Never to Whistleblow
JFBA’s Approach

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When to whistleblow – a lawyer’s guide
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The Japanese Attorney System

Practicing Attorneys (*bengoshi*)

- Mission of Practicing Attorneys (Art. 1)
  - Protect fundamental human rights
  - Realize social justice

- Practice of Law (Art. 3)
  - Litigation, Non-contentious matters
  - Administrative proceedings
  - Other legal matters

- Unauthorized practice of Law = Criminal (Art. 72)
  - Legal matters are reserved to practicing attorneys
The Japanese Attorney System

- Practicing Attorneys *(Bengoshi)*
  - Unlimited Scope of Legal services, including representation at all levels of court
- Tax Attorneys *(Zeirishi)*
- Patent Attorneys *(Benrishi)*
- Judicial Scriveners *(Shiho Shoshi)*
- Administrative Scriveners *(Gyosei Shoshi)*

Limited Scope of Legal Services
The Japanese Attorney System

Self Governance

- JFBA is authorized to examine attorney qualifications
- JFBA membership is mandatory to practice law
- JFBA is authorized to take disciplinary actions
- JFBA is responsible for supervision of practicing attorneys
  No supervision by any governmental authority
- JFBA operates entirely on its own dues and revenues
Japan Federation of Bar Associations

Members (as of October 1, 2011)

- Local Bar Associations 52
- Practicing Attorneys 30,529 (Bengoshi)
- Legal Profession Corporations 538
- Registered Foreign Lawyers 363 (Gaikokuho-Jimu-Benjoshi)
Japan Federation of Bar Associations

Organization

Committees
- Statutory Committees
- Standing Committees
- Special Committees

Legislative Bodies
- General Meeting
- House of Delegates
- Board of Executive Governors
- Board of Governors

Executives
- President
- Vice Presidents
- Executive Governors
- Governors
- Auditors

Secretariat

- Qualifications Screening Board
- Disciplinary Action Committees
- Discipline Maintenance Committees
- Complainants' Grievance Panel
- Gaikokuho-Jimu-Bengoshi Registration Screening Board
- Gaikokuho-Jimu-Bengoshi Disciplinary Action Committees
- Gaikokuho-Jimu-Bengoshi Discipline Maintenance Committees
Code of Ethics
Adopted by the General Meeting of November 10, 2004

- Codifies professional ethics for attorneys, including confidentiality obligations and conflict of interest
- Also, provides that an attorney shall not:
  * Promote any fraudulent transactions, violence, or any other illegal or improper conduct, nor shall utilize such conduct (Art. 14)
  * Conduct any business which is degrading or against public morals, nor participate in such business, nor let his or her name be used for such business (Art. 15)
  * Receive any subject matter of a dispute (Art. 17)
Combating Money Laundering
AML Act of 2007

Administrative Agencies → Information → FIU

Japan Financial Intelligence Center → Exchange Information → Foreign FIUs

Law Enforcement Authorities

Foreign FIUs

Terrorists, Organized Crimes

Disgorgement of profit → Investigation

Specified Business Operators

Suspicious Transaction Reporting

Identification and Verification of Clients; Record Keeping

Financial Institutions
Non Financial Businesses

Audit / Supervision
Suspicious Transaction

Information

Law Enforcement Authorities

Professionals (other than Bengoshi)

Bengoshi
Combating Money Laundering
Never to Whistleblow

- Duty of Confidentiality ← Consultation with lawyers with confidence should be fundamental to the justice
- Lawyers excluded from the reporting obligations ← JFBA active lobbying before the bill submitted to the Diet
- Article 8 of the AML Act – delegate the rulemaking authority regarding bengoshi to JFBA; the rules should be comparable to the obligations imposed on the other professionals
Combating Money Laundering
JFBA Regulations

- Client identification and verification
- Record keeping
- Additional duty – particular to Bengoshi
  - To consider carefully, when accepting an instruction from client, whether or not the purposes of the instruction relates to a transfer of crime proceeds
  - If a bengoshi finds out, after accepting an instruction, that the purposes of the instruction relates to a transfer of crime proceeds, the lawyer shall explain to the client that is illegal and persuade the client to abandon the achievement of the purpose.
Combating Money Laundering
JFBA Regulations

- Events triggering obligations to identify the client and verify the identification
  - acceptance or administration of client assets;
  - buying and selling of real estate;
  - investing for the purpose of establishing or managing a company, or contributing similar funds;
  - establishment of a legal person or a similar entity;
  - conclusion of a trust contract; or
  - buying and selling of a company
Combating Money Laundering
2011 Amendments to AML Act

- Enhance Customer Due Diligence Obligations ← 2008 FATF mutual evaluation
- To be implemented in April 2013
- Scope of CDD deepened
  - purposes of transaction, beneficial owner
    → Financial Institutions and non financial businesses only
- Events triggering CDD broadened
  - suspicious clients, high risk jurisdictions
    → including professionals → JFBA regulations need to be amended
- Internal Control System
- The principle of “never to whistleblow” unchanged
For more information, please visit

- IBA Anti-Money Laundering Forum
  http://www.anti-moneylaundering.org
- Japan Federation of Bar Associations
  http://www.nichibenren.or.jp/en/
- Japan Financial Intelligence Center (FIU)
  http://www.npa.go.jp/sosikihanzai/jafic/jaficenglishpage/jaficenglish.html
- English language translation of JFBA rules and regulations are at:
  http://www.nichibenren.or.jp/en/about/us/regulations.html