an "overriding mandatory rule" applicable to international/cross boarder civil disputes overriding the general rules (international private law) of governing laws; (b) does not explicitly provides such overriding mandatory rules but are interpretated as such by the court; or (iii) provides any extraterritorial effects * Overriding mandatory rule: The legislation in the jurisdiction directly without application of the general rules of the governing laws in the jurisdiction. * Extraterritorial effects: The law applies to the act conducted out of the jurisdiction.	(a) ☒Yes ☐No (b) ☒Yes ☐No (c) ☒Yes ☐No [If Yes] Overview: Under the following circumstances, Chinese laws shall be mandatorily applied: ・ The overriding mandatory rules shall directly be applied for such foreign-related relations, including (i) where the dispute involves the protection of the rights and interests of the worker(s); (ii) the food or public health security, environmental security, foreign exchange control and other financial security, anti-monopoly and anti-dumping (Article 4 of the Law of the Application of Laws to Foreign-related Civil Relations; Article 8 of the Interpretation of the SPC on Several Issues Relating to Application of the Law of the Application of Laws to Foreign-related Civil Relations (I)). ・ For contracts that are to be performed within the territory of China, namely contracts for Sino-foreign equity joint ventures, Sino-foreign contractual joint ventures and Sino-foreign cooperative exploration and development of natural resources, the laws of China shall be directly applied (Article 467 of the Civil Code). ・ If the application of foreign laws will infringe on the public interests, the laws of China shall be directly applied (Article 5 of the Law of the Application of Laws to Foreign-related Civil Relations) ・ Where a party concerned intentionally create connection points of foreign-related relations in order to circumvent the mandatory provisions of the laws and administrative regulations of China, the court shall adjudicate and determine that the dispute involves no application of foreign laws and laws of China shall be applied (Article

		9 of the Interpretation of the SPC on Several Issues Relating to Application of the Law of the Application of Laws to Foreign-related Civil Relations (I)).
	(ii) Please provide overviews of some court cases where the court judged that a specific provision was an "overriding mandatory rule" in resolving international and transnational civil disputes.	Precedent: ☐Yes ☒No [If Yes] Case Information: Tianjin Onst Fashion Company Liquidation Group (Plaintiff & Defendant in counterclaim) v. markgain Investments Limited dispute (Defendant & Plaintiff in counterclaim) over Sino-foreign joint venture contract dispute, dated March 18, 2011. Case No. (2011) Min Shen Zi No. 290 Retrial Court: SPC 2nd instance Court: Tianjin High People's Court 1st instance Court: Tianjin First Intermediate People's Court Overview of the case: This case is a Sino-foreign joint venture contract dispute. Tianjin Onst Fashion Company ("Onst") is a PRC company and markgain Investments Limited ("markgain") is a HK company. Onst and markgain created a joint venture. As one of the factories of Onst exists mortgage that cannot be transferred, the JV company decided to quit. The parties would like to address the dispute of contribution of capital. Summaries of the judgment: The overriding mandatory rule is reflected that the courts determined that the application of the law shall be determined in accordance with Article 5 of the Law on Foreign-Related Economic Contracts (now is updated to Article 467 of the Civil Code). I.e., for contracts to be performed within the territory of China, namely contracts for Sino-foreign equity joint ventures, Sino-foreign contractual joint ventures and Sino-foreign cooperative exploration and development of natural resources, the laws of China shall be directly applied. Therefore, the laws of China shall prevail in this case.
	(iii) Is there any possibility that overriding mandatory rules would apply to trade infringement cases?	☐Yes ☒No ☐Not Clear [If Yes] Reason (precedents or arguments):

(5) 韓国

NO.	Question	Answer
1	**Procedure for collection of evidence in cases involving the infringement of trade secrets**	
1-1	(i) Please explain the following regarding the procedures for collection of evidence in cases involving the infringement of trade secrets. Note: If the system is not available in civil litigation, but only in intellectual property litigation, please state as such.	
	(ii) Please provide an overview of the procedures for collection of evidence held by the adverse party in civil proceedings. Examples: information disclosure system, court evidence preservation procedures, commissioning of examinations, procedures for information disclosure through the court such as an order to submit documents (discovery system in the U.S., disclosure system in the UK), procedures to confirm the facts through court-appointed experts (investigation system in Germany)	Overview of the system / laws and regulations on which they are based: [Available for civil litigation in general] ▪ **Obligation to submit documents (Article 344 of the Civil Procedure Act)** The holder of a document may not refuse to submit it in certain cases, including (i) When the party holds the document quoted in a lawsuit; (ii) When the applicant holds a judicial right to ask the holder of the document to transfer or show it to him; and (iii) When the document has been prepared for the benefit of the applicant, or prepared as to a legal relationship between the applicant and the holder of document. ▪ **Entrusting Forwarding of Document (Article 352 of the Civil Procedure Act)** A request for submission of a documentary evidence may be made by filing a request for entrusting (i.e. ordering) the holder of document with forwarding such document to the court. ▪ **Right to Request Elucidation and Right to Ask Questions (Article 136 of the Civil Procedure Act)** Each party may, if deemed necessary, request the presiding judge to ask questions necessary for elucidation of the other party. ▪ **Request for Perusal of Litigation Record (Article 162 of the Civil Procedure Act)** A party or a third party vindicating the interests may file a request for a perusal and copying of litigation records. [Available only for litigation involving the infringement of a patent or involving acts of unfair competition] ▪ **Obligation to submit documents needed to prove infringement or damages (Article 14-3 of the UCPA[116], Article 132 of the Patent Act)** The court may, according to a party's application, order the other party to submit documents pertaining to proof of infringement and/or damages resulting from infringement. ▪ **Obligation to clarify specific circumstances (Article 126-2 of the Patent Act)** A party to a lawsuit filed against infringement of a patent or an exclusive license, who denies a specific type of behavior of an infringement, as claimed by the patentee or exclusive licensee, shall present his or her own specific type of behavior. Where the party argues that he or she has good reasons for being unable to present his or her own specific type of behavior, the court may order the party to submit materials that can substantiate such argument

[116] Refers to the "Unfair Competition Prevention and Trade Secret Protection Act."

		▪ **Duty of Explaining Matters for Appraisal (Article 128-2 of the Patent Act)** Where the court orders an appraisal in legal proceedings on infringement of a patent or exclusive license for the calculation of the amount of losses caused by the infringement, a party shall explain the matters necessary for the appraisal to an appraiser.
	(iii) Please provide an overview of the procedures for collection of evidence hold by the accused or any third party in criminal proceedings. Example: criminal investigation by a criminal investigation agency, seizure of evidence.	Overview of the system / laws and regulations on which they are based: [Non-compulsory investigations] ▪ **Interrogation of Criminal Suspect (Article 241 of the Criminal Procedure Act)** Criminal investigation agencies may interrogate criminal suspects. ▪ **Seizure of Voluntarily Produced Articles (Article 108 of the Criminal Procedure Act)** Articles which have been dropped or left, or voluntarily produced by their owner, possessor, or custodian may be retained without a warrant of seizure. ▪ **Inquiry to public offices and other public organizations (Article 199(2) of the Criminal Procedure Act** Criminal investigation agencies may request that public offices and other public organizations report on items required for investigation. [Compulsory investigations] ▪ **Seizure, Search, and Inspection (Article 215 of the Criminal Procedure Act)** Criminal investigation agencies may seize, search, or inspect articles or persons according to the warrant issued by a judge of the competent district court. ▪ **Interception of mail or electronic communications (Article 5 of the Protection of Communications Secrets Act)** Criminal investigation agencies may intercept mail or electronic communications according to the warrant issued by a judge of the competent district court.
	(iv) Please provide an overview of the procedures for collection of evidence in administrative proceedings. Example: on-site inspections by administrative organs.	Overview of the system / laws and regulations on which they are based: N/A
	(v) Are the procedures for collection of evidence applicable for evidence located outside the country under investigation?	The procedures for collection of evidence in civil proceedings: ☐Yes ☒No The procedures for collection of evidence in criminal proceedings: ☐Yes ☒No The procedures for collection of evidence in administrative proceedings: ☐Yes ☒No

	(vi) Please explain the relationship between civil proceedings and criminal proceedings regarding the procedures for collection of evidence. Examples: Whether or not the parties may request the disclosure and submission of evidence collected in criminal proceedings in civil proceedings.	Overview: Parties may submit evidence collected in criminal proceedings in civil proceedings, and vice versa. However, because evidence used in criminal proceedings must conform to strict conditions, some evidence used in civil proceedings may not be usable in criminal proceedings. Relevant laws and provisions: Inspection and copying of records of finalized criminal trials: Article 59-2 of the Criminal Procedure Act Commissioning the sending of documents, including records of criminal trials: Article 352 of the Civil Procedure Act In practice, if a prosecution (indictment, 起訴) is made and evidence is submitted to the criminal court, the criminal court may send such evidence to the civil court of a related case through the above commissioning process. However, the Prosecutor's Office typically will not send evidence to the civil court before prosecution (indictment) occurs.
1-2	(i) Is there any system to reduce the burden of proof of the plaintiff (i.e. rights owners or infringed party) with respect to proving infringement of intellectual property rights in intellectual property litigation (especially in litigation involving the infringement of a patent)?	☒Yes ☐No If Yes, please go to (ii).
	(ii) [If Yes in (i)] Please provide an overview of the system.	Overview of the system: If a patent concerns a product, manufacturing, assigning, leasing, or importing a product used exclusively for manufacturing such product is deemed infringement. If a patent concerns a process, manufacturing, assigning, leasing, or importing a product used exclusively for practicing the process is deemed infringement. Relevant laws and regulations: Article 127 of the Patent Act. For reference, a revision to the Patent Act is currently under discussion. The revision involves inspection by an inspector appointed by a court (similar to Germany), a deposition system (similar to the US, but not including request for production of documents of the US discovery system).
1-3	(i) Is there any system to reduce the burden of proof of the plaintiff (i.e. trade secret owners or infringed party) with respect to proving infringement of trade secrets in litigation involving the infringement of trade secrets?	☐Yes ☒No If Yes, please go to (ii).
	(ii) [If Yes in (i)] Please provide an overview of the system.	Overview of the system Relevant laws and regulations:
2	**Calculation and Estimation System of the Amount of Damages in cases of the infringement of trade secrets**	
2-1	(i) In Intellectual Property Law in general (especially in litigation involving the infringement of a patent), who bears the burden of proving damage, the plaintiff or the defendant? Also, how is the	Burden of proving the amount of damages: the **plaintiff** Note: If Plaintiffs, please answer (ii) and 2-2. Methods to prove the amount of damage: Damages are calculated through the general method of damage calculation in civil procedure (i.e. the difference between the states where there was infringement versus no infringement), or through one

	amount of damage proven?	of the methods described in 2-1(iii).
	(ii) [If Plaintiffs in (i)] If plaintiffs bear the burden of proving the amount of damage, is there any system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any)?	☒Yes ☐No If Yes, please go to (iii)
	(iii) [If Yes in (ii)] Please provide an overview of the system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any).	Overview of the system /Relevant laws and regulations: ▪ **Presumption of the amount of damages (plaintiffs may select any one of the following)** (i) If the infringer sold infringing products, the profit per unit product multiplied by the number of products that the patent proprietor was unable to sell due to the infringement (Article 128(2) of the Patent Act) (ii) Profits gained by the infringer due to the infringement (Article 128(4) of the Patent Act) (iii) Reasonable license fees (Article 128(5) of the Patent Act) ▪ **Reasonable amount of damages as deemed by the court (Article 128(7) of the Patent Act)** If it is deemed by the court that there has been infringement, but is exceedingly difficult to calculate actual damages, the court may award a reasonable amount of damages.
2-2	(i) If plaintiffs bear the burden of proving the amount of loss or damage in litigation involving the infringement of trade secrets, is there any system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any)?	☒Yes ☐No If Yes, please go to (ii).
	(ii) [If Yes in (i)] Please provide an overview of the system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any).	Overview of the system /Relevant laws and regulations: ▪ **Presumption of the amount of damages (plaintiffs may select any one of the following)** (i) If the infringer sold infringing products, the profit per unit product multiplied by the number of products that the infringed party was unable to sell due to the infringement (Article 14-2(1) of the UCPA) (ii) Profits gained by the infringer due to the infringement (Article 14-2(2) of the UCPA) (iii) Reasonable license fees (Article 14-2(3) of the UCPA) ▪ **Reasonable amount of damages as deemed by the court (Article 14-2(5) of the UCPA)** ▪ If it is deemed by the court that there has been infringement, but is exceedingly difficult to calculate actual damages, the court may award a reasonable amount of damages.
2-3	Please provide the information of the leading decisions of trade secret cases that the court awarded high amount of damages.	Case Information: Supreme Court Decision 2017Da34981, trade secrets regarding technology Date of Decision: Sep. 10, 2019 Awarded Amount: KRW 6.7 billion (approx. JPY 670 million) The above case involved technology used in vehicle navigation systems. Plaintiff: Autostrasse Co., Ltd. (Korean company) Defendant: G&SD Co., Ltd. (Korean company)
3	**Protection on Licensees**	

	involving Trade Secrets	
3-1	(i) Is there any system to protect a licensee in Intellectual Property Law in general (especially patent rights or copyrights) where rights owners have assigned their intellectual property rights to a third party or become bankrupt?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please provide an overview of the system to protect licensees.	**[In the event that rights owners have assigned intellectual property rights to a third party]** If licenses are registered in the patent register, licensees may assert their rights against the new rights owner (Articles 101, 118 of the Patent Act)
3-2	(i) Is there any system to protect licensees involving trade secrets if owners of the trade secrets assigned their business or became bankrupt?	☐Yes ☒No If Yes, please go to (ii).
	(ii) [If Yes in (i)] Please provide an overview of the system to protect licensees.	Overview of the system: Relevant laws and regulations:
4	**International jurisdiction and governing law in cases of transnational infringement of trade secrets**	
4-1	(i) Please explain the laws and regulations providing the basic rules on how to determine international jurisdiction and an overview thereof.	Relevant laws and regulations: Act on Private International Law [117] (hereinafter referred to as "**APIL**") How to determine : (i) As the most general rule, Korean courts have international jurisdiction when the parties or the dispute at hand is substantively related to the Republic of Korea (Article 2 of the APIL). (ii) Korean courts have international jurisdiction to lawsuit against natural persons with habitual residence in the Republic of Korea (Article 3 of the APIL). (iii) Korean courts have international jurisdiction if the lawsuit is against natural and legal persons with offices in the Republic of Korea, and the dispute at hand is related to the work of said offices (Article 4 of the APIL). (iv) Korean courts have international jurisdiction if the object of the lawsuit is located in South Korea (Article 5 of the APIL).
	(ii) Is there any special provisions on torts regarding how to determine international jurisdiction. If any, please provide the overview.	☒Yes ☐No (If Yes) Overview: Korean courts have international jurisdiction on lawsuits involving torts if the act was committed in the Republic of Korea or the result of the act occurs in the Republic of Korea (Article 44 of the APIL).
	(iii) Is there any difference in the method for determining international jurisdiction between claims for damages and injunctions?	☐Yes ☒No (If Yes) Overview:
	(iv) Please provide an overview of special provisions on the infringement of trade secrets regarding the method for determining international jurisdiction.	☐Yes ☒No (If Yes) Overview:

[117] The APIL has been wholly revised on Jan. 4, 2022, and an official English translation is not yet available. A translation of the previous version of the Act is here.

4-2	(i) Please explain the laws and regulations providing the basic rules on how to determine applicable law and an overview thereof.	Relevant laws and regulations: The APIL How to determine: The rule for determining applicable law differs for each type of legal relationship (see below).
	(ii) Please provide an overview of any special provisions on the rules on how to determine applicable law with respect to tort liability.	☒Yes ☐No (If Yes) Overview: Torts governed by the law of where the act was committed or the place that the result of the act occurred (Article 52(1) of the APIL).
	(iii) Is there any difference in the method for determining an applicable law between claims for damages and injunctions? If yes, please provide an overview.	☐Yes ☒No (If Yes) Overview:
	(iv) Please provide an overview of any special provisions on the rules on how to determine applicable law with respect to the infringement of trade secrets.	☒Yes ☐No (If Yes) Overview: Protection of intellectual property is governed by the law of the place where the infringement occurred (Article 40 of the APIL).
4-3	Please explain the relationship between the rules of governing law and international jurisdiction. Examples: The law of the forum applies if the forum has jurisdiction, the forum has jurisdiction if the law of the forum should apply, the applicable law (the law of the forum or a foreign law) is determined after determining whether the forum has jurisdiction.	First, it is determined whether Korean courts have international jurisdiction to the dispute, according to relevant clauses of the APIL (some of which are described in 4-1). If it is found that Korean courts do not have jurisdiction, the case is dismissed without further review (却下). If it is found that Korean courts do have jurisdiction, the governing law is determined according to relevant clauses of the APIL. The governing law will not necessarily be Korean law.
4-4	Please provide overviews of some leading cases and summaries of the judgments in relation to the rules of methods for determining international jurisdiction and the governing law.	**[Leading case regarding international jurisdiction]** Supreme Court Decision 2002Da59788 Delivered on January 27, 2005 **Overview of case:** The plaintiff, a Korean individual, registered the internet domain "hpweb.com" with a US domain name registrar. The defendant, The Hewlett-Packard Company, disputed the domain name with the US National Arbitration Forum, which decided that the plaintiff must hand over the "hpweb.com" domain name to the defendant. The plaintiff objected to the above decision and filed a lawsuit with Korean courts. **Contents of the judgement:** [1] The determination of international jurisdiction should follow the basic idea of aiming to achieve impartiality between the parties, and appropriateness, speediness and economy of adjudication, and should, more concretely, take into account not only private interests such as impartiality between the parties, convenience and predictability, but also interests of the court as well as of the state such as appropriateness, speediness and efficiency of adjudication, and effectiveness of judgment. The issue of which interest among such diverse interests deserves protection should be determined reasonably, applying in each individual case the objective criteria of substantial relationship between the court and the parties, and substantial relationship between the court and the case in dispute.

		[2] The Supreme Court recognized that the courts of the Republic of Korea have international jurisdiction over the litigation on the ground that the content of the dispute is substantially related to the Republic of Korea, where a person domiciled in the Republic of Korea and operating a business therein challenges the decision rendered by the US National Arbitration Forum ordering transfer of his domain name which he registered at a US registrar for domain names and thereby he possessed. **[Leading case regarding governing law of unjust enrichment]** Supreme Court Decision 2009Da15596, Decided May 26, 2011 **Overview of case:** See above Supreme Court Decision 2002Da59788 **Contents of the judgement:** Where the plaintiff, a habitual resident of the Republic of Korea who registered and used the Internet domain name "hpweb.com", filed for restoration of this domain name on the grounds of unjust enrichment on the part of The Hewlett-Packard Company, a corporation with headquarters in California, U.S.A., after The Hewlett-Packard Company filed for dispute resolution at the National Arbitration Forum within the U.S., in accordance with the Uniform Domain Name Dispute Resolution Policy (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN), on the grounds that the rights of its trademark "hp" that was registered within the U.S. had been infringed, and subsequently came into possession of rights to this domain name, the Court ruled that the laws of the state of California, U.S.A., were the governing law when determining the establishment and validity of a claim of unjust enrichment, as California must be seen as the location where this enrichment occurred when The Hewlett-Packard Company came into possession of rights to the above domain name.
4-5	Please explain some leading cases which found extraterritorial application in international and transnational litigation involving the infringement of trade secrets.	Case Information: N/A Overview of the case: Summary of the judgment: Applied laws and regulations that permit extraterritorial application:
4-6	(i) For determining the governing law, is there any legislation that (a) provide for an "overriding mandatory rule" applicable to international/cross boarder civil disputes overriding the general rules (international private law) of governing laws; (b) does not explicitly provides such overriding mandatory rules but are interpreted as such by the court; or (iii) provides any extraterritorial effects * Overriding mandatory rule: The legislation in the jurisdiction directly without application of the	(a) ☒Yes ☐No (b) ☐Yes ☒No (c) ☒Yes ☐No [If Yes] Overview: "Mandatory provisions"[118] of the laws of the Republic of Korea (i.e. provisions which cannot be waived by private autonomy) that must apply regardless of the governing law may apply even if the governing law is not that of the Republic of Korea (Article 20 of the APIL). Typical Examples of "Mandatory provisions" are as follows: (1)Regulations reflecting the basic ethical view of society (Article 103 of the Civil Act) (2) Regulations regarding the Maintenance of Order in Family Relations (Articles 767 ~ 1118 of the Civil Act)

[118] There are certain provisions stating that some of the examples above are Mandatory Provisions such as the below example. However, this is not the case for all Mandatory Provisions. Some Mandatory Provisions are declared mandatory by the court, and some are only discussed by Jurist professors.
*For example:
Civil Act Article 289 (Mandatory Provisions) Any contract which is against the provisions of Articles 280 through 287 and is disadvantageous to the superficiary has no effect.

	general rules of the governing laws in the jurisdiction. * Extraterritorial effects: The law applies to the act conducted out of the jurisdiction.	(3) Regulations regarding the Basic Structure of Law and Order (Articles 3 ~ 17 of the Civil Act) (4) Regulations on Matters That Have Important Influence on Third Parties and Society (Real Rights Section(Articles 185 ~ 372 of the Civil Act) etc
	(ii) Please provide overviews of some court cases where the court judged that a specific provision was an "overriding mandatory rule" in resolving international and transnational civil disputes.	Precedent: ☐Yes ☒No No court cases where the court judged that a specific provision was an "overriding mandatory rule" in resolving international and transnational civil disputes. [If Yes] Case Information: Overview of the case: Summaries of the judgment:
	(iii) Is there any possibility that overriding mandatory rules would apply to trade infringement cases?	☐Yes ☐No ☒Not Clear [If Yes] Reason (precedents or arguments):

4. その他の新たな知的財産制度を巡る課題に関する公開情報調査

(1) アメリカ

NO.	Questions	Answer
1	Legal ground for protection on non-registered design	
1-1	Please explain the legal basis for non-registered design protections, if any.	Legal basis: ☒Yes ☐No Overview / Legal Basis and Regulations: Certain types of designs are protected by copyright, and protection exists under the federal Copyright Act even without registration of the copyright. Copyright protection does not extend to "useful articles," which are articles "having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information." Two and three dimensional designs are protectable by copyright to the extent that the designs are ornamental and not functional, and the design constitutes an original work of authorship that is fixed in a tangible medium. Copyright protection does not extend to ideas, and copyright protection may be denied where an idea and expression of the idea become inseparable (called the "merger doctrine"). This tends to apply where there are only limited ways to express a particular idea, It is required to secure a copyright registration for U.S. Works before a copyright infringement lawsuit can be filed. It is also possible for a two or three dimensional design to be protected as trade dress under the federal Lanham Act, without registration of the trade dress, if the design is an indicator of source and so long as the design is not functional and is inherently distinctive (or acquired distinctiveness is established). For product designs, there is always a requirement to establish secondary meaning or acquired distinctiveness. It is possible for a design to be protectable both by copyright and by trade dress. *Warner Bros. Entertainment, Inc. v. X One X Productions*, 840 F.3d 971 (8th Cir. 2016) (copyright and trademark protection are distinct and co-exist). Design protection is not available under the patent laws without securing a patent.
1-2	(i) Does the protection of non-registered designs cover tangible goods AND/OR intangible goods?	(i) Tangible goods Protection of goods: ☒Yes ☐No ☐Not Clear Overview/Legal Basis and Regulations: As discussed above, design of tangible goods is possible under the Copyright Act and the Lanham Act, without registration. (ii) Intangible goods Protection of goods: ☒Yes ☐No ☐Not Clear So long as the designs are not functional and satisfy the other requirements discussed above, protection also applies to intangible goods[119].
	(ii) Please describe the legal basis of your answer to the question (i).	Copyright: Copyright Act, 17 U.S.C. §101 et seq. Trade Dress: Lanham Act, 15 U.S.C. §1051 et seq.; Restatement Third, Unfair Competition, §16; state statutory laws and state common law[120]
	(iii) If there is any leading case, please provide the summary of the case.	See cases discussed below.

[119] Intangible goods are protected by both copyright and Lanham laws

[120] It is possible to assert claims for trade dress infringement under state trademark statutes and the common law for a particular state. But the law is not nearly as well developed under state laws, and will vary by state. The Restatement does not, by itself, create a cause of action. It is common for plaintiffs to assert state law claims with their federal Lanham Act claims, but the Lanham Act claims typically are predominant in the litigation.

2-2	(i) Is the act of providing identical or substantially similar goods subject to the restriction between real world and digital world, i.e., is the design of tangible products protected if the design is copied for digital products, or vice versa?	Civil claim (demand for injunction, demand for compensation for damages, etc.): ☒Yes ☐No ☐Not Clear Criminal punishment, etc. : ☒Yes ☐No ☐Not Clear Border measures : ☒Yes ☐No ☐Not Clear Legal protection is available in cases where tangible goods are copied as intangible (or vice versa) (Hereafter referred to as "Cross-over Case".). A very good example of this is the recent case brought by Hermes. A digital artist made NFTs of the company's Birkin handbags, calling them MetaBirkins. The jury found that the artist infringed Hermes's trademark right and awarded damages. A copyright infringement claim would also be possible in a Cross-over Case, since copyright law does not require that the original and challenged works be in the same medium. The test for copyright infringement typically is whether the two works are substantially similar. For works that are only minimally creative, courts will sometimes apply a more stringent standard. The test for trade dress infringement under federal and state law is whether the second party's design is likely to cause confusion. The courts apply a number of factors to assess likelihood of infringement. The factors vary by Circuit, but generally include the strength of the plaintiff's trade dress, the similarity of the trade dress of the parties, whether the goods or services promoted by each party under its trade dress are competitive, related or complementary, whether the goods or services are promoted and sold through the same channels; intent to trade on goodwill; sophistication of the consumers and care in the decision process; and whether there is evidence of any actual confusion. If the trade dress qualifies as famous, the plaintiff could also assert a claim for dilution under both federal and state law. Under 17 U.S.C. §506, certain copyright infringement is prosecuted as a crime, including will copyright infringement done for commercial advantage or financial gain, or reproducing or distributing works with a retail value of more than $1000 in a 180 day period, or making a work available on a computer network that was intended for commercial distribution. It also is a crime to use fraudulent copyright notice or fraudulently remove them. Use of counterfeit trademarks is a crime under the Trademark Counterfeiting Act of 1984 (18 U.S.C. §2320). The Anticounterfeiting Consumer Protection Act of 1996 includes additional provisions to address counterfeiting of trademarks and copyrights.
	(ii) Please explain the legal ground for your answer in (i) that the protection is/is not applicable (laws, regulations, or court cases).	See above.
	(iii) Please provide an overview of any leading court cases.	See cases discussed below.
2-3	(i) Even if the infringer's product is not competing with the products of the owner of the non-registered design, is the act of providing identical or substantially similar goods subject to the restriction?	☒Yes ☐No If the design is protected by copyright, then there is no requirement that the products are competitive or related in any way. If the design is protected by trade dress, then the products typically must be competitive, related or complementary to constitute infringement. If the trade dress is famous, then this factor is not required for a claim of dilution. For the example provided, it is possible that both copyright and trade dress claims could be asserted, depending on the specific facts of the design.

	Example: A car design is misused for a toy car or in a virtual space.	For copyright infringement, there is no requirement at all for the parties to be competitors. For trade dress infringement, it is not required that the parties are competitors, but it is required that there be a likelihood of confusion. If the parties are not competitors, then it generally is required that the junior party's goods or services are of the type that a consumer would think that the senior party would offer or endorse, or that there is some sort of affiliation. If there is a claim for trade dress dilution under the Lanham Act (available only for a famous trade dress), there is no requirement that the parties are competitors and there is no requirement to prove likelihood of confusion, only likelihood of dilution.
	(ii) Please explain the legal ground for your answer in (i) that the protection is/is not applicable (laws, regulations, court cases).	See above.
	(iii) Please provide an overview of any leading court cases.	*Star Athletica, LLC v. Varsity Brands*, 137 S. Ct. 1002 (2017). The Supreme Court held that the two-dimensional designs affixed to cheerleading uniforms were entitled to copyright protection under the Copyright Act since the designs were separable from the useful article and otherwise qualified as protectable pictorial, graphic, or sculptural works. *Christian Louboutin S.A. v. Yves Saint Laurent America Holding, Inc.*, 696 F.3d 206 (2d Cir. 2012). The Second Circuit held that the red lacquer outsoles on women's shoes constituted protectable trade dress under federal trademark law. While the trade dress owner had a registration, the registration was not dispositive. In fact, the Second Circuit narrowed the scope of the federal registration since the claimed trade dress in the registration was deemed overly broad. *TrafFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23 (2001). The Supreme Court held that an expired utility patent covering the design of the claimed trade dress had "vital significance" in determining whether the design was eligible for trade dress protection. The court concluded that the expired patent was significant evidence against trade dress protection and reversed the decision of the Second Circuit. *Apple Inc. v. Samsung Electronics Co., Ltd.*, 786 F.3d 983 (Fed. Cir. 2015). The litigation between these two parties spanned several years and involved a large number of patent, design patent and trade dress claims. The jury concluded that Apple's claimed trade dress was protectable, but the Federal Circuit reversed that finding because it found the designs to be functional, and vacated the jury's damages award that had been based on trade dress dilution. Apple asserted both registered and unregistered trade dresses in that case.
2-4	Please explain the duration (commencement and expiration) of the protection of non-registered designs. As for the commencement of protection, please clarify if the protection is available prior to the first sale (or being made public).	For copyright protection – protection for works created after January 1, 1978, is (1) life of the author plus 70 years; or (2) for works made for hire, 95 years from publication or 120 from creation, which ever expires first. Protection starts when the work is fixed in a tangible medium of expression, which may be before the work is made public. For trade dress protection – the protection lasts for as long as the design is not abandoned and continues to be used and perceived as an indicator of source. If the trade dress is not registered, then it is not protected until it is used publicly. And if it is not inherently distinctive, then it is not protectable until it has achieved acquired distinctiveness (or secondary meaning).
3	New legislation or amendment of the laws relating to non-registered designs	
3-1	Please explain the current trends regarding the amendment of legislation with regard to the protection of non-	Congress has from time to time considered new laws to protect certain types of designs. For example, Congress periodically considers whether to extend protection to apparel. On the other hand, where design protection has been used to interfere with consumer's ability to repair and maintain their goods, Congress has considered laws exempting replacement parts from design patent protection.

	registered designs. Example: Protected subject matter (tangible or intangible products), scope of infringement (infringement of tangible products, intangible products or digital spaces), duration of protection.	One area of great interest now relates to non-fungible tokens ("NFTs"). The Copyright Office and the U.S. Patent and Trademark Office announced Nov. 22, 2022, that they are seeking comments on intellectual property concerns related to the growing use of NFTs. Comments may be submitted through Jan. 9, 2023, and there will be roundtable meetings via video conference on Jan. 10 on patents, on Jan. 12 on trademarks, and on Jan. 18 on copyrights. There has been litigation over NFTs, including one addressing NFTs that display Nike shoe designs, one by Hermes involving NFTs that use the term "MetaBirkins," and one by a rapper who sued over use of his likeness and name for a line of NFTs. To the extent that designs are created using artificial intelligence ("AI"), there are risks that the design will not be entitled to copyright protection since the work is not "the fruits of intellectual labor." There may be new laws or regulations addressing these issues.

(2) ドイツ

NO.	Questions	Answer
1	Legal ground for protection on non-registered design	
1-1	Please explain the legal basis for non-registered design protections, if any.	Legal basis: ☒Yes ☐No Overview / Legal Basis and Regulations: Non-registered designs can in principle be protected in Germany based on design law, copyright law and unfair competition law. **Design law:** According to Art. 4(1) of Regulation No. 6/2002 of 12 December 2001 (Community Design Regulation), any design that is new and has individual character can enjoy design protection. Designs which meet these requirements are then protected as so-called unregistered Community designs throughout the EU (Art. 11(1) Community Design Regulation). **Copyright law:** Non-registered Designs can also be protected by copyright law if they constitute a "work". This requires an own intellectual creation of the author (Sec. 2(2) German Copyright Act). In general, the threshold to meet this requirement is not very high. This means that also rather simple designs can enjoy copyright protection if they express some level of creativity. Also, so-called works of applied art can enjoy copyright protection. There has been a recent shift in the case-law so that such works of applied arts are in principle protected under the same requirements as other works (see below for more details). **Unfair competition law:** Non-registered designs can also be protected against imitations under unfair competition law if they have "competitive originality" and a certain notoriety (i.e. the target audience knows and recognises them). However, in practice, unfair competition law is rather a "fallback option", which becomes relevant if protection cannot be based on design law or copyright law.
1-2	(i) Does the protection of non-registered designs cover tangible goods AND/OR intangible goods?	(i) Tangible goods Protection of goods: ☒Yes ☐No ☐Not Clear Overview/Legal Basis and Regulations: Art. 4(1) Community Design Regulation, Sec. 2 German Copyright Act, Sec. 4 No. 3 German Unfair Competition Law Act. (ii) Intangible goods Protection of goods: ☒Yes ☐No ☐Not Clear
	(ii) Please describe the legal basis of your answer to the question (i).	**Design law:** Designs protect the appearance of the whole or a part of a product, while product is broadly defined. A product is any industrial or handicraft item (Art. 3(b) Community Design Regulation). This also includes designs of, for example, screen displays and icons, graphic user interfaces and other kinds of visible elements of a computer program (but not the computer program as such), as long as they are new and have individual character. **Copyright law:** The German Copyright Act protects all works that are personal intellectual creations (Sec. 2(2) German Copyright Act). This also involves multimedia or virtual intangible works that combine or include, e.g. text, sound, images, graphics, data etc. With regard to the protectability of digital (intangible) works, there are in principle no special requirements compared to non-digital (tangible) works. What matters is that the work is the result of creative choices, which are expressed in a form which is perceivable by other people. **Unfair competition law:** Protection of unfair competition law covers all "goods and services". This is defined broadly by German courts and includes work results of all kinds, and thus

		also intangible goods.
	(iii) If there is any leading case, please provide the summary of the case.	Court cases: ☐Yes ☒No (If Yes) Case Information: Overview of the case:
2-2	(i) Is the act of providing identical or substantially similar goods subject to the restriction between real world and digital world, i.e., is the design of tangible products protected if the design is copied for digital products, or vice versa?	Civil claim (demand for injunction, demand for compensation for damages, etc.): ☐Yes ☐No ☐Not Clear Criminal punishment, etc. : ☐Yes ☐No ☐Not Clear Border measures : ☐Yes ☐No ☐Not Clear The answer to (ii) specifies for each field of law which legal action referred to in (i) is available. If the law is written that legal action is available.
	(ii) Please explain the legal ground for your answer in (i) that the protection is/is not applicable (laws, regulations, or court cases).	**Design law:** Injunctions: Art. 89(1)(b) Community Design Regulation. Damages: Art. 89(1)(d) Community Design Regulation, Sec. 42(2) German Design Act. Criminal punishment: for non-registered designs not applicable; only for registered designs Sec. 51, 65 German Design Act. Border measures: EU Regulation No. 608/2013 (aimed at tangible goods) **Copyright law:** Injunctions: Sec. 97(1) of the German Copyright Act. Damages: Sec. 97(2) of the German Copyright Act. Criminal sanctions: Sec. 106 et seqq. the German Copyright Act. Border measures: EU Regulation No. 608/2013 and Sec. 111b, 111c German Copyright Act (aimed at tangible goods). **Unfair competition law:** Injunction: Sec. 8 German Unfair Competition Law Act. Damages: Sec. 9 German Unfair Competition Law Act. Criminal sanctions: not applicable. Border measures: not applicable.
	(iii) Please provide an overview of any leading court cases.	Court cases: ☐Yes ☒No (If Yes) Case Information: Overview of the case:
2-3	(i) Even if the infringer's product is not competing with the products of the owner of the non-registered design, is the act of providing identical or substantially similar goods subject to the restriction? Example: A car design is misused for a toy car or in a virtual space.	☒Yes ☐No

	(ii) Please explain the legal ground for your answer in (i) that the protection is/is not applicable (laws, regulations, court cases).	**Design law:** There is no requirement that the infringer is a competitor of the person owning the design right. The scope of the protection conferred by an unregistered Community design right includes any design which does not produce a different overall impression (Art. 10(1) Community Design Regulation). For example, an unregistered design of a car can be infringed by a toy car (see below). **Copyright law:** The infringer need not be a competitor of the person owning the copyright. Copyright protection is also not limited to the same type of goods. This means that creating a digital copy of a tangible work can also infringe the copyright. **Unfair competition law:** The opposing party must be a competitor of the person asserting claims.
	(iii) Please provide an overview of any leading court cases.	Court cases: ☒Yes ☐No (If Yes) Overview of the case: The Federal Court of Justice held that a toy car (in this case a BMW) can infringe BMW's design rights of its car if it creates the same overall impression. Design protection also applies to replicas as toys (Federal Court of Justice, decision of 12 October 1995, case no. I ZR 191/93).
2-4	Please explain the duration (commencement and expiration) of the protection of non-registered designs. As for the commencement of protection, please clarify if the protection is available prior to the first sale (or being made public).	Duration / legal basis and regulations: **Design law:** 3 years (Art. 11(1) Community Design Regulation). **Copyright law:** 70 years after death of author (post mortem auctoris), Sec. 64 German Copyright Act. **Unfair competition law:** No explicit duration as protection is not based on a "formal" IP right. However, there is a statutory limitation for all unfair competition law claims of 6 months after the person asserting claims has become or should have become aware of the circumstances giving rise to the claim (Sec. 11 German Unfair Competition Law Act). Commencement of protection / legal basis and regulations: **Design law:** Date on which the design has first been made available to the public within the Community (Art. 11(1) Community Design Regulation). **Copyright law:** Copyright protection arises at the time of the creation of the work. The date of the first sale is irrelevant, thus protection is available prior to first sale or publication. **Unfair competition law:** Protection arises if all requirements are fulfilled. However, statutory limitation commences after person asserting claims has become aware or should have become aware of the circumstances giving rise to the claim (Sec. 11 German Unfair Competition Law Act). Expiration of protection / legal basis and regulations: **Design law:** 3 years as from the date on which the design was first made available to the public within the Community. **Copyright law:** 70 years after death of author (see above). **Unfair competition law:** Only statutory limitation (see above).
3	New legislation or amendment of the laws relating to non-registered designs	

3-1	Please explain the current trends regarding the amendment of legislation with regard to the protection of non-registered designs. Example: Protected subject matter (tangible or intangible products), scope of infringement (infringement of tangible products, intangible products or digital spaces), duration of protection.	In Germany, courts have recently been much more generous in granting copyright protection for works of applied art. The reason is that the German Federal Court of Justice has changed its case law stating that works of applied art and all other types of works are in principle protected under the same requirements (Federal Court of Justice, decision of 13 November 2013, case no. I ZR 143/12). In addition, there is recent case law of the European Court of Justice (ECJ) stating that the concept of work in copyright law must be interpreted autonomously and uniformly throughout the EU. According to the ECJ, the concept of "work'" has two conditions. First, it entails an original subject matter which is the author's own intellectual creation and, second, it requires the expression of that creation. This (only) requires that the subject matter reflects the personality of its author, as an expression of his free and creative choices (ECJ, decision of 11 June 2020, Case C-833/18). German courts have started to implement this ECJ in a way that rather generously protects works of applied art under copyright law. Ultimately, this means that copyright protection is increasingly becoming relevant for cases involving works of applied art. In many cases, non-registered designs will therefore also enjoy copyright protection in addition to the "typical" design protection under Community Design Regulation.

(3) フランス

NO.	Questions	Answer
1	Legal ground for protection on non-registered design	
1-1	Please explain the legal basis for non-registered design protections, if any.	Legal basis: ☒Yes ☐No Overview / Legal Basis and Regulations: Under the doctrine of *l'unité de l'art*, designs are cumulatively protected in France under both copyright (Art. L.111-3 and following of the French IP code) and design law (Art. L.511.1 and following of the code). Under French law, unregistered designs are eligible for **copyright legal protection** if the owner can demonstrate that the design is "original", *i.e* that the design shows the author's personality in its creation. In addition, although French design law does not provide protection for unregistered design, the European protection granted for unregistered Community design is enforceable. Accordingly, a design can be protected as an **unregistered Community design** by virtue of **Article 11 of the EU Community Design Regulation (6/2002)("Regulation"),** provided that it complies with the condition of novelty, has individual character and has been disclosed to the public within the European Union (*i.e* has been published, exhibited, used in trade or otherwise disclosed in such a way that, in the normal course of business, these events could reasonably have become known in the sector concerned operating within the European Union).
1-2	(i) Does the protection of non-registered designs cover tangible goods AND/OR intangible goods?	(i) Tangible goods Protection of goods: ☒Yes ☐No ☐Not Clear Overview/Legal Basis and Regulations: Art. 3 a) and b) of the Regulation. (ii) Intangible goods Protection of goods: ☒Yes ☐No ☐Not Clear
	(ii) Please describe the legal basis of your answer to the question (i).	Both tangible and intangible goods may benefit from the Community design protection pursuant to in **Article 3 of the Regulation:** **(a)** "design" means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, **shape**, texture and/or materials of the product itself and/or its ornamentation. **(b)** "product" means any industrial or handicraft item, including *inter alia* parts intended to be assembled into a complex product, packaging, get-up, **graphic symbols and typographic typefaces**, but excluding computer programs. A study called "Catalogue on the Practices on the Protection of New Technological Design" drafted by an industrial design forum called ID5 that studies industrial design office practices, provides the results of an interview of the five main protection offices across the world, including the European Union Intellectual Property Office (EUIPO), on the application of industrial design protection to emerging designs. In this study, **the EUIPO has clearly confirmed that:** • **protection in the European Union currently exists for:** i. static and dynamic graphical user interfaces; ii. screen display designs that are displayed only when corresponding signals are sent from external environment iii. screen savers;

		iv. static or dynamic icons; v. transitional images; vi. animated characters; vii. computer related typeface type; and viii. screen display designs that are merely displayed apart from practical/functional human interaction (e.g., ornamental patterns (including wallpapers), photo, a scene of computer games and/or movies, etc.). ix. holographic designs; x. projected image designs (e.g., projection onto a windshield, optical/laser projection keyboard); and xi. **virtual three-dimensional designs**.
	(iii) If there is any leading case, please provide the summary of the case.	Court cases: ☒Yes ☐No (If Yes) Case Information: Cour de Cassation, *Commercial Chamber*, 8 April 2014, n° 13-10-689 Overview of the case: See answer to 2-2 iii for an application to video games designs.
2-2	(i) Is the act of providing identical or substantially similar goods subject to the restriction between real world and digital world, i.e., is the design of tangible products protected if the design is copied for digital products, or vice versa?	Civil claim (demand for injunction, demand for compensation for damages, etc.): ☒Yes ☐No ☐Not Clear Criminal punishment, etc. : ☒Yes ☐No ☐Not Clear Border measures : ☐Yes ☐No ☒Not Clear[121] As mentioned above, the EUIPO considers that designs of tangible products in a virtual environment meet the condition set out in Article 3 a) and b) of the EU Community Design Regulation and are therefore eligible to protection. Therefore, claim for infrigment of an unregistered Community Design can be brought before the national courts and tribunals of first and second instance ("Community design courts") designated as competent by the relevant member state, in accordance with Article 80 of the Regulation. According to Article 89 of the Regulation, in an action for infringement a Community design court may order the following measures: (a) an order prohibiting the defendant from proceeding with the acts which have infringed or would infringe the Community design; (b) an order to seize the infringing products; (c) an order to seize materials used in order to manufacture the infringing goods; (d) any order imposing other sanctions appropriate under the circumstances which are provided by the law of the Member State in which the acts of infringement or threatened infringement are committed, including its private international law. This does not prevent the claimant, according to Article 90, to additionnally apply for provisional measures, including protective measures in respect of a Community design as may be available under national law in respect of national design rights. Therefore, civil claims are possible under article 89 and 90 of the Regulation. Morevoer, according to Article 89 (d) other sanctions available under the law of the relevant member state may be imposed.

[121] Article 82 and 83of the Regulation deal with jurisdictional competence in the context of international claims.

		To this regard, Article L.515-1 of the Frenche Intellectual Proerty Code provides that any infringement of the rights defined by Article 19 of Council Regulation (EC) No. 6/2002 constitutes an infringement engaging the civil liability of its author. Moreover, according to Article L.521-10 of the French Intellectual Property Code, any infringement knowingly made to the deisgn rights is punished by three years of imprisonment and 300 000 euros of fine.
	(ii) Please explain the legal ground for your answer in (i) that the protection is/is not applicable (laws, regulations, or court cases).	In the above-mentioned ID5 study "Catalogue on the Practices on the Protection of New Technological Design", **the European Union Intellectual Property Office (EUIPO) specifically confirmed that designs of tangible products may be protected in a computer or virtual reality environment, based on Art. 3 a) and b) of the Regulation**. Specifically, the EUIPO confirmed that it was possible to protect the use of a design of a tangible automobile in a computer or virtual reality environment, such as in a computer game, Second Life® or Turbosquid virtual reality environment. This finding does not come directly from a decision or ruling of the EUIPO. As mentioned, the EUIPO has participated in a study called "Catalogue on the Practices on the Protection of New Technological Design" drafted by an industrial design forum called ID5 that studies industrial design office practices. For this study, the five main protection offices across the world, including the European Union Intellectual Property Office (EUIPO), were interviewed on the application of industrial design protection to emerging designs. Among the questions asked to the desig office practices, the ID5 asked the following: "Is it possible to protect a design in a computer or virtual reality environment with an industrial design registration? Specifically, is it possible to protect the use of a design of an automobile in a computer or virtual reality environment, such as in a computer game, Second Life® (http://secondlife.com/) or Turbosquid (https://www.turbosquid.com/) virtual reality environment?) If not, why does it not qualify for protection?" The EUIPO answered that it was possible on the basis of Article 3 of the Regulation.
	(iii) Please provide an overview of any leading court cases.	Court cases: ☒Yes ☐No (If Yes) Case Information: Cour de Cassation, *Commercial Chamber*, 8 April 2014, n° 13-10-689. Overview of the case: FERRARI, owner of international models of its famous vehicles and model toys, considered that the video game "Turismo" allowed the players to evolve a model taking the characteristics of its 360 Modena and F 40 models, basing its position on copyright and Community design protection. *Cour de Cassation* (French Supreme Court) approves the position of the Court of Appeal on the absence of designs and model infringement, considering that, if there were resemblances in this case between the virtual model and the vehicle, the virtual model of the video game had its own physiognomy insusceptible to produce on the informed observer the same global impression as the registered model. If in this case the infringement is not established after analysis of the identifying elements of the models in question, it should be noted that **the Court of Cassation confirms that an infringement can result in principle from the virtual elements appearing or being used in video games.** It may therefore be inferred from this leading case that design and models

		protection is afforded to intangible virtual designs.
2-3	(i) Even if the infringer's product is not competing with the products of the owner of the non-registered design, is the act of providing identical or substantially similar goods subject to the restriction? Example: A car design is misused for a toy car or in a virtual space.	☒Yes ☐No
	(ii) Please explain the legal ground for your answer in (i) that the protection is/is not applicable (laws, regulations, court cases).	**The protection granted by the Regulation is not dependant upon the use of the destination of the products and whether there is a competition risk**. The reproduction of an original creation alone constitutes an infringement independently of any other act (Cass. 1st civ., March 5, 1991) and it can perfectly well be carried out "online", on an Internet site (Court of Appeal of Paris, 4th ch., 10 Apr. 2009) or in the form of a "miniature" (TGI- First Degree Civil Court- Paris, 3rd ch. sect. 03, Oct. 29, 2002 – see below). The important thing is that the essential features are reproduced. The mere fact that the infringer's product is not competing does not prevent the product to be held infringing. However, it may prevent the creator form claiming, as an alternative, an act of unfair competition. Indeed, *Cour de Cassation* has confirmed that according it is always possible to bring an action for liability for unfair competition in conjunction with an infringement action (including a Community design infringement), and the trial judges are then obliged to examine this claim when the infringement action is dismissed (*Cass. com. Feb. 4, 2014; Cass. com. Dec. 10, Cass. com. June 12, 2012 :* etc.). However, in such case, in the absence of competing product, a claim of unfair competition would not be available.
	(iii) Please provide an overview of any leading court cases.	Court cases: ☒Yes ☐No (If Yes) TGI Paris, 3rd ch. sect. 03, Oct. 29, 2002 Overview of the case: The Volkswagen company claimed that another company has infringed is model right [122] by manufacturing a miniature vehicle counterfeiting Volkswagen's protected model. The Court found that, based on articles L 511-1 and L 521-4 of the Intellectual Property Code, the reproduction carried out in the form of a miniature **qualifies as an infringement. The Court further ruled that the mere fact of giving a new destination to the reproduced model does not give rise to creation**

[122] The "model right" based on articles L 511-1 and L 521-4 of the Intellectual Property Code.

2-4	Please explain the duration (commencement and expiration) of the protection of non-registered designs. As for the commencement of protection, please clarify if the protection is available prior to the first sale (or being made public).	Duration / legal basis and regulations: An unregistered Community design is protected for a **period of three (3) years**. Commencement of protection / legal basis and regulations: The protection period starts from the date on which the design was **first made available to the public within the European Union** (Art. 11 of the Regulation). A design shall be deemed to have been made available to the public within the EU if it has been published, exhibited, used in trade or otherwise made available to the public in such a way that, in the normal course of business, these facts could reasonably have been known to the persons in the sector concerned, operating within the EU. However, the design shall not be deemed to have been made available to the public solely because it has been disclosed to a third party under explicit or implicit conditions of secrecy. Protection is not available before the first divulgation. Expiration of protection / legal basis and regulations: The protection expires at the end of the abovementioned three (3) years period without any possibility of renewal.
3	New legislation or amendment of the laws relating to non-registered designs	
3-1	Please explain the current trends regarding the amendment of legislation with regard to the protection of non-registered designs. Example: Protected subject matter (tangible or intangible products), scope of infringement (infringement of tangible products, intangible products or digital spaces), duration of protection.	The European Commission has published an evaluation of the current framework which assess the degree to which the applicable legislation is still fit for purpose, in particular given the pace of digital transformation and technological development, including the increasing role of digital designs. The evaluation aims determining whether the EU's design protection system needs to be improved or updated. It is not possible to describe in detail what changes will be made to the regulation and the directive, since no draft of this text has yet been published nor elaborated in a stable form. However, the "Commission Staff Working Document Evaluation of EU legislation on design protection [SWD(2020 265 final] published by the European Commission provides some indications on the amelioration points the reform may seek to pursue, based on the results of an open public consultation published in the same documents. Based on the result of the consultation, we may argue that it is likely that the reform will seek to extend the definition of product to new types of intangible forms (for example, manifestations that are not physically defined as two or three-dimensional objects) and modify the representation requirements to take into account the specificity of new digital models. The open consultation has indeed evidenced that the current requirements for the representation of Community designs under the Regulation are not appropriate to show designs with sufficient clarity and precision, both for tangible product and non-tangible products (e.g. animated designs, graphical user interfaces). The most criticised requirements were the limited number of views (7), which limits the ability for a designer to show the design fully and may create priority issues, and the limited means of representation. The current graphic representations are in certain cases not apt to represent designs which have different forms of appearance, or to show a set sequence or movement. Some respondents also mentioned that a wider range of file formats (e.g. 3D files, video animations, higher resolution file formats for static images) and an extension of the permitted design types should be introduced.

(4) 韓国

NO.	Questions	Answer
1	Legal ground for protection on non-registered design	
1-1	Please explain the legal basis for non-registered design protections, if any.	Legal basis: ☒Yes ☐No Overview / Legal Basis and Regulations: Non-registered designs are protected under the UCPA. Specifically, copying the "shape of goods" manufactured by another person is considered unfair competition and is not allowed (Article 2(1)(i) of the UCPA).
1-2	(i) Does the protection of non-registered designs cover tangible goods AND/OR intangible goods?	(i) Tangible goods Protection of goods: ☒Yes ☐No ☐Not Clear Overview/Legal Basis and Regulations: See 1-1 above; the "shape of goods" is protected. (ii) Intangible goods Protection of goods: ☐Yes ☐No ☒Not Clear
	(ii) Please describe the legal basis of your answer to the question (i).	Similar to the corresponding Japanese law, the UCPA protects the "shape of goods," which is generally interpreted to not include the form of "intangible" goods. However, a broad interpretation[123] may include the form of an intangible object. It is unclear at this time whether the protection extends to intangible goods.
	(iii) If there is any leading case, please provide the summary of the case.	Court cases: ☒Yes ☐No (If Yes) Case Information: Supreme Court Decision 2015Da216758, Decided January 25, 2017[124] Overview of the case: The plaintiff operated a chain of ice cream shops which sold ice cream topped with honeycomb fragments. The defendant started its own chain of ice cream shops which also sold ice cream of the same concept. The plaintiff argued that the defendant copying the shape of the plaintiff's ice cream product constituted unfair competition under Article 2(1)(i) of the UCPA. The Supreme Court deemed that the defendant's actions did not constitute unfair competition under Article 2(1)(i) of the UCPA, because the shape of the plaintiff's ice cream is not protected under Article 2(1)(i) of the UCPA. This is because the shape of the plaintiff's ice cream product differs from serving to serving, and the abstract concept of "ice cream topped with honeycomb fragments" is not a "shape of goods" that is protected under Article 2(1)(i) of the UCPA.
2-2	(i) Is the act of providing identical or substantially similar goods subject to the restriction between real world and digital world, i.e., is the design of tangible products protected if the	Civil claim (demand for injunction, demand for compensation for damages, etc.): ☐Yes ☐No ☒Not Clear Criminal punishment, etc. : ☐Yes ☐No ☒Not Clear Border measures : ☐Yes ☐No ☒Not Clear

[123] In this case, a "broad interpretation" would mean an interpretation of the law that is broader than the currently accepted interpretation. Under the currently accepted interpretation of Article 2(1)(i) of the UCPA, "goods" is interpreted to mean a tangible item (有體物) which is traded on its own. According to this interpretation, Article 2(1)(i) of the UCPA does not protect intangible goods (無體物).At the present time, there is no widely accepted interpretation of the law or corresponding legal basis, doctrine, etc. which includes intangible goods in the "goods" under Article 2(1)(i) of the UCPA.

[124] No court cases that make judgements on the form of goods with incorporeal objects (data, etc.). It is also unclear whether Article 2(1)(i) of the UCPA would apply for the design of intangible goods, as mentioned above.

	design is copied for digital products, or vice versa?	As mentioned, it is not yet clear whether the design of tangible products is protected if the design is copied for digital products, or vice versa. However, the general provisions that may apply are as follows: UCPA Article 5 (Liability for Compensation of Damage from Acts of Unfair Competition) A person who causes damage to another person's business interest by intentionally or negligently engaging in an act of unfair competition or an act of violation of Article 3-2 (1) or (2) (only referring to an act of unfair competition committed intentionally in the case of subparagraph 1 (c) of Article 2) shall be liable for compensation of damage. Article 18 (Penalty Provisions) (3) Any of the following persons shall be punished by imprisonment with labor for not more than three years or by a fine not exceeding 30 million won: 1. A person who has engaged in an act of unfair competition under subparagraph 1 of Article 2 (excluding items (h), (j), (k) 1) through 3, (l), and (m));
	(ii) Please explain the legal ground for your answer in (i) that the protection is/is not applicable (laws, regulations, or court cases).	Article 2(1)(i) of the UCPA protects the “shape of goods.” Here, “goods” is generally interpreted to mean “tangible goods.” On the contrary, digital products are “intangible goods.” Therefore, it is unclear whether copying the “shape of goods” to produce digital products would constitute unfair competition under Article 2(1)(i) of the UCPA, and there appear to be no leading cases on this matter as of the time of this review[125].
	(iii) Please provide an overview of any leading court cases.	Court cases: ☐Yes ☒No (If Yes) Case Information: Overview of the case:
2-3	(i) Even if the infringer's product is not competing with the products of the owner of the non-registered design, is the act of providing identical or substantially similar goods subject to the restriction? Example: A car design is misused for a toy car or in a virtual space.	☒Yes ☐No
	(ii) Please explain the legal ground for your answer in (i) that the protection is/is not applicable (laws, regulations, court cases).	There is no requirement in Article 2(1)(i) of the UCPA that the infringer’s product must be in competition (with the products of the owner of the non-registered design) in order for the act of copying[126] the non-registered design to constitute unfair competition.
	(iii) Please provide an overview of any leading court cases.	Court cases: ☐Yes ☒No (If Yes) Overview of the case:

[125] There are no court cases including by lower courts and other courts

[126] The "act of unfair competition" under Article 2(1)(i) of the UCPA occurs when one transfers, lends (including displaying for such transfer or lending), imports, or exports goods whose shape has copied another's design.

2-4	Please explain the duration (commencement and expiration) of the protection of non-registered designs. As for the commencement of protection, please clarify if the protection is available prior to the first sale (or being made public).	Duration / legal basis and regulations: The duration is 3 years (Article 2(1)(i)(1) of the UCPA). Commencement of protection / legal basis and regulations: Commencement of protection is when the shape of the good is established [127], e.g. through manufacture of a prototype (Article 2(1)(i)(1) of the UCPA). Expiration of protection / legal basis and regulations: Protection expires at 3 years from the commencement of protection (Article 2(1)(i)(1) of the UCPA).
3	New legislation or amendment of the laws relating to non-registered designs	
3-1	Please explain the current trends regarding the amendment of legislation with regard to the protection of non-registered designs. Example: Protected subject matter (tangible or intangible products), scope of infringement (infringement of tangible products, intangible products or digital spaces), duration of protection.	There are no significant discussions with regards to the revision of Article 2(1)(i) of the UCPA, which protects non-registered designs. There is no information regarding any other legislation or legislative amendments with regard to the protection of non-registered designs

[127] According to the text of the law, protection begins on "the date the shape of the other goods, including the production of the prototype, was completed." This is understood to mean that the product does not need to be on sale for protection to commence.

（資料１）

質問票（日本語版）

経済産業省経済産業政策局知的財産政策室と事前協議を行って確定した質問文及び期待される参考回答例としての日本の制度・状況等についての説明は以下のとおりである。

Ⅰ　国際約束に基づく禁止行為（外国公務員贈賄罪）

NO.	質問	回答
1	**外国公務員贈賄防止に関する制度について**	
1-1	(i) 自然人及び法人に対する制裁として、刑事罰は定められていますか。	☒Yes ☐No ※　Yes の場合には(ii)に回答ください
	(ii)【(i)で Yes の場合】法定刑（罰金刑、拘禁刑）の内容とその根拠法令・規定を説明してください。 注：根拠法令・規定を明示してください。 当該規定の文言もご共有ください。	法定刑の内容（罰金刑、拘禁刑）／根拠法令・規定： ①　自然人に対する罰則 贈賄行為者には 5 年以下の懲役もしくは 500 万円以下の罰金、又はこれが併科される（不正競争防止法 21 条 2 項 7 号）。 ②　共犯関係者に対する罰則 共犯者には 5 年以下の懲役もしくは 500 万円以下の罰金、又はこれが併科される（刑法 61 条）。※ほう助をしたと認められる者については、2 年 6 月以下の懲役もしくは 250 万円以下の罰金、又はこれが併科される（刑法 63 条、68 条 3 号・4 号） ③　法人に対する罰則 法人に対しては 3 億円以下の罰金刑が科される（不正競争防止法 22 条 1 項 3 号）。※外国法人も、会社法上の外国会社（会社法 823 条）については両罰規定が適用され得るものと考えられ、3 億円以下の罰金刑が科される
1-2	(i) 自然人及び法人に対する制裁として、行政罰は定められていますか。 行政罰には、行政府が課す課徴金（fine）や民事制裁（civil sanction）を含みます。	☐Yes ☒No ※　Yes の場合には(ii)に回答ください

	(ii)【(i)で Yes の場合】行政罰の内容とその根拠法令・規定を説明してください。 注：根拠法令・規定を明示してください。 当該規定の文言もご共有ください。	行政罰の内容：N/A 根拠法令・規定：N/A
1-3	(i) 自然人及び法人に対する制裁のうち、罰金スライド制が導入されているものはありますか。 罰金スライド制：不正な商取引の金額や利得の額などに応じて（連動して）、罰金額の上限を規定する制度。	☐Yes ☒No ※　Yes の場合には(ii)に回答ください
	(ii)【(i)で Yes の場合】制裁額の算定の指標となる要素（例えば、純利益、損失、贈賄額など）と算出方法を説明してください。	指標となる要素：N/A 算出方法：N/A
1-4	(i) 自然人及び法人に対する公訴時効期間の定めはありますか。	☒Yes ☐No ※　Yes の場合には(ii) (iii)に回答ください
	(ii)【(i)で Yes の場合】自然人及び法人に対する公訴時効の期間とその根拠法令・規定を説明してください。 注：根拠法令・規定を明示してください。 当該規定の文言もご共有ください。	公訴時効の期間：5 年（自然人、法人） 根拠法令・規定： 刑事訴訟法第 250 条 2 項 5 号、不正競争防止法 21 条 2 項 7 号、22 条 3 項
	(iii)【(i)で Yes の場合】自然人及び法人に対する公訴時効期間を中断又は停止する手段がありますか。	☒Yes ☐No ※　Yes の場合には(iv)に回答ください
	(iv)【(iii)で Yes の場合】中断又は停止となる事由、公訴時効の中断又は停止が及ぶ者（行為者個人/法人/その両方）を説明してください。 注：根拠法令・規定を明示してください。 当該規定の文言もご共有ください。	中断[128]となる事由： N/A 停止[129]となる事由： 公訴の提起、犯人が国外にいる場合、犯人が逃げ隠れているため有効に起訴状の謄本の送達又は略式命令の告知ができなかった場合 適用対象：公訴の提起については行為者個人及び法

[128] 時効が中断すると、それまでに進行した時効の効力を失われる。中断断事由が消滅すると、改めて初めから時効の進行が始まる。
[129] 時効が停止しても、それまでに進行した時効の効力は失われない。停止事由が消滅すると、残りの期間について時効の進行が始まる。

		人)。それ以外の事由については行為者個人。 根拠法令・規定： 刑事訴訟法 254 条、第 255 条 1 項、2 項
1-5	調査対象国の国内法の適用について、以下のそれぞれの事案について、説明してください。 注：根拠法令・規定を明示してください。 当該規定の文言もご共有ください。	
	(i) 調査対象国に本社を有する Company X の国外に所在する支店又は営業所の Employee A（調査対象国の国籍を有しない個人）が調査対象国外（支店所在国／第三国）で贈賄した。	Company X への適用：☒Yes ☐No Employee A への適用：☒Yes ☐No 国内法が適用される条件（海外拠点との共謀などもしあれば）： 犯罪の構成要件の一部をなす行為が国内で行われ、又は構成要件の一部である結果が国内で発生したこと（Employee A と調査対象国内本社従業員又は調査対象国の国籍を有する本社従業員との間に共謀が存在し、共謀共同正犯が成立する場合を含む） 根拠法令・規定：刑法 1 条（属地主義）、刑法 3 条（属人主義）、刑法 60 条（共犯）
	(ii) 調査対象国に本社を有する Company X の外国子会社（foreign subsidiary）の Employee B（調査対象国の国籍を有しない個人）が調査対象国外（子会社所在国／第三国）で贈賄した。 ※ subsidiary であるか affiliate であるかによって、適用の範囲が変わる場合には、それぞれについて説明してください。	Company X への適用：☒Yes ☐No Employee B への適用：☒Yes ☐No 国内法が適用される条件（海外拠点との共謀などもしあれば）： 犯罪の構成要件の一部をなす行為が国内で行われ、又は構成要件の一部である結果が国内で発生したこと（Employee B と調査対象国内本社従業員又は調査対象国の国籍を有する本社従業員との間に共謀が存在し、共謀共同正犯が成立する場合を含む） 根拠法令・規定：刑法 1 条（属地主義）、刑法 3 条（属人主義）、刑法 60 条（共犯）
	(iii) 調査対象国に本社を有する Company X の国外代理店（agent）の Employee C（調査対象国の国籍を有しない個人）が調査対象国外（代理店所在国／第三国）で贈賄した。	Company X への適用：☒Yes ☐No Employee C への適用：☒Yes ☐No 国内法が適用される条件（海外拠点との共謀などもしあれば）： 犯罪の構成要件の一部をなす行為が国内で行われ、

		又は構成要件の一部である結果が国内で発生したこと（Employee C と調査対象国内本社従業員又は調査対象国の国籍を有する本社従業員との間に共謀が存在し、共謀共同正犯が成立する場合を含む） 根拠法令・規定：刑法 1 条（属地主義）、刑法 3 条（属人主義）、刑法 60 条（共犯）
2	**調査対象国における外国公務員贈賄防止に関する実態について**	
2-1	外国公務員贈賄の摘発事例（Case）のうち、制裁が重かった事例（5 件以内）について説明してください。 注：根拠法令・規定を明示してください。当該規定の文言、及び、（入手可能であれば）判決文（英語又は日本語が望ましい）もご共有ください。	
	ケース 1	東京地裁平成 21 年 1 月 29 日、平成 21 年 3 月 24 日 事案の概要： 東京都内に本店を置く被告人会社の従業員等であった 4 名が、ベトナム・ホーチミン市における幹線道路建設事業に関するコンサルタント業務を受注した謝礼等の趣旨で、同事業担当幹部に対して 2 度にわたり、それぞれ約 60 万米ドル、約 20 万米ドルの利益を供与した事案。 ☒刑事罰 ☐行政罰 ☐その他（　　） 制裁の内容： 被告 4 名に懲役 2 年 6 月、懲役 2 年、懲役 1 年 6 月、懲役 1 年 8 月（それぞれ執行猶予 3 年）、被告会社に 7000 万円の罰金が科された。 根拠法令・規定： ①東京地裁平成２１年１月２９日 被告会社（Ｙ１）について、平成１８年法律第５５号による改正前の不正競争防止法２２条１項１号，２１条１項１１号，１８条１項。 被告人Ｙ２及び同Ｙ４について、判示第１：刑法６０条，平成１５年法律第４６号による改正前の不正競争防止法１４条３号，１１条１項、判示第２：刑法６０条，平成１８年法律第５５号による改正前の不正競争防止法２１条１項１１号，１８条１項。

		被告Ｙ３について、刑法６０条，平成１５年法律第４６号による改正前の不正競争防止法１４条３号，１１条１項 ②東京地裁平成２１年３月２４日 被告人Ｙ１，同Ｙ２及び同Ｙ３について、判示第１の各所為につきいずれも刑法６０条，２４６条２項。 被告人Ｙ４について、判示第１の１の所為につき刑法６０条，２４６条２項，判示第２の所為につき同法６０条，平成１８年法律第５５号による改正前の不正競争防止法２１条１項１１号，１８条１項。
	ケース 2	東京地裁平成 27 年 2 月 4 日 事案の概要： 東京都に本店を置く鉄道コンサルタント事業等を営む株式会社の元社長、元国際部長及び元経理担当取締役の 3 名が、インドネシア、ベトナム及びウズベキスタンでの ODA 事業に関連し、鉄道公社関係者等に金銭を提供した事案。 ベトナム鉄道公社関係者に約 7,000 万円、インドネシア運輸省鉄道総局関係者に 2,000 万円相当の金銭、ウズベキスタン鉄道公社関係者に 5,477 万円相当の金銭をそれぞれ供与した。 ☒刑事罰 □行政罰 □その他（　　） 制裁の内容： 被告人 3 名に、懲役 2 年（執行猶予 3 年）、懲役 3 年（執行猶予 4 年）、懲役 2 年 6 月（執行猶予 3 年）、被告会社に 9,000 万円の罰金が科された。 根拠法令・規定： 詳細不明
	ケース 3	名古屋簡裁令和 2 年 1 月 事案の概要： 電子機器製品の販売等を業とする現地法人社長（当時）が、通関の違反をめぐる追徴金を減額させるなど有利な取り計らいを受けるため、ベトナムのハイフォン市税関局の幹部職員 2 人に 15 億ドン（約 735 万円）を供与したという事案。 ☒刑事罰 □行政罰 □その他（　　） 制裁の内容：被告人に 100 万円の罰金が科された。

		根拠法令・規定： 詳細不明
	ケース 4	事案の概要：N/A □刑事罰 □行政罰 □その他（　　） 制裁の内容： 根拠法令・規定：
	ケース 5	事案の概要：N/A □刑事罰 □行政罰 □その他（　　） 制裁の内容： 根拠法令・規定：
2-2	外国公務員贈賄の摘発事例のうち、リーディングケースとなる事例がもしあれば、いくつか説明してください。3 件以下でも結構ですし、3 件以上ある場合には行を追加ください。 注：根拠法令・規定を明示してください。 当該規定の文言、及び、（入手可能であれば）判決文（英語又は日本語が望ましい）もご共有ください。	
	ケース 1	東京地裁平成 21 年 1 月 29 日、平成 21 年 3 月 24 日 事案の概要： 東京都内に本店を置く被告人会社の従業員等であった 4 名が、ベトナム・ホーチミン市における幹線道路建設事業に関するコンサルタント業務を受注した謝礼等の趣旨で、同事業担当幹部に対して 2 度にわたり、それぞれ約 60 万米ドル、約 20 万米ドルの利益を供与した事案。 ※外国公務員贈賄罪における初の両罰規定適用事案である。 ☒刑事罰 □行政罰 □その他（　　） 制裁の内容： 被告 4 名に懲役 2 年 6 月、懲役 2 年、懲役 1 年 6 月、懲役 1 年 8 月（それぞれ執行猶予 3 年）、被告会社に 7000 万円の罰金が科された。 根拠法令・規定： ①東京地裁平成２１年１月２９日 被告会社（Ｙ１）について、平成１８年法律第５５号

		による改正前の不正競争防止法２２条１項１号，２１条１項１１号，１８条１項。 被告人Ｙ２及び同Ｙ４について、判示第１：刑法６０条，平成１５年法律第４６号による改正前の不正競争防止法１４条３号，１１条１項、判示第２：刑法６０条，平成１８年法律第５５号による改正前の不正競争防止法２１条１項１１号，１８条１項。 被告Ｙ３について、刑法６０条，平成１５年法律第４６号による改正前の不正競争防止法１４条３号，１１条１項 ②東京地裁平成２１年３月２４日 被告人Ｙ１，同Ｙ２及び同Ｙ３について、判示第１の各所為につきいずれも刑法６０条，２４６条２項。 被告人Ｙ４について、判示第１の１の所為につき刑法６０条，２４６条２項，判示第２の所為につき同法６０条，平成１８年法律第５５号による改正前の不正競争防止法２１条１項１１号，１８条１項。
	ケース 2	事案の概要：N/A □刑事罰 □行政罰 □その他（　　） 制裁の内容： 根拠法令・規定：
	ケース 3	事案の概要：N/A □刑事罰 □行政罰 □その他（　　） 制裁の内容： 根拠法令・規定：
2-3	外国公務員贈賄に関する事例について、近年の摘発や制裁の傾向及び動向を説明してください。	OECD のフェーズ４審査報告書によると、OECD は以下のとおり評価している。 ・罰金額や懲役刑が上限に近いようなケースはない。懲役刑は全て執行猶予付。 ・時効については、例えばフタバの事案では時効が完成して法人は処罰されなかった（フェーズ４審査報告書、パラグラフ 22)。 ・管轄については、日本本社の従業員と海外子会社等の従業員の共謀が認められたケースはない（フェーズ４審査報告書、パラグラフ 247-250、フォローアップ勧告 18g(iii)）

2-4	(i) 外国公務員贈賄の摘発事例のうち、罰金スライド制を適用した事案がありますか。	☐Yes ☒No ※ Yes の場合には(ii)を回答ください。
	(ii)【(i)で Yes の場合】代表的な事案について、説明してください。 注：根拠法令・規定を明示してください。当該規定の文言、及び、（入手可能であれば）判決文（英語又は日本語が望ましい）もご共有ください。 ※ 営業所、子会社、代理店の行為に対して制裁が科された場合にはその根拠法令・規定も明示してください。	事案の概要：N/A 制裁の種別： ☐刑事罰 ☐行政罰 ☐その他（ ） 罰金額： 罰金額の算定に際して考慮された要素： 罰金額の算定方法： 根拠法令・規定： ※ 記載すべき事案が複数あれば以下に追記ください。
2-5	(i) 外国公務員贈賄の摘発事例のうち、調査対象国の国内法を域外適用[130]した事案がありますか。	☒Yes ☐No ※ Yes の場合には(ii)を回答ください。
	(ii)【(i)で Yes の場合】代表的な事案について、説明してください。特に、外国籍の従業員・代理人等が贈賄を行ったケースがあれば優先的に記載ください。	事案の概要：電子機器製品の販売等を業とする現地法人社長（当時）が、通関の違反をめぐる追徴金を減額させるなど有利な取り計らいを受けるため、ベトナムのハイフォン市税関局の幹部職員 2 人に 15 億ドン（約 735 万円）を供与したという事案（名古屋簡裁令和 2 年 1 月）。同事案においては、被告人に 100 万円の罰金が科された。 準拠法・管轄に関する主要な判示内容：詳細不明 ※ 記載すべき事案が複数あれば以下に追記ください。

[130] 通常、一国の法律は、その国の領土内において適用され、その効力は外国に及ばないというのが原則であるところ、その国の法律をその国の外で行われた行為に対して適用する場合をいいます。

Ⅱ　営業秘密に係る立証負担の軽減等に関する制度

NO.	質問	回答
1	**営業秘密の侵害事案における証拠収集手続について**	
1-1	営業秘密の侵害事案における証拠収集手続について、以下の事項について説明してください。 ※　一般の民事訴訟では利用できず、知的財産訴訟・営業秘密訴訟だけで利用できる制度であれば、そのように記載してください。	
	(i) 民事手続における、相手方が保有する証拠を収集する手続の概要を説明してください。 例．情報開示請求制度、裁判所による証拠保全の手続、調査嘱託、文書提出命令等の裁判所を通じた情報開示手続（米国のディスカバリ制度、英国のディスクロージャー制度等）、裁判所の選任する専門家による事実関係の確認手続（ドイツの査証制度等）	制度の概要／根拠法令・規定： **【民事訴訟全般で利用できる制度】** ・ **提訴前予告通知後の照会（民事訴訟法 132 条の 2 以下）** 訴えを提起しようとする者は、当該訴えの被告となるべき者に対し、訴え提起を予告することにより、訴え提起前に、提起を予定している訴訟における主張又は立証を準備するために必要であることが明らかな事項について、書面で回答するよう求めることができる。 ・ **提訴前証拠収集処分（民事訴訟法 132 条の 4）** 裁判所は、訴え提起を予告した者の申立てにより、その訴えの提起前に、証拠の収集として一定の処分をすることができる。その証拠は、当該訴えにおいて立証のために明らかに必要であり、かつ、申立人自ら収集することが困難なものでなければならない。 ・ **証拠保全（民事訴訟法 234 条）** あらかじめ証拠調べをしておかなければその証拠を使用することが困難となる事情がある場合、裁判所は、申立てにより、証拠調べをすることができる。 ・ **当事者照会（民事訴訟法 163 条）** 訴訟の当事者は、当該訴訟の係属中、相手方に対し、主張又は立証を準備するために必要な事項を書面で回答するよう求めることができる。 ・ **文書提出命令（民事訴訟法 219 条以下）** 裁判所は、訴訟の当事者の申立てに理由があると

		認める場合、その相手方又は第三者に対し、所持する文書を提出するよう命ずる。 ・ **文書送付嘱託（民事訴訟法 226 条）** 裁判所は、訴訟の当事者の申立てに基づき、その相手方又は第三者に対し、所持する文書を送付するよう求める。 ・ **検証物提示命令（民事訴訟法 232 条 1 項、223 条）** 裁判所は、訴訟の当事者の申立てに理由があると認める場合、その相手方又は第三者に対し、所持する検証の目的物を提示するよう命ずる。 ・ **検証物送付嘱託（民事訴訟法 232 条 1 項、226 条）** 裁判所は、訴訟の当事者の申立てに基づき、その相手方又は第三者に対し、所持する検証の目的物を送付するよう求めることができる。 ・ **調査嘱託（民事訴訟法 186 条）** 裁判所は、訴訟追行のために必要な調査を、官公署その他の団体に嘱託することができる。 ・ **訴訟記録等の閲覧・謄写（民事訴訟法 91 条）** 何人も訴訟記録の閲覧を請求でき、当事者及び利害関係を疎明した第三者は、謄写を請求できる。 ・ **職務上の請求（住民基本台帳法 12 条の 3 第 2 項、20 条 4 項）** 弁護士を含む一定の資格を有する者は、一定の場合に、受任している事件の依頼者のために、住民票及び戸籍附票の交付を受けることができる。 ・ **弁護士会照会（弁護士法 23 条の 2）** 弁護士は、その所属する弁護士会を介して、公務所又は公私の団体に対し、受任している事件について必要な事項の報告を求めることができる。 **【特許権侵害訴訟又は営業秘密侵害を含む不正競争行為訴訟でのみ使用できる制度】** ・ **侵害行為の具体的態様の明示義務** 特許権侵害訴訟又は不正競争による営業上の利益の侵害に係る訴訟において、侵害被疑者が、侵害されたと主張する者により主張されている、侵害行為を組成した物又は方法の具体的態様を否認する場合には、侵害被疑者は、自己の行為の具

		体的態様を明らかにしなければならない（特許法 104 条の 2、不正競争防止法 6 条）。 ・ **侵害行為の立証又は損害の計算に必要な書類の提出命令** 特許権侵害訴訟又は不正競争による営業上の利益の侵害に係る訴訟において、裁判所は、当事者の申立てにより、当事者に対し、侵害行為の立証又は損害の計算に必要な書類の提出を命じることができる（特許法 105 条、不正競争防止法 7 条）。 ・ **損害計算のための鑑定** 特許権侵害訴訟又は不正競争による営業上の利益の侵害に係る訴訟において、裁判所が侵害行為による損害計算のための鑑定を命じた場合には、当事者は、鑑定人に対し、当該鑑定のため必要な事項を説明しなければならない（特許法 105 条の 2 の 12、不正競争防止法 8 条）。 ・ **査証** 特許権侵害訴訟において、裁判所は、当事者の申立てにより、査証人を指定し、当該査証人に対し、相手方の工場等に立ち入り相手方が所持又は管理する物について調査した上で、報告書を提出するよう命じることができる（特許法 105 条の 2～105 条の 2 の 10）（ドイツの特許法上の「査察」に類似する制度）。
	(ii) 刑事手続における、第三者、被告人・被疑者が保有する証拠を収集する手続の概要を説明してください。 例．捜査機関による捜査、強制的な捜査による被疑者の逮捕、証拠物の差押	制度の概要／根拠法令・規定： **【任意捜査】** ・ **取調べ（刑事訴訟法 198 条 1 項及び 223 条 1 項）** 捜査機関は、被疑者又は被疑者以外の者に対し、犯罪に関する情報を聴取することができる。 ・ **領置（刑事訴訟法 221 条）** 捜査機関は、遺留物又は任意提出物について、他人の占有を排除して任意に占有を取得することができる。 ・ **実況見分（犯罪捜査規範 104 条以下）** 捜査機関は、五感の作用により、任意に場所、物又は人の形状を認識することができる。 ・ **公務所又は公私の団体に対する必要事項の照会（刑事訴訟法 197 条 2 項）**

		捜査機関は、公務所又は公私の団体に対し、必要な事項の報告を求めることができる。 **【強制捜査】** ・ **差押え（刑事訴訟法第 218 条 1 項及び 220 条 1 項）** 捜査機関は、裁判官の発する令状に基づき又は被疑者の逮捕に伴い、強制的に他人の占有を排除してその占有を取得することができる。 ・ **捜索（刑事訴訟法第 218 条 1 項及び 220 条 1 項）** 捜査機関は、裁判官の発する令状に基づき又は被疑者の逮捕に伴い、物又は人を発見するために強制的に一定の場所を調べることができる。 ・ **検証（刑事訴訟法第 218 条 1 項及び 220 条）** 捜査機関は、裁判官の発する令状に基づき又は被疑者の逮捕に伴い、五感の作用により、強制的に場所、物又は人の形状を認識することができる。 ・ **通信傍受（刑事訴訟法 222 条の 2、犯罪捜査のための通信傍受に関する法律 3 条 1 項）** 捜査機関は、裁判官の発する令状に基づき、当事者双方の同意なく、特定の犯罪に関連する他人間の通信を受けることができる。
	(iii) 行政手続における証拠収集手続の概要を説明してください。 例．行政機関における立入検査	制度の概要／根拠法令・規定：N/A
	(iv) 調査対象国外にある証拠に対して証拠収集手続を利用することができますか。	民事手続における証拠収集手続： ☐Yes ☒No 刑事手続における証拠収集手続： ☐Yes ☒No 行政手続における証拠収集手続： ☐Yes ☒No
	(v) 証拠収集手続に関する民事手続と刑事手続相互の関係を説明してください。 例．刑事手続で収集した証拠を、民事手続のために当事者は開示・民事手続への提出を求めることができるかなど	概要： 閲覧・謄写し、又は、文書送付嘱託の申立を行って、刑事裁判記録、刑事不起訴事件記録を、民事訴訟において提出する。 もっとも、刑事訴訟手続により収集された証拠を民事訴訟において利用できない可能性もある。 根拠法令・規定：

		刑事裁判記録の閲覧・謄写：刑事訴訟法 53 条、記録事務規程 17 条 1 項 刑事不起訴事件記録の閲覧・謄写：刑事訴訟法 47 条但書 刑事裁判記録の文書送付嘱託：民事訴訟法 226 条
1-2	(i) 知的財産訴訟（特に特許権侵害訴訟）において、知的財産権侵害の立証について、原告（知的財産に係る権利者／被侵害者）の立証負担を軽減する制度はありますか。	☒Yes ☐No Yes の場合には(ii)を回答ください。
	(ii)【(i)で Yes の場合】制度の概要説明してください。	制度の概要： 根拠法令・規定： ・ **【特許法】生産方法の推定（104 条）** 当該特許の出願前に日本で公然と知られていない物を生産する方法の発明について特許がされている場合には、それと同一の物は、当該方法により生産したものと推定される。 ・ **侵害行為の具体的態様の明示義務（104 条の 2）** 1-1(i)に記載のとおり。 ・ **侵害行為の立証ために必要な書類の提出命令（105 条）** 1-1(i)に記載のとおり。
1-3	(i) 営業秘密侵害訴訟において、営業秘密の侵害の立証について、原告（営業秘密に係る権利者／被侵害者）の立証負担を軽減する制度はありますか。	☒Yes ☐No Yes の場合には(ii)を回答ください。
	(ii)【(i)で Yes の場合】制度の概要説明してください。	制度の概要／根拠法令・規定： ・ **技術上の秘密を取得した者の当該技術上の秘密を使用する行為等の推定（不正競争防止法５条の 2）** 以下の(i)~(iii)を全て立証した場合には、侵害被疑者は、営業秘密の不正使用行為を行ったと推定される。 (i) 対象となる情報は、生産方法のような技術上の情報であること (ii) 侵害被疑者が、2 条 1 項 4 号（営業秘密の不正取得及びその後の使用・開示）、5 号又は 8 号（不正取得の事実を知った上での転得及びその後の使用・開示）に規定する不正な取得行為を行ったこと (iii) 侵害被疑者が、技術上の秘密を使用したことが明

		らかな行為(技術上の秘密情報を使用してできる物の生産、技術上の秘密を用いて評価・分析するサービスの提供）を行ったこと ・ **侵害行為の具体的態様の明示義務（6 条）** 1-1(i)に記載のとおり。 ・ **侵害行為の立証のために必要な書類の提出命令（7 条）** 1-1(i)に記載のとおり。
2	**営業秘密の侵害事案における損害賠償額算定・推定制度について**	
2-1	(i) 知的財産法一般（特に特許権侵害訴訟）において、損害の立証責任は原告と被告のどちらが負い、損害額（amount of damages）はどのように立証されるのでしょうか。	損害額の立証責任：原告 ※　原告の場合には(ii)と 2-2 を回答ください。 損害額の立証方法： 原告は、主に、下記(iii)の規定を利用するか、又は自身で逸失利益を計算して損害額を立証する。
	(ii)【(i)で原告の場合】原告が損害額の立証責任を負う場合、原告の立証負担を軽減する制度はありますか（法定賠償額、倍額・懲罰的賠償に関する規定がある場合は、これらを含む)。	☒Yes ☐No Yes の場合には(iii)を回答ください。
	(iii)【(ii)で Yes の場合】原告の立証負担を軽減する制度の概要について説明してください（法定賠償額、倍額・懲罰的賠償に関する規定がある場合は、これらを含む)。	制度の概要／根拠法令・規定： **【特許法】** ・ **損害額の推定（以下のいずれかを選択可能）** - 損害額としての逸失利益の算定方法が定められている（102 条 1 項)。 - 侵害者が侵害行為により受けた利益の額は、被侵害者の損害額と推定される(102 条 2 項)。 - 侵害された特許発明の相当実施料額を損害額として請求できる（102 条 3 項、4 項)。 ・ **損害計算のために必要な書類の提出命令（105 条 1 項）** 1-1(i)に記載のとおり。 ・ **損害計算のための鑑定（105 条の 2 の 12）** 1-1(i)に記載のとおり。 ・ **相当な損害額の認定（105 条の 3）** 特許権侵害訴訟において、損害の発生自体は認められるにもかかわらず、損害額の立証のために必要な事実の立証がその性質上極めて困難である場合には、裁判所は、相当な損害額を認定するこ

		とができる。
2-2	(i) 営業秘密侵害訴訟において、原告が損害額の立証責任を負う場合、原告の立証負担を軽減する制度はありますか（法定賠償額、倍額・懲罰的賠償に関する規定がある場合は、これらを含む）。	☒Yes ☐No Yes の場合には(ii)を回答ください。
	(ii)【(i)で Yes の場合】原告の立証負担を軽減する制度の概要について説明してください（法定賠償額、倍額・懲罰的賠償に関する規定がある場合は、これらを含む）。	制度の概要／根拠法令・規定： ・ **損害賠償額の推定** - 一定の不正競争行為について、損害額としての逸失利益の算定方法が定められている（不正競争防止法 5 条 1 項）。 - 侵害者が侵害行為により受けた利益の額は、被侵害者の損害額と推定される（5 条 2 項）。 - 一定の不正競争行為について、各行為の使用料相当額を損害額として請求できる（5 条 3 項）。 ・ **損害計算のために必要な書類の提出命令（7 条）** 1-1(i)に記載のとおり。 ・ **損害計算のための鑑定（8 条）** 1-1(i)に記載のとおり。 ・ **相当な損害額の認定（9 条）** 不正競争による営業上の利益の侵害に係る訴訟において、損害の発生自体は認められるにもかかわらず、損害額の立証のために必要な事実の立証がその性質上極めて困難である場合には、裁判所は、相当な損害額を認定することができる。
2-3	営業秘密侵害が争われた事件で、高額な損害賠償が認められた（命じられた）代表的な判決について情報（事件番号、賠償額）があれば情報提供いただけますか。	日本の営業秘密侵害訴訟（判決）において、損害賠償額として支払が命じられたもののうち、高額なものは以下のとおり。 ・技術に関する営業秘密　10 億 2300 万円（知財高裁令和 2・1・31「新日鐵住金電磁鋼板事件（対元従業員」） ・営業情報に係る営業秘密　1 億 3923 万円（大坂池判平成 25・4・11「中古車顧客情報事件」）
3	**営業秘密に係るライセンシーの保護制度について**	

3-1	(i) 知的財産法一般（特に特許権、著作権）において、権利者(right owner)が知的財産権を第三者に譲渡(assign)した場合又は権利者が破産（bankrupt）した場合に、ライセンシーを保護する制度[131]はありますか。	☒Yes ☐No ※　Yes の場合には(ii)を回答ください。
	(ii)【(i)で Yes の場合】ライセンシーを保護する制度の概要について説明してください。	制度の概要／根拠法令・規定： **【権利者が知的財産権を第三者に譲渡した場合】** ライセンシーは、登録を要することなく、知的財産権の譲受人に対し、通常実施権又は仮通常実施権を主張できる（特許法 99 条、34 条の 5）。 **【権利者が破産した場合】** 破産管財人は、ライセンス契約を解除することができない（破産法 56 条 1 項、53 条 1 項、2 項）。
3-2	(i) 営業秘密保有者（owner of trade secret）が、事業を譲渡した場合又は破産した場合、営業秘密に係るライセンシーを保護する制度はありますか。	☐Yes ☒No ※　Yes の場合には(ii)を回答ください。
	(ii)【(i)で Yes の場合】ライセンシーを保護する制度の概要について説明してください。	制度の概要／根拠法令・規定：
4	**営業秘密の渉外侵害事案における国際裁判管轄及び準拠法（実施法の適用範囲）について**	
4-1	(i) 国際裁判管轄の決定方法について、基本的な事項が定められた法令の名称とその概要を説明してください。	法令名：民事訴訟法 決定方法の概要[132]： 以下のいずれかに該当する場合、日本の裁判所に訴えを提起することができる。 ・ 被告の住所又は主たる事務所が日本にある場合（3 条の 2） ・ 事件の類型に応じて規定された要件を充足する場合（3 条の 3） ・ 併合請求において日本の裁判所が管轄権を有する一つの請求が他の請求と密接に関連する場合（3 条の 6） ・ 当事者が日本の裁判所に訴えを提起することを合意した場合（3 条の 7）

[131] 例として、ライセンシーが、知的財産に係る権利の譲受人又は破産管財人に対して、当該知的財産の使用継続（使用等に対する差止等の権利行使を受けないこと）を主張する権利を認めた規定が存在すること等が挙げられます。
[132] 解答例として、「被告の住所、契約上の債務の履行地、請求の目的となる財産の所在地が調査対象国にある場合に調査対象国が裁判管轄権を有する」といった回答が考えられます。

		・ 被告が日本の裁判所は管轄権を有しない旨を主張しなかった場合（3 条の 8）
	(ii) 国際裁判管轄の決定方法について、不法行為に関する特則があれば、その概要を説明してください。	☒Yes ☐No （Yes の場合） 概要： 日本国内で、不法行為が行われ、又は不法行為の結果が発生した場合、日本の裁判所に訴えを提起することができる（民訴法第 3 条の 3 第 8 号）。
	(iii) 国際裁判管轄の決定方法について、損害賠償請求を行う場合と差止請求を行う場合とで違いがありますか。	☐Yes ☒No （Yes の場合） 概要：
	(iv) 国際裁判管轄の決定方法について、営業秘密侵害に関する特則があれば、その概要を説明してください。	☐Yes ☒No （Yes の場合） 概要：
4-2	(i) 準拠法の決定方法について、基本的な事項が定められた法令の名称とその概要を説明してください。	法令名： 法の適用に関する通則法 決定方法の概要[133]： 法律関係の類型ごとに、準拠すべき法律が規定されている。
	(ii) 準拠法の決定方法について、不法行為に関する特則があれば、その概要を説明してください。	☒Yes ☐No （Yes の場合） 概要： 不法行為によって生ずる債権の成立及び効力については、原則として、加害行為の結果が発生した地の法に準拠する（法の適用に関する通則法 17 条）。
	(iii) 準拠法の決定方法について、損害賠償請求を行う場合と差止請求を行う場合とで違いがありますか。	☐Yes ☒No （Yes の場合） 概要：
	(iv) 準拠法の決定方法について、営業秘密侵害に関する特則があれば、その概要を説明し	☐Yes ☒No

[133] 解答例として、「当事者による合意より決定する」、「最密接関係地の法律による」といった回答が考えられます。

	てください。	（Yes の場合） 概要：
4-3	準拠法ルールと国際裁判管轄はどのような関係にありますか。 例．管轄が認められれば法廷地法が適用されるのか、自国法が適用されるべきと考えられる場合に管轄も認められるのか、管轄権の有無の判断をした後に、準拠法（法廷地法又は外国法）を決定するのか、など	まず、日本の裁判所に訴えが提起された場合には、日本の裁判所が国際裁判管轄権を有するか否かを法廷地である日本の民事訴訟法の規定に基づいて判断する。 次に、日本の裁判所が管轄権を有すると判断された場合には、法廷地である日本の国際私法（通則法）の規定に基づいて事案に適用されるべき準拠法（日本法又は外国法）を決定する。
4-4	国際裁判管轄及び準拠法の決定方法のルールにリーディングケースとなる裁判例があれば、事案の概要及び主な判示事項を説明してください。	**【国際裁判管轄に関するリーディングケース】** 最判平成 26 年 4 月 24 日民集 68 巻 4 号 329 頁 **事案の概要：** 原告は、A 社の従業員であった Y1 及び Y2 に対し、同社との間の日本国内における独占的使用権等の付与に関する契約に基づき、眉トリートメント技術を開示した。Y1 及び Y2 は、Y3 社を設立し、A 社を退職した後、Y3 社は、日本国内で同様のサロンを開設した。原告は、Y らによる当該技術の不正な開示及び使用等を理由に、損害賠償及び差止めを求める訴えを米国裁判所に提起し、認容判決を獲得した。原告は、米国の当該判決について、日本の裁判所に対し、執行判決を求めた。 **判示事項：** 不法行為に関する訴えに関する国際裁判管轄の規定（民訴法 3 条の 3 第 8 号）は、民法所定の不法行為に基づく訴えに限らず、違法行為により権利利益が侵害され、又は侵害されるおそれがある者が提起する差止請求に関する訴えにも適用される。 **【差止請求の準拠法に関するリーディングケース】** 知財高判平成 30 年 1 月 15 日 **事案の概要：** 日本法人である被告は、日本国外において、外国企業から、日本法人である原告の製品に関する情報（本件情報）が掲載された文書等を取得し、別件訴訟において、証拠として裁判所に提出した。原告は、被告によ

		る当該提出が、営業秘密に関する不正競争行為に該当すると主張して、本件情報の使用及び開示の差止めを求めた。 **判示事項：** ・ 違法行為により権利利益を侵害された者が提起する差止め請求の訴えに関する法律関係の性質は不法行為である。したがって、その準拠法については、不法行為に関する準拠法について規定した通則法第 17 条により決定すべきであり、加害行為の結果が発生した地の法に準拠すべきである。 ・ 原告が日本に本店所在地を有する日本法人であること、及び当該情報の使用又は開示が日本国内において行われたことからすると、使用又は開示が行われ、権利侵害という結果が発生した地は日本である。 **【損害賠償請求の準拠法に関するリーディングケース】** 知財高判令和元年 9 月 20 日（平成 30 年（ネ）10049 号） **事案の概要：** スイス法人である原告は、日本法人の被告に対し、被告が、原告とのパートナーシップ契約に基づき開示を受けた営業秘密を不正に使用し、第三者に開示したことが、営業秘密に関する不正競争行為に該当すると主張して、損害賠償を請求した。 **判示事項：** ・ 不正競争は、不法行為としての性質を有するため、その準拠法については、法の適用に関する通則法 17 条が適用される。 ・ 本件の請求は、原告の営業秘密の不正使用及び不正開示が日本国内で行われ、それによって X の営業上の利益が侵害され、又は侵害されるおそれがあることに基づくものであるから、『加害行為の結果が発生した地』である日本の法が準拠法となる。
4-5	国際的・渉外的（transnational）な営業秘密侵	事案の概要：N/A

	害事件において域外適用を認めた裁判例があれば説明してください。	判示事項： 域外適用を認めた根拠法令：
4-6	(i) 国際的・渉外的な民事紛争の解決において、準拠法に関する法令（国際私法）に従って準拠法を選択・適用するのではなく、(a)国内法令の目的・内容からを直接に適用する「絶対的強行法規」(overriding mandatory rules）と明文で規定している法律、(b)絶対的強行法規と明文で規定していないが解釈によって絶対的強行法規とされている法律や、(c)適用範囲について域外適用されることを定めた法律がありますか。 ※絶対的強行法規：法廷地の裁判所に国際裁判管轄が認められた場合には、準拠法の決定手続なしに当然に適用される法廷地の法規 ※域外適用：法廷地の裁判所に国際裁判管轄が認められ、かつ、準拠法が決定されたことを前提に、準拠法の法律が、本来適用対象ではない行為についても適用されること	絶対的強行法規：☒Yes ☐No （Yes の場合） 概要： ・ 労働組合法（7 条） ・ 独占禁止法 ・ 外国為替管理及び外国貿易管理法、外国為替管理令
	(ii) 国際的・渉外的な民事紛争の解決において、「絶対的強行法規」を認めた裁判例があれば、その概要を説明ください。	裁判例：☒Yes ☐No （Yes の場合） ・ **労働組合法第 7 条（東京地決昭和 40 年 4 月 26 日）** **事案の概要：** 申請人は、各国の航空業者へ飛行要員を供給するアメリカ合衆国カリフォルニア州法人である被告との間で、原告が A 社に派遣されて就労する内容の労働契約を締結して、A 社の国内線の機長として就労していた。同契約には、カリフォルニア州の労働災害補償法に準拠する旨の条項が置かれていた。 被告は、原告に対し、原告の抗議活動を理由に、解雇の意思表示をした。 原告は、解雇の無効を主張して、賃金仮払いの仮処分を申請した。 **主たる判示事項：**

		原告に対する解雇の効力は、労務の供給地である日本の労働法を適用して判断すべきであり、当事者が自由に準拠法を選択することを認める法の適用に関する通則法 7 条、8 条 1 項は排除される。 ・ **独占禁止法（東京地決平成 19 年 8 月 28 日）** **事案の概要：** 原告は、被告との間で、被告の代理人として被告の製品を A 社に販売する契約を締結した。同契約には、韓国法を準拠法とする旨の条項が含まれていた。 その後、被告は原告に対し、当該契約について更新拒絶の意思表示をした。 原告は、被告に対し、当該契約の更新拒絶に関して独占禁止法 24 条に基づく差止請求権を有することを理由に、被告は原告による発注を経ずに A に対し直接又は第三者を介して被告製品を販売しないことを仮に定めることを求めた。 **主たる判示事項：** 独占禁止法は、強行法規であるため、当事者間の準拠法に関する合意の有無にかかわらず、本件に適用される。 ・ **外国為替管理及び外国貿易管理法、外国為替管理令（最判昭和 40 年 12 月 23 日民集 19 巻 9 号 2306 頁）** **事案の概要：** アメリカに居住する A は、日本に居住する被告に対し、500 ドルを貸与した。その後 A は日本に居住する原告に対し、当該貸金債権を譲渡した。原告は被告に対し、弁済を求めて訴えを提起した。 **主たる判示事項：** 被告が A から 500 ドルを借り入れた行為及び A が当該債権を原告に譲渡した行為はいずれも、日本の居住者と非居住者との間の債権関係の発生・変更を禁止する旧外国為替及び外国貿易管理法 30 条 3 号並びに旧外国為替管理令 13 条 1 項 1 号に該当するため、これを解除する旧外国為替管理令 13 条 2 項に基づく主務大臣の許可が必要である。しかし、いずれの行為につ

		いても当該許可を得ていないから、上記行為は上記法令に違反するものである。 ※準拠法のいかんを問わず、同法が適用されている。
	(iii)【(i)又は(ii)で Yes の場合】営業秘密侵害に係る訴訟で「絶対的強行法規」が適用される可能性があるでしょうか。	☐Yes ☐No ☒Not Clear （Yes の場合） 裁判例又は議論の状況：

Ⅲ　仮想空間における知的財産の保護制度

NO.	質問	回答
1	**非登録デザイン保護の法的根拠について**	
1-1	非登録デザインを保護する制度があれば、説明してください。	制度の存在：☒Yes ☐No 概要／根拠法令・規定： 意匠登録（意匠権取得）の有無、著作権による保護の有無とは関係なく、先行する他人の商品（日本国内における販売から３年を超えないもの）の形態と実質的に同一の形態の商品を譲渡等する行為は不正競争行為となり、損害賠償・差止請求・刑事罰の対象となる（不正競争防止法第 2 条 1 項 3 号）。 なお、非登録デザインに著作権が認められる場合には、著作権法によっても保護され、そのデザインを複製する行為などは、損害賠償・差止請求・刑事罰の対象となる。ただし、実用に供され、あるいは産業上利用される創作物（いわゆる「応用美術」）は、著作権法で保護されるかは議論があるところであるが、現在のところ、著作権による保護の対象にならないとする裁判例が有力である。
2	**非登録デザインの保護制度について【1-1 で Yes の場合】**	
2-1	(i) 非登録デザインの保護対象は、有体物の商品（tangible products）、無体物の商品（intangible products）のいずれか一方、又は両方が保護されるのでしょうか。	①有体物の商品 有体物の商品の保護：☒Yes ☐No ☐Not Clear 根拠法令、説明：上記 1-1 参照 ②無体物の商品 無体物の商品の保護：☐Yes ☐No ☒Not Clear 根拠法令、説明：不正競争防止法第 2 条 1 項 3 号では保護の対象を「商品の形態」（不正競争防止法 2 条 6 項）と定めている。一般的にはこの「商品の形態」には、無体物の商品は含まれないと解釈されている。しかし、無体物の形状を含むと解釈することも可能であるとの議論がなされている。そのため、無体物の商品が保護される可能性がある。
	(ii) (i)で保護の対象となる／ならない根拠（法令・裁判例）を説明ください。	不正競争防止法第 2 条 1 項 3 号では保護の対象を「商品の形態」（不正競争防止法 2 条 1 項 3 号）と定めて

		いる。この「商品の形態」に、無体物の形状を含むと解釈することも可能と考えられている。そのため、有体物の商品及び無体物の商品の双方が保護される可能性がある。 各法的措置の根拠規定は以下のとおりである。 差止請求：不正競争防止法 3 条 損害賠償請求：不正競争防止法 4 条 刑事罰：不正競争防止法 21 条 2 項 3 号
	(iii) このような模倣事例が問題となった裁判例があれば、その代表的な事案の概要を説明してください。	裁判例の有無：☒Yes ☐No （Yes の場合） 事案の概要： 被告会社が、原告会社の製造販売するソフトウェアの形態を模倣し、教育用教材に関するソフトウェアを販売していた事案（東京地判平成 30 年 8 月 17 日平成 29 年（ワ）第 21145 号） 主な判示事項： 不正競争防止法２条 1 項 3 号の「商品の形態」とは、「需要者が通常の用法に従った使用に際して知覚によって認識することができる商品の外部及び内部の形状並びにその形状に結合した模様、色彩、光沢及び質感」をいう（同条 4 項）。原告のソフトウェアは、タブレットとは別個に経済的価値を有し、独立して取引の対象となるものであることから「商品」ということができ、また、これを起動する際にタブレットに表示される画面や各機能を使用する際に表示される画面の形状、模様、色彩等は「形態」に該当し得る。
2-2	(i) フィジカル/デジタルを交錯する模倣品・酷似品の提供行為[134]も規律の対象となりますか。 例．現実世界における有体物の商品（自動車や衣服）が、仮想空間における無体物としてコピーされる事例（仮想空間における自動車のデザインやアバターの衣服）（又は、その逆の事例）	民事請求（差止請求・損害賠償請求等）：☐Yes ☐No ☒Not Clear 刑事罰等：☐Yes ☐No ☒Not Clear 国境措置：☐Yes ☐No ☒Not Clear

[134] 具体的には、有体物の商品が無体物としてコピーされる事例（又は、その逆の事例）が生じた場合に、当該コピーが規律の対象となっているかという問題をいいます。

	(ii) (i)で保護の対象となる／ならない根拠（法令・裁判例）を説明ください。	商品形態の保護を目的とする不正競争防止法2条1項3号は、他人の商品の形態を「摸倣」した商品を譲渡等する行為を保護の対象としている。この「摸倣」であるというためには、同種の商品間における商品の形態を比較し、商品の形態全体からみて重要な意味を有する部分が実質的に同一であることが必要となる。そのため、衣服のデザインを、アバターの衣服にコピーした場合は、商品の種類が異なるため、「摸倣」に該当しないと考えられている。もっとも、不正競争防止法2条1項3号が、市場の先行利益という新商品開発のインセンティブを保護するものであることを理由として、異なる商品間であっても実質的に同一であるという解釈も可能であるという議論がなされている。そのため、フィジカル/デジタルを交錯する模倣事例でも、保護される可能性がある。
	(iii) このような模倣事例が問題となった裁判例があれば、その代表的な事案の概要を説明してください。	裁判例の有無：☐Yes ☒No （Yes の場合） 事案の概要： 主な判示事項：
2-3	(i) 非登録デザインの保有者（owner）と侵害者の商品販売市場が競合していない場合であっても、模倣・酷似するデザインの商品の提供行為は規制の対象となりますか。 例．自動車のデザインについて、おもちゃの自動車に盗用された、ＰＣ用の画像や仮想空間での画像デザインで盗用された	☒Yes ☐No
	(ii) (i)で保護の対象となる／ならない根拠（法令・裁判例）を説明ください。	被侵害者と侵害者の商品販売市場が競合していない場合には「営業上の利益」の侵害（同法第3等）が存在するかが問題となる。この点について、法令上の規定はなく、裁判例もないが、一般的には商品販売市場が競合していない場合でも、「営業上の利益」（同法第3等）が侵害されるものと考えられている。

	(iii) このような模倣事例が問題となった裁判例があれば、その代表的な事案の概要を説明してください。	裁判例の有無： ☐Yes ☒No （Yes の場合） 事案の概要： 主な判示事項：
2-4	(i) 非登録デザインの保護期間はどのくらいで、保護の始期及び終期の起算点はいつですか。なお、保護の始期については、商品の販売開始よりも前（商品が公表されるより前）の段階で、被登録デザインが保護されるかを説明してください。	保護の期間／根拠法令・規定： 3 年間（不正競争防止法 19 条 1 項 5 号イ） 始期／根拠法令・規定： 明文の規定はない。裁判例においては、商品として販売を可能とする段階に至っており、かつ、それが外見的に明らかになっている場合には保護を受けられると判示した。 終期の起算点／根拠法令・規定： 日本国内において最初に販売された日（不正競争防止法 19 条 1 項 5 号イ）
3	**非登録デザインの立法・法改正について**	
3-1	非登録デザインの保護に関する近年の立法・法改正（amendment of the legislations）に関する動向がもしあれば説明してください。 例. 保護対象（有体物、無体物）、侵害態様（有体物での侵害、無体物・無形空間での侵害）、保護期間等	不競法第 2 条第 1 項第 3 号に関して、改正に向けて以下の事項の検討がなされている。 ・　不競法第 2 条 1 項 3 号の「商品」に無体物の形状も「形態」に該当することを明確にするための法改正 ・　有体物の商品が無体物としてコピーされる事例（又は、その逆の事例）が生じた場合に、当該コピーが「模倣」に該当することを明確にするための法改正 ・　有体物の商品が無体物としてコピーされる事例（又は、その逆の事例）が生じた場合に、被侵害者と侵害者の商品販売市場が競合していない場合に、被侵害者は「営業上の利益」（同法第 3 等）を侵害されたことを明確化するための法改正 ・　非登録デザインの保護について、「国内での最初の販売から３年間」とされているが、３年という期間の延長の要否、保護の始期（販売開始前からの保護の享受の可能性）、終期の起算時期（展示会出品等の取扱）の明確化のための法改正

質問表（英語）

日本語版の質問票を英語版にしたものである。ただし、調査対象国の調査範囲に応じて、実際の調査に際しては、質問範囲や質問内容を一部変更したものもある。

I Prohibited acts based on international commitments (the crime of bribing foreign public officials)

NO.	Question	Answer
1	**System for Combating Bribery of Foreign Public Officials**	
1-1	(i) Are criminal penalties provided as sanctions against natural and juridical persons?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the statutory penalties (fine and/or imprisonment) and the relevant laws, regulations and provisions on which they are based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Details of the Statutory Penalties (Fine and/or Imprisonment) / Laws, Regulations, and Provisions on Which They Are Based: (1) Penalties for Natural Persons A person convicted of bribery shall be punished by imprisonment with labor for not more than 5 years or a fine of not more than 5 million yen, or both (Article 21, Paragraph 2, Item 7 of the Unfair Competition Prevention Act). (2) Penalties for accomplices An accomplice shall be punished by imprisonment with labor for not more than 5 years or a fine of not more than 5 million yen, or both (Article 61 of the Penal Code). Note: A person who is found to have aided and abated the commission of such crime shall be punished by imprisonment with labor for not more than 2 years and 6 months or a fine of not more than 2.5 million yen, or both (Article 63, Article 68, Items 3 and 4 of the Penal Code). (3) Penalties for juridical persons Juridical persons shall be punished by a fine of up to 300 million yen (Article 22, Paragraph 1, Item 3 of the Unfair Competition Prevention Act). Note: Foreign juridical entities under the Companies Act (Article 823 of the Companies Act) are also subject to a dual criminal liability provision, and are liable to a fine of not more than 300 million yen.
1-2	(i) Are administrative penalties provided as sanctions against natural and juridical persons? Administrative penalties include fines and civil sanctions imposed by the administrative branch of government.	☐Yes ☒No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the administrative penalties and the laws, regulations and provisions on which they are based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Administrative penalties: N/A Laws, regulations and provisions on which they are based: N/A
1-3	(i) Are there any sanctions against natural or juridical persons for which a sliding fine scale has been introduced? Sliding fine scale: A system that prescribes a maximum fine amount depending on/ linking to the amount of the wrongful business transaction and the amount of the gain.	☐Yes ☒No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the index factors (e.g., net income, loss, bribe amount,	Index factor: N/A How it is calculated: N/A

	etc.) for calculating the sanction amount and how it is calculated.	
1-4	(i) Is there a statute of limitations period for prosecution against natural and juridical persons?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please explain the limitations period for prosecution against natural and juridical persons and the laws, regulations and provisions on which it is based. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Limitations period for prosecution: 5 years (for both natural persons and juridical persons) Applied laws and provisions: Article 250, Paragraph 2, Item 5 of the Code of Criminal Procedure; Article 21, Paragraph 2, Item 7 and Article 22, Paragraph 3 of the Unfair Competition Prevention Act
	(iii) [If Yes in (i)] Is there a means to interrupt or suspend the limitations period for prosecution against natural and juridical persons?	☒Yes ☐No If Yes, please go to (iv)
	(iv) [If Yes in (iii)] Please explain the grounds for the interruption or suspension and the scope of persons (individual natural person/juridical person/both) to whom the interruption or suspension of the statute of limitations on prosecution extends. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	Grounds for interruption[135]: N/A Grounds for suspension[136]: When a prosecution is filed, when the offender is out of the country, or when the service of a copy of the indictment or the notice of summary order cannot be effectuated because the offender has escaped or is in hiding. Applicable to: For the filing of a public prosecution, the individual natural person and juridical person. For other grounds, the individual person. Laws and provisions on which they are based: Article 254, Article 255, Paragraphs 1 and 2 of the Code of Criminal Procedure
1-5	Please explain, for each of the following cases, the application of the local laws of the country under investigation. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions.	
	(i) Employee A (an individual who is not a citizen of the country under investigation) of a branch or sales office located outside the country under investigation of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the branch or sales office locates or any third country).	Applicable to Company X: ☒Yes ☐No Applicable to Employee A: ☒Yes ☐No Conditions under which the local law applies (e.g., conspiracy with an overseas office): The act constituting part of the crime was committed in the country under investigation or the result constituting part of the crime occurred in the country under investigation (including cases where there is a conspiracy between Employee A and an employee of the headquarters in the country under investigation or an employee of the headquarters who is a national of the country under investigation, and both of them are coprincipals in the conspiracy). Applied laws and provisions: Article 1 of the Penal Code (principle of territoriality), Article 3 of the Penal Code (nationality principal), and Article 60 of the Penal Code (complicity).

[135] When the statute of limitations is interrupted, the limitations period that has been running until that point loses its effect. When the grounds for interruption are removed, the statute of limitations begins to run again from the beginning.

[136] Even if the statute of limitations is suspended, the limitations period that has been running up to that point does not lose its effect. Once the grounds for suspension are removed, the statute of limitations begins to run for the remainder of the limitations period.

	(ii) Employee B (an individual who is not a citizen of the country under investigation) of a foreign subsidiary of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the foreign subsidiary locates or any third country). Note: If the scope of application varies depending on whether it is subsidiary or affiliate, please explain each.	Applicable to Company X: ☒Yes ☐No Applicable to Employee B: ☒Yes ☐No Conditions under which the local law applies (e.g., conspiracy with an overseas office): The act constituting part of the crime was committed in the country under investigation or the result constituting part of the crime occurred in the country under investigation (including cases where there is a conspiracy between Employee B and an employee of the headquarters in the country under investigation or an employee of the headquarters who is a national of the country under investigation, and both of them are coprincipals in the conspiracy). Applied laws and provisions: Article 1 of the Penal Code (principle of territoriality), Article 3 of the Penal Code (nationality principal), and Article 60 of the Penal Code (complicity).
	(iii) Employee C (an individual who is not a citizen of the country under investigation) of a foreign agent of Company X, which has its headquarters in the country under investigation, has offered bribes outside the country under investigation (the country where the foreign agent locates or any third country).	Applicable to Company X: ☒Yes ☐No Applicable to Employee A: ☒Yes ☐No Conditions under which the local law applies (e.g., conspiracy with an overseas office, if any): The act constituting part of the crime was committed in the country under investigation or the result constituting part of the crime occurred in the country under investigation (including cases where there is a conspiracy between Employee C and an employee of the headquarters in the country under investigation or an employee of the headquarters who is a national of the country under investigation, and both of them are coprincipals in the conspiracy). Applied laws and provisions: Article 1 of the Penal Code (principle of territoriality), Article 3 of the Penal Code (nationality principal), and Article 60 of the Penal Code (complicity).
2	**Actual situation regarding measures against the bribery of foreign public officials in the country under investigation**	
2-1	[Only for the US and the UK] Please describe up to five (5) cases of bribery of foreign public officials that were severely sanctioned. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese).	
	Case 1	Case Information: Judgments of the Tokyo District Court, dated January 29, 2009 and March 24, 2009 Outline of the case: In this case, four employees of the prosecuted company, whose head office is located in Tokyo, provided profits of approximately US$600,000 and US$200,000 to a senior executive in charge of a trunk road construction project in Ho Chi Minh City, Vietnam, on two occasions for the purpose of, among other things, rewarding him for having placed an order for consulting services related to the project. ☒ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: The four accused were sentenced to 2 years and 6 months imprisonment, 2 years imprisonment, 1 year and 6 months imprisonment, and 1 year and 8 months imprisonment (each suspended for 3 years), and the prosecuted company was fined

		70 million yen. Applied laws and provisions: (1) Judgment of Tokyo District Court, dated January 29, 2009 For the prosecuted company (Y1), Article 22, Paragraph 1, Item 1, Article 21, Paragraph 1, Item 11, Article 18, Paragraph 1 of the Unfair Competition Prevention Act before its amendment by Law No. 55 of 2006. As for the accused Y2 and Y4, the first part of the judgment was made under Article 60 of the Penal Code, Article 14, Item 3, Article 11, Paragraph 1 of the Unfair Competition Prevention Act before its amendment by Law No. 46 of 1993. The second part of the judgment was made under Article 60 of the Penal Code and Article 21, Paragraph 1, Item 11 and Article 18, Paragraph 1 of the Unfair Competition Prevention Act before its amendment by Law No. 55 of 2006. For the accused Y3, Article 60 of the Penal Code, Article 14, Paragraph 3 and Article 11, Paragraph 1 of the Unfair Competition Prevention Act before its amendment by Law No. 46 of 2003. (2) Judgment of Tokyo District Court, dated March 24, 2009 For the accused Y1, Y2 and Y3, regarding each of their acts as described in the first part of the judgment, Article 60 and Article 246, Paragraph 2 of the Penal Code. As for the accused Y4, Article 60, Article 246, Paragraph 2 of the Penal Code, with regard to the first act of the first part of the judgment. With regard to the second part of the judgment, Article 60 of the Penal Code and Article 21, Paragraph 1, Item 11 and Article 18, Paragraph 1 of the Unfair Competition Prevention Act before its amendment by Law No. 55 of 2006.
	Case 2	Case Information: Judgment of Tokyo District Court dated February 4, 2015 Outline of the case: In this case, a former president, a former international department manager, and a former accounting director of a Tokyo-based company engaged in railroad consulting and other businesses provided money to persons related to a railroad public corporation in connection with ODA projects in Indonesia, Vietnam and Uzbekistan. They provided approximately 70 million yen to a person related to the Vietnam Railway Corporation, 20 million yen equivalent to a person related to the Directorate General of Railways of the Ministry of Transport of Indonesia, and 54.77 million yen equivalent to a person related to the Uzbekistan Railway Corporation. ☒ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: The three accused were sentenced to 2 years imprisonment (suspended for 3 years), 3 years imprisonment (suspended for 4 years), 2 years and 6 months imprisonment (suspended for 3 years), and the prosecuted company was fined 90 million yen. Applied laws and provisions: Details unknown
	Case 3	Case Information: Judgment of Nagoya District Court, dated in January 2020 Outline of the case: In this case, the then-president of a local company in Vietnam that was engaged in the sale of electronic products offered VND1.5 billion (approximately 7.35 million yen) to two senior officials of the Haiphong City Customs Department in order to receive favorable arrangements, including a reduction in the additional fines for customs clearance violations.

		☒ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: The accused was fined one million yen. Applied laws and provisions: Details unknown
	Case 4	Case Information: Outline of the case: N/A ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 5	Case Information: Outline of the case: N/A ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
2-2	**[for jurisdictions other than the US and the UK]** Please describe some of the leading cases of bribery of foreign public officials detected, if any. Three cases or less is fine, and if you would like to explain more than three cases, please add a line. Note: Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese).	
	Case 1	Case Information: Judgment of Tokyo District Court, dated January 29, 2009 and March 24, 2009 Outline of the case: In this case, four employees of the prosecuted company, whose head office is located in Tokyo, provided profits of approximately US$600,000 and US$200,000 to a senior executive in charge of a trunk road construction project in Ho Chi Minh City, Vietnam, on two occasions for the purpose of, among other things, rewarding him for having placed an order for consulting services related to the project. Note: This is the first case in which a dual criminal liability provision for bribery of a foreign public official was applied. ☒ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: The four accused were sentenced to 2 years and 6 months imprisonment, 2 years imprisonment, 1 year and 6 months imprisonment, and 1 year and 8 months imprisonment (each suspended for 3 years), and the prosecuted company was fined 70 million yen. Applied laws and provisions: (1) Judgment of Tokyo District Court, dated January 29, 2009 For the prosecuted company (Y1), Article 22, Paragraph 1, Item 1, Article 21, Paragraph 1, Item 11, Article 18, Paragraph 1 of the Unfair Competition Prevention Act before its amendment by Law No. 55 of 2006. As for the accused Y2 and Y4, the first part of the judgment was made under Article 60 of the Penal Code, Article 14, Item 3, Article 11, Paragraph 1 of the Unfair Competition Prevention Act before its amendment by Law No. 46 of 1993. The second part of the judgment was made under Article 60 of the Penal Code and Article 21, Paragraph 1, Item 11 and Article 18, Paragraph 1 of the Unfair Competition Prevention Act before its amendment by Law No. 55 of 2006.

		For the accused Y3, Article 60 of the Penal Code, Article 14, Paragraph 3 and Article 11, Paragraph 1 of the Unfair Competition Prevention Act before its amendment by Law No. 46 of 2003. (2) Judgment of Tokyo District Court, dated March 24, 2009 For the accused Y1, Y2 and Y3, regarding each of their acts as described in the first part of the judgment, Article 60 and Article 246, Paragraph 2 of the Penal Code. As for the accused Y4, Article 60, Article 246, Paragraph 2 of the Penal Code, with regard to the first act of the first part of the judgment. With regard to the second part of the judgment, Article 60 of the Penal Code and Article 21, Paragraph 1, Item 11 and Article 18, Paragraph 1 of the Unfair Competition Prevention Act before its amendment by Law No. 55 of 2006.
	Case 2	Case Information: Outline of the case: N/A ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
	Case 3	Case Information: Outline of the case: N/A ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Sanctions: Applied laws and provisions:
2-3	Please explain the current trends and developments in detection and sanctions in cases involving bribery of foreign public officials.	According to the OECD Phase 4 Report, the OECD assessed the following ・ There are no cases in which the amount of fines or imprisonment is close to the maximum limit. All prison sentences are suspended. ・ In the Futaba case, for example, the statute of limitations period was completed and the company was not punished (Phase 4 Report, Paragraph 22). ・ As for jurisdiction, there is no case in which a conspiracy between an employee of the head office in Japan and an employee of an overseas subsidiary, etc. was found (Phase 4 Report, Paragraphs 247-250, Follow-up Recommendation 18g(iii))
2-4	[Only for Australia, South Korea and France] (i) Have any of the cases of bribery of foreign public officials been subject to a sliding scale of fines?	☐Yes ☒No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please describe a typical case. <u>Note:</u> Please clearly indicate laws and provisions on which they are based. Please also share the wording of such provisions and (if available) the text of the judgement (preferably in English or Japanese). <u>Note:</u> If sanctions were imposed for the acts of a sales office, subsidiary, or agent, please also specify the laws, regulations and provisions on which they are based.	Case Information: Outline of the case: N/A Type of sanction: ☐ Criminal penalty ☐ Administrative penalty ☐ Other ( ) Fine amount: Factors considered in the calculation of the fine amount: How the amount of the fine was calculated: Laws and provisions on which they are based: Note: If you have more than one case that should be mentioned, please add them below.

2-5	(i) Have any of the cases of bribery of foreign public officials involved the extraterritorial application[137] of the local laws of the country under investigation?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please describe a typical case. In particular, if there are any cases of bribery by foreign employees, agents, etc., please give priority to such cases.	Case Information: Outline of the case: In this case, the then-president of a local company in Vietnam which was engaged in the sale of electronic products offered VND1.5 billion (approximately 7.35 million yen) to two senior officials of the Haiphong City Customs Department in order to receive favorable arrangements, including a reduction in the additional fines for customs clearance violations (Judgment of Nagoya District Court, dated January 2020). The accused was fined one million yen. Key judicial decisions on governing law and jurisdiction: Details unknown Note: If you have more than one case that should be mentioned, please add them below.

[137] This is a case in which the laws of a country are applied to acts committed outside that country, whereas the general rule is that the laws of a country are applied within the territory of that country and their effect does not extend to foreign countries.

II Burden of Proof in relation to trade secret case

NO.	Question	Answer
1	**Procedure for collection of evidence in cases involving the infringement of trade secrets**	
1-1	(i) Please explain the following regarding the procedures for collection of evidence in cases involving the infringement of trade secrets. Note: If the system is not available in civil litigation, but only in intellectual property litigation, please state as such.	
	(ii) Please provide an overview of the procedures for collection of evidence held by the adverse party in civil proceedings. Examples: information disclosure system, court evidence preservation procedures, commissioning of examinations, procedures for information disclosure through the court such as an order to submit documents (discovery system in the U.S., disclosure system in the UK), procedures to confirm the facts through court-appointed experts (investigation system in Germany)	Overview of the system / laws and regulations on which they are based: **[Available for civil litigation in general]** ・ **Inquiry after providing an advance notice and before filing an action (Under Article 132-2 of the Code of Civil Procedure)** A person that intends to file an action, by providing advance notice regarding the filing of the action, may, before filing the action, request the would-be defendant in the action to provide written particulars that will clearly be necessary for preparing allegations or proof in the action. ・ **Dispositions on the collection of evidence prior to filing an action (Article 132-4 of the Code of Civil Procedure)** The court may, upon receiving a petition from a person providing advance notice, and before the action is filed, reach a certain disposition in connection with the collection of evidence. The evidence shall clearly be necessary for proof in the action and be difficult to be collected by the petitioner. ・ **Preservation of Evidence (Article 234 of the Code of Civil Procedure)** If the court finds circumstances to be such that, unless the examination of evidence is conducted in advance, it will be difficult to use the evidence, the court, upon petition, may conduct an examination of the evidence. ・ **Inquiry by a party (Article 163 of the Code of Civil Procedure)** While litigation is pending, a party to the litigation may request the adverse party to provide written particulars that will be necessary for preparing allegations or proof. ・ **Order to submit documents (Article 219 of the Code of Civil Procedure)** If the court finds there to be grounds for a petition by a party to litigation, it orders the person in possession of a document to submit the same. ・ **Commissioning the sending of a document (Article 226 of the Code of Civil Procedure)** The court may, upon receiving a petition from a party to litigation, request the person in possession of a document to send the same. ・ **Order to present an object for inspection (Articles 232 and 223 of the Code of Civil Procedure)** If the court finds there to be grounds for a petition by a party to litigation, it may order the person in possession of an object to present the same. ・ **Commissioning the sending of an object (Article 232 and 226 of the Code of Civil Procedure)**

		The court may, upon receiving a petition from a party to litigation, request the person in possession of an object to send the same. ・ **Commissioning examinations (Article 186 of the Code of Civil Procedure)** The court may commission a government or public office or any other organization to conduct the necessary examinations. ・ **Inspection and copying of case records (Article 91 of the Code of Civil Procedure)** Any person may file a request to inspect a case record, and the parties to the cases or a third party that makes a prima facie showing of interest in the cases may file a request to copy the case record. ・ **Official claims (Articles 12-3(2) and 20(4) of the Residential Basic Book Act)** Persons with certain qualifications (including attorneys at law) may, in certain cases, obtain a certificate of residence and a certificate of family register for the client in a case taken by the attorney. ・ **Inquiry through the Bar Association (Article 23-2 of the Attorneys Act)** An attorney may make a request, through the bar association of which they hold a membership, to public offices or public or private organizations seeking the provision of information necessary for a case taken by the attorney. **[Systems available only for litigation involving the infringement of a patent or involving acts of unfair competition]** ・ **Obligation to Clarify Specific Circumstances (Article 104-2 of the Patent Act and Article 6 of the Unfair Competition Prevention Act)** In litigation involving the infringement of a patent or business interests through unfair competition, if the adverse party denies the specific circumstances of the thing that the patentee or the person who claims to be infringed upon asserts to be the infringing article or process, the adverse party should clarify the specific circumstances of the adverse party's own action. ・ **Order to submit documents that are needed to prove the infringement or to calculate the damage caused by the infringement (Article 105 of the Patent Act and Article 7 of the Unfair Competition Prevention Act)** In litigation involving the infringement of a patent or business interests through unfair competition, the court may, at the petition of a party, order a party to submit documents that are needed to prove the infringement or to calculate the damage caused by the infringement. ・ **Expert opinion for calculation of damages (Article 105-2-12 of the Patent Act and Article 8 of the Unfair Competition Prevention Act)** In litigation involving the infringement of a patent or business interests through unfair competition, if the court orders an expert opinion in order to calculate the damages caused by the infringement, the parties shall provide an explanation to the expert on the matters necessary to form an expert opinion. ・ **Investigations (Article 105-2 - to 105-2-10 of the Patent Act)** In litigation involving the infringement of a patent, the court may, at the petition of a party, designate an investigator and order the investigator to enter the adverse party’s factory or any other facility,

		to investigate an item that the adverse party owns or manages, and to submit a report (the system similar to "inspection" under German Patent Act.).
	(iii) Please provide an overview of the procedures for collection of evidence hold by the accused or any third party in criminal proceedings. Example: criminal investigation by a criminal investigation agency, seizure of evidence.	Overview of the system / laws and regulations on which they are based: **[Non-compulsory investigations]** ・ **Interrogation and interview (Articles 198(1) and 223(1) of the Code of Criminal Procedure)** Criminal investigation agencies may interview a suspect or persons other than the suspect in connection with a crime. ・ **Retention (Article 221 of the Code of Criminal Procedure)** Criminal investigation agencies may acquire the possession of articles which have been left or those which have been voluntarily produced, excluding the possession of others with no legal force. ・ **On-the-spot investigation (Article 104 of the Code of Conduct Concerning Criminal Investigations)** Criminal investigation agencies may recognize the shape of places, objects or persons through the five senses with no legal force. ・ **Inquiry to public offices or public or private organizations about necessary matters (Article 197(2) of the Code of Criminal Procedure)** Criminal investigation agencies may request public offices or public or private organizations to provide necessary information. **[Compulsory investigations]** ・ **Seizure (Articles 218(1) and 220(1) of the Code of Criminal Procedure)** Criminal investigation agencies may, upon a warrant being issued by a judge or when they arrest a suspect, compulsorily acquire the possession of objects, excluding the possession of others. ・ **Search (Article 218(1) and 220(1) of the Code of Criminal Procedure)** Criminal investigation agencies may, upon a warrant issued by a judge or when they arrest a suspect, compulsorily search certain places to find objects or persons. ・ **Inspection (Article 218(1) and 220(1) of the Code of Criminal Procedure)** Criminal investigation agencies may, upon a warrant being issued by a judge or when they arrest a suspect, compulsorily recognize the shape of places, objects, or persons through the five senses. ・ **Interception of electronic communications (Article 222-2 of the Code of Criminal Procedure and Article 3(1) of the Act on Communications Interception for Criminal Investigations)** Criminal investigation agencies may, upon a warrant being issued by a judge, intercept communications between other persons related to the specific crime without the consent of either party.
	(iv) Please provide an overview of the procedures for collection of evidence in administrative proceedings. Example: on-site inspections by	Overview of the system / laws and regulations on which they are based: N/A

	administrative organs.	
	(v) Are the procedures for collection of evidence applicable for evidence located outside the country under investigation?	The procedures for collection of evidence in civil proceedings: ☐Yes ☒No The procedures for collection of evidence in criminal proceedings: ☐Yes ☒No The procedures for collection of evidence in administrative proceedings: ☐Yes ☒No
	(vi) Please explain the relationship between civil proceedings and criminal proceedings regarding the procedures for collection of evidence. Examples: Whether or not the parties may request the disclosure and submission of evidence collected in criminal proceedings in civil proceedings.	Overview: Parties may submit records of criminal trials and records of cases of non-prosecution obtained through inspection and may copy or commission the sending of documents in civil proceedings. However, evidence collected through criminal proceedings may not be available in civil proceedings. Relevant laws and provisions: Inspection and copying of records of criminal trials: Article 53 of the Code of Criminal Procedure and Article 1(1) of the Rules of Administration for Records Inspection Copying of records of cases of non-prosecution: The proviso to Article 47 of the Code of Criminal Procedure Commissioning the sending of documents regarding records of criminal trials: Article 226 of the Code of Civil Procedure.
1-2	(i) Is there any system to reduce the burden of proof of the plaintiff (i.e. rights owners or infringed party) with respect to proving infringement of intellectual property rights in intellectual property litigation (especially in litigation involving the infringement of a patent)?	☒Yes ☐No If Yes, please go to (ii).
	(ii) [If Yes in (i)] Please provide an overview of the system.	Overview of the system: Relevant laws and regulations: **[Patent Act]** ・ **Presumption of production process (Article 104)** If a patent is granted on an invention that is a process for producing a product and the product was not publicly known in Japan prior to the filing of the patent application, any article identical to that product is presumed to have been produced using the patented process. ・ **Obligation to clarify specific circumstances (Article 104-2)** Described in 1-1 (j) ・ **Order to submit documents that are needed to prove the infringement (Article 105)** Described in 1-1 (j)
1-3	(i) Is there any system to reduce the burden of proof of the plaintiff (i.e. trade secret owners or infringed party) with respect to proving infringement of trade secrets in litigation involving the infringement of trade secrets?	☐Yes ☐No If Yes, please go to (ii).
	(ii)[If Yes in (i)] Please provide an overview of the system.	Overview of the system / Relevant laws and regulations: ・ **Presumption of action of using technical secrets by a person who acquires the same (Article 5-2 of the Unfair Competition Prevention Act)** If all of the following (i) to (iii) are proven, the alleged infringer is presumed to be unfairly using technical secrets. (i) The relevant information shall be technical information, such as

		regarding the production process. (ii) The alleged infringer unfairly obtains the secrets as provided in Article 2(1)(iv), (v) or (viii). (iii) The alleged infringer conducts acts specified by a Cabinet order as being acts from which it can be clearly understood that the technical secrets have been used. ・ **Obligation to clarify specific circumstances (Article 6)** As described in 1-1 (j) ・ **Order to Submit Documents that are needed to prove the infringement (Article 7)** As described in 1-1 (j)
2	**Calculation and Estimation System of the Amount of Damages in cases of the infringement of trade secrets**	
2-1	(i) In Intellectual Property Law in general (especially in litigation involving the infringement of a patent), who bears the burden of proving damage, the plaintiff or the defendant? Also, how is the amount of damage proven?	Burden of proving the amount of damages: Plaintiffs Note: If Plaintiffs, please answer (ii) and 2-2. Methods to prove the amount of damage: Plaintiffs primarily prove the amount of damage either by utilizing the provisions of (iii) below or by calculating their own lost earnings.
	(ii) [If Plaintiffs in (i)] If plaintiffs bear the burden of proving the amount of damage, is there any system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any)?	☒Yes ☐No If Yes, please go to (iii)
	(iii) [If Yes in (ii)] Please provide an overview of the system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any).	Overview of the system / Relevant laws and regulations: **[Patent Act]** ・ **Presumption of the amount of damage (plaintiffs are able to select one of the following))** - The method for calculating lost earnings as damages is stipulated (Article 102(1)). - The amount of the profit from the infringement received by infringers is presumed to be the amount of damage suffered by the infringed party (Article 102(2)). - The patentee may seek reasonable license fees for the infringed patented invention as the amount of damage (102(3) and 102(4)). ・ **Order to submit documents that are needed to calculate the damage caused by the infringement (Article 105(1))** As described in 1-1(i) ・ **Expert opinion for calculation of damages (Article 105-2-12)** As described in 1-1(i) ・ **Approval of reasonable amount as the amount of damages (Article 105-3)** If, in litigation involving the infringement of a patent, damage is found to have been incurred but, due to the nature of the facts, it is extremely difficult to prove the facts that need to be proved in order to prove the amount of the damage, the court may approve a reasonable amount as the amount of the damage.
2-2	(i) If plaintiffs bear the burden of proving the amount of loss or damage in litigation involving the infringement of trade secrets, is there any system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any)?	☒Yes ☐No If Yes, please go to (ii).

	(ii) [If Yes in (i)] Please provide an overview of the system to reduce the plaintiff's burden of proof (including statutory damages, multiple damages, or punitive damages if any).	Overview of the system / Relevant laws and regulations: ・ **Presumption of amount of damage (plaintiffs are able to select one of the following)** - The method for calculating lost earnings as damages is stipulated for certain acts of unfair competition (Article 5(1) of the Unfair Competition Prevention Act). - The amount of profit from the infringement received by the infringers is presumed to be the amount of damage suffered by the infringed party (Article 5(2)). - For certain acts of unfair competition, the infringed party may seek reasonable royalties for each act as the amount of damage (Articles 5(3) and 5(4)). ・ **Order to submit documents that are needed to calculate the damage caused by the infringement (Article 7)** Described in 1-1(i) ・ **Expert opinion for calculation of damages (Article 8)** Described in 1-1(i) ・ **Approval of reasonable amount as the amount of damages (Article 9)** If, in litigation involving the infringement of business interests through unfair competition, damage is found to have been incurred but, due to the nature of the facts, it is extremely difficult to prove the facts that need to be proved in order to prove the amount of the damage, the court may approve a reasonable amount as the amount of the damage.
2-3	Please provide the information of the leading decisions of trade secret cases that the court awarded high amount of damages.	Case Number: Date of Decision: Awarded Amount: The decisions in Japanese trade secret infringement litigation in which courts have ordered the payment of high damages are as follows: - Trade secret regarding technology: JPY 1.23 billion (Judgement of Intellectual Property High Court, January 31, 2020) - Trade secret regarding business information: JPY 139 million and 230 thousand (Judgement of Osaka District Court, April 11, 2013)
3	**Protection on Licensees involving Trade Secrets**	
3-1	(i) Is there any system to protect a licensee in Intellectual Property Law in general (especially patent rights or copyrights) where rights owners have assigned their intellectual property rights to a third party or become bankrupt?	☒Yes ☐No If Yes, please go to (ii)
	(ii) [If Yes in (i)] Please provide an overview of the system to protect licensees.	Overview of the system / Relevant laws and regulations: **[In the event that rights owners have assigned intellectual property rights to a third party]** Licensees may claim a non-exclusive license or provisional non-exclusive license against an assignee of intellectual property rights without registration (Articles 99 and 34-5 of the Patent Act). **[In the event that rights owners have become bankrupt]** Bankruptcy trustees may not terminate license agreements (Article 56(1), 53(1) and 53(2) of the Bankruptcy Act).
3-2	(i) Is there any system to protect licensees involving trade secrets if owners of the trade secrets assigned their business or became bankrupt?	☐Yes ☒No If Yes, please go to (ii).

	(ii) [If Yes in (i)] Please provide an overview of the system to protect licensees.	Overview of the system /Relevant laws and regulations:
4	**International jurisdiction and governing law in cases of transnational infringement of trade secrets**	
4-1	(i) Please explain the laws and regulations providing the basic rules on how to determine international jurisdiction and an overview thereof.	Relevant laws and regulations: Code of Civil Procedure How to determine: If any of the following applies, plaintiffs may file an action in a Japanese court. ・ The defendant's domicile or principal office is located in Japan (Article 3-2). ・ Requirements specified according to the type of cases are satisfied (Article 3-3). ・ Any one claim over which Japanese courts have jurisdiction is closely connected with another claim regarding a joint claim (Article 3-6). ・ The parties agreed to file an action in a Japanese court (Article 3-7). The defendant fails to claim that Japanese courts have no jurisdiction (Article 3-8).
	(ii) Is there any special provisions on torts regarding how to determine international jurisdiction. If any, please provide the overview..	☒Yes ☒No (If Yes) Overview: If torts are committed or result from torts occurring in Japan, an action may be filed in a Japanese court (Article 3-3(viii) of the Code of Civil Procedure).
	(iii) Is there any difference in the method for determining international jurisdiction between claims for damages and injunctions?	☐Yes ☒No (If Yes) Overview:
	(iv) Please provide an overview of special provisions on the infringement of trade secrets regarding the method for determining international jurisdiction.	☐Yes ☒No (If Yes) Overview:
4-2	(i) Please explain laws and regulations providing the basic rules on how to determine applicable law and an overview thereof.	Relevant laws and regulations: Act on General Rules for Application of Laws How to determine: The law to be governed is stipulated for each type of legal relationship.
	(ii) Please provide an overview of any special provisions on the rules on how to determine applicable law with respect to tort liability.	☒Yes ☐No (If Yes) Overview: The formation and effect of a claim arising from a tort is governed by the law of the place where the result of the wrongful act occurred, in principle (Article 17 of the Act on General Rules for Application of Laws).
	(iii) Is there any difference in the method for determining an applicable law between claims for damages and injunctions? If yes, please provide an overview.	☐Yes ☒No (If Yes) Overview:
	(iv) Please provide an overview of any special provisions on the rules on how to determine applicable law with respect to the infringement of trade secrets.	☐Yes ☒No (If Yes) Overview:
4-3	Please explain the relationship between	First, if the action is filed in Japanese courts, a determination is

	the rules of governing law and international jurisdiction. Examples: The law of the forum applies if the forum has jurisdiction, the forum has jurisdiction if the law of the forum should apply, the applicable law (the law of the forum or a foreign law) is determined after determining whether the forum has jurisdiction.	made as to whether Japanese courts have jurisdiction based on provisions of the Japanese Code of Civil Procedure which is the law of the forum. If Japanese courts is found to have jurisdiction, the applicable law (Japanese law or foreign law) is determined in accordance with the provisions of the Private International law of Japan, the place of the forum.
4-4	Please provide overviews of some leading cases and the summaries of the judgments in relation to the rules of methods for determining international jurisdiction and the governing law.	**[Leading case regarding international jurisdiction]** Judgment of Supreme Court, April 24, 2014, 68-4 Minshu 329 **Overview of the case:** The plaintiff disclosed an eyebrow treatment technology to Y1 and Y2, who were employees of Company A, under a contract with the company regarding the grant of exclusive rights to use in Japan. Y1 and Y2 thereafter established Company Y3 and Y3 opened similar salons in Japan after Y1 and Y2 had retired from the company. The plaintiff filed an action in a U.S. court seeking damages and an injunction against unauthorized disclosure and use of the technology by Y1, Y2 and Y3, and the claims were allowed. The plaintiff then sought an execution judgment for a judgment of a foreign court in a Japanese court. **Contents of the judgment:** The provision of international jurisdiction over litigation relating to torts (Article 3-3(viii) of the Code of Civil Procedure) applies not only to litigation based on torts as prescribed in the Civil Code, but also to litigation relating to claims for injunctions filed by persons whose rights and interests have been or are threatened to be infringed upon due to illegal acts. **[Leading case regarding the law governing claims for injunctions]** Judgment of Intellectual Property High Court, January 15, 2018 **Overview of the case:** The defendant, a Japanese corporation, obtained documents containing information on the products of the plaintiff, a Japanese corporation (the "Information"), from a foreign company outside Japan, and submitted them to the court as evidence in separate litigation. The plaintiff sought an injunction against the use and disclosure of the information, claiming that the submission by the defendant constituted an act of unfair competition concerning trade secrets. **Contents of the judgment:** ・ The nature of the legal relationship concerning litigation for an injunction filed by a person whose rights and interests have been infringed upon by an illegal act is a tort. Therefore, the applicable law should be determined in accordance with Article 17 of the Act on General Rules for Application of Laws, which stipulates the governing law regarding torts, and it should be governed by the law of the place where the result of the wrongful act occurred. ・ Judging from the fact that the plaintiff was a Japanese corporation with its head office in Japan and the information was used or disclosed in Japan, the place where the result of the infringement of rights occurred by the use or disclosure thereof was Japan. **[Leading case regarding the law governing claims for damages]** Judgment of Intellectual Property High Court, September 20, 2019 **Overview of the case:**

		The plaintiff, a Swiss corporation, sought damages against the defendant, a Japanese corporation, claiming that unauthorized use and disclosure to a third party of trade secrets disclosed under the partnership agreement with the plaintiff by the defendant constitutes an act of unfair competition concerning trade secrets. **Contents of the judgment:** ・ Since acts of unfair competition have the nature of a tort, Article 17 of the Act on General Rules for Application of Laws applies to unfair competition. ・ Since the claim in this case was based on the fact that the defendant had unfairly used and disclosed the plaintiff's trade secrets in Japan and the plaintiff's business interests had been infringed upon or were threatened to be infringed upon by the use and disclosure, it was governed by the law of Japan where the result of the wrongful act occurred.
4-5	Please explain some leading cases which found extraterritorial application in international and transnational litigation involving the infringement of trade secrets.	Case Information: Overview of the case: N/A Summary of the judgment: Applied laws and regulations that permit extraterritorial application:
4-6	(i) For determining the governing law, Is there any legislation that (a) provide for an "overriding mandatory rule" applicable to international/cross boarder civil disputes overriding the general rules (international private law) of governing laws; (b) does not explicitly provides such overriding mandatory rules but are interpretated as such by the court; or (iii) provides any extraterritorial effects * Overriding mandatory rule: The legislation in the jurisdiction directly without application of the general rules of the governing laws in the jurisdiction. * Extraterritorial effects: The law applies to the act conducted out of the jurisdiction.	(a) ☒Yes ☐No (b) ☒Yes ☐No (c) ☒Yes ☐No [If Yes] Overview: ・ Labor Union Act ・ Antimonopoly Law Foreign Exchange Control and Foreign Trade Control Act, Foreign Exchange Control Order
	(ii) Please provide overviews of some court cases where the court judged that a specific provision was an "overriding mandatory rule" in resolving international and transnational civil disputes.	Precedent: ☒Yes ☐No [If Yes] **Case Information:** ・ **Article 7 of the Labor Union Act (Judgment of Tokyo District Court, April 26, 1965)** **Overview of the case:** The applicant entered into an employment contract with the defendant, a California corporation that supplies flight personnel to airlines in each country, under which the applicant had been dispatched to Company A as a captain on Company A's domestic flights. The contract contained a clause stating that it was governed by the Industrial Accident Compensation Act of California. The defendant expressed its intention to dismiss the plaintiff (applicant) to him because of his protest activities. The plaintiff (applicant) filed a petition for a provisional disposition seeking the provisional payment of wages, claiming that the dismissal was invalid. **Summaries of the judgment:** The effect of the dismissal on the applicant should be judged by applying the labor laws of Japan, the place where the labor is supplied, and Articles 7 and 8(1) of the Act on General Rules for

		Application of Laws, which allow the parties to freely choose the applicable law, are excluded. **Case Information:** ・ **Antimonopoly Law (Judgment of Tokyo District Court, August 28, 2007)** **Overview of the case:** The plaintiff entered into a contract with the defendant to sell the defendant's products to Company A as the defendant's agent. The contract contained a clause stating that it was governed by Korean laws. Subsequently, the defendant expressed their intention to the plaintiff to refuse to renew the contract. The plaintiff demanded a provisional determination that the defendant would not sell the defendant's products directly or through a third party to Company A without an order placed by the plaintiff on the grounds that the defendant had the right to demand an injunction under Article 24 of the Antimonopoly Law with respect to the refusal to renew the contract. **Summaries of the judgment:** Since the Antimonopoly Law is a mandatory law, it applies to this case regardless of whether or not there is an agreement on the governing law between the parties. **Case Information:** ・ **Foreign Exchange Control and Foreign Trade Control Act, Foreign Exchange Control Order (Judgment of Supreme Court, December 23, 1965, 19-9 Minshu 2306)** **Overview of the case:** Person A, living in the U.S., loaned the defendant, living in Japan, $500. Thereafter, Person A assigned the loan claim to the plaintiff, who lives in Japan. The plaintiff filed an action against the defendant seeking payment. **Summaries of the judgment:** The defendant's act of borrowing $500 from Person A and Person A's act of assigning the claim to the plaintiff both fell under Article 30(iii) of the former Foreign Exchange and Foreign Trade Control Law and Article 13(1)(i) of the former Foreign Exchange Control Order, which prohibit the occurrence and change of a claim relationship between a Japanese resident and a non-resident. Therefore, permission from the competent Minister under Article 13(2) of the former Foreign Exchange Control Order was required in order to remove this prohibition. However, since the permission had not been obtained for any of the above acts, the above acts were in violation of the above laws and regulations. Note: The said law applies regardless of the governing law.
	(iii) Is there any possibility that overriding mandatory rules would apply to trade infringement cases?	☐Yes ☐No ☒Not Clear [If Yes] Reason (Precedents or arguments):

III IP Protection on Digital World

NO.	Questions	Answer
1	**Legal ground for protection on non-registered design**	
1-1	Please explain the legal basis for non-registered design protections, if any.	Legal basis: ☒Yes ☐No Overview / Legal Basis and Regulations: The act of transferring a good that is substantially identical to the form of another's product constitutes an act of unfair competition and is subject to claims for damages, injunctions and criminal penalties (Article 2, Paragraph 1, Item 3 of the Unfair Competition Prevention Act). In the event that copyright is granted for a non-registered design, it is also protected under the Copyright Act, and acts such as reproduction of the design are subject to claims for damages, injunctions and criminal penalties. However, it is a matter of debate as to whether creative works for practical use or industrial use (so-called "applied art") are protected by the Copyright Act. At present, the prevailing court decision is still that they are not subject to protection by copyright.
1-2	(i) Does the protection of non-registered designs cover tangible goods AND/OR intangible goods?	(i) Tangible goods Protection of goods: ☒Yes ☐No ☐Not Clear Overview/Legal Basis and Regulations: Please see 1-1 above (ii) Intangible goods Protection of goods: ☐Yes ☐No ☒Not Clear
	(ii) Please describe the legal basis of your answer to the question (i).	The Unfair Competition Prevention Act defines the object of protection as “the form of the goods” (Article 2(1)(iii)). Generally, this "form of goods" does not include intangible goods. However, it has been argued that it can also be interpreted to include the form of an intangible object. As such, intangible goods may be protected.
	(iii) If there is any leading case, please provide the summary of the case.	Court cases: ☒Yes ☐No (If Yes) Overview of the case: A case in which the defendant company imitated the form of software related to educational materials manufactured and sold by the plaintiff company (Tokyo District Court, August 17, 2018, Case No. 2018 (Wa) 35263). The "form of goods" referred to in Article 2(1)(iii) of the Unfair Competition Prevention Act means "the external and internal shape of the goods and the pattern, color, luster, and texture combined with such shape that consumers can recognize by perception when they use the goods in accordance with their ordinary usage" (Article 2(4)). The court found that the plaintiff's software can be considered "goods" because it has economic value separate from the tablet and is the subject of independent transactions, and the shape, pattern, color, etc. of the screen that appears on the tablet when it is activated and the screen that appears when each function is used can be considered "form”.

2-2	(i) Is the act of providing identical or substantially similar goods subject to the restriction between real world and digital world, i.e., is the design of tangible products protected if the design is copied for digital products, or vice versa?	Civil claim (demand for injunction, demand for compensation for damages, etc.): ☐Yes ☐No ☒Not Clear Criminal punishment, etc. : ☐Yes ☐No ☒Not Clear Border measures : ☐Yes ☐No ☒Not Clear
	(ii) Please explain the legal ground for your answer in (i) that the protection is/is not applicable (laws, regulations, or court cases).	The Unfair Competition Prevention Act defines the object of protection as "the form of goods" (Article 2 (1) (iii)). It is considered possible to interpret "the form of goods" to include the form of intangible objects. Therefore, both tangible goods and intangible goods have the possibility of being protected by the Unfair Competition Prevention Act. The basis for each legal action is as follows. Demand for injunction: Article 3 of the Unfair Competition Prevention Act Claim for damages: Article 4 of the Unfair Competition Prevention Act Criminal punishment: Article 21(2)(iii) of the Unfair Competition Prevention Act
	(iii) Please provide an overview of any leading court cases.	Court cases: ☒Yes ☐No (If Yes) Overview of the case:
2-3	(i) Even if the infringer's product is not competing with the products of the owner of the non-registered design, is the act of providing identical or substantially similar goods subject to the restriction? Example: A car design is misused for a toy car or in a virtual space.	☒Yes ☐No
	(ii) Please explain the legal ground for your answer in (i) that the protection is/is not applicable (laws, regulations, court cases).	Where the product sales markets of the infringing party and the infringed party do not compete, the question becomes whether there is an infringement of "business interests" (Article 3). Although there are no legal provisions or judicial precedents on this point, it is generally considered that "business interests" are infringed upon even when there is no competition in the product sales market.
	(iii) Please provide an overview of any leading court cases.	Court cases: ☒Yes ☐No (If Yes) Overview of the case:
2-4	Please explain the duration (commencement and expiration) of the protection of non-registered designs. As for the commencement of protection, please clarify if the protection is available prior to the first sale (or being made public).	Duration / legal basis and regulations: For three years (Article 19(1)(v)(a) of the Unfair Competition Prevention Act) Commencement of protection / legal basis and regulations: There is no clear provision. The court judged that protection is available if the product has reached the stage where it can be sold as a good and if it is clear from the appearance of the product. Expiration of protection / legal basis and regulations: For three years from the date of first sale in Japan (Article 19(1)(v)(a) of the Unfair Competition Prevention Act)

3	New legislation or amendment of the laws relating to non-registered designs	
3-1	Please explain the current trends regarding the amendment of legislation with regard to the protection of non-registered designs. Example: Protected subject matter (tangible or intangible products), scope of infringement (infringement of tangible products, intangible products or digital spaces), duration of protection.	With regard to Article 2(1)(iii) of the Unfair Competition Prevention Act, the following matters have been examined for revision. ・Amendments to the Act to clarify that the form of intangible objects also falls under the category of "form" in Article 2(1)(iii) of the Unfair Competition Prevention Act. ・Amendments to the law to clarify that, in cases where tangible goods are copied as incorporeal goods (or vice versa), such copying falls under the category of "imitation." ・Amendments to the Act to clarify that, in cases where tangible goods are copied as incorporeal goods (or vice versa), if there is no competition between the infringed party and the infringer's market for selling goods, the infringed party has suffered an infringement of its "business interests" (Article 3). ・Amendments to the Act regarding non-registered designs below; i. Extend duration of protection for three years ii. Clarify that commencement of protection before the start of sales iii. Clarify that the cause for the commencement of protection includes when the design was displayed at the exhibition.

以上