

## Rules on Measures against Persons who have Engaged in Fraudulent Practices in Japan's ODA Projects (Provisional Translation)

### (Definitions)

Article 1 In these Rules, the meanings of the terms set forth in the following items are as prescribed respectively in those items.

- (i) The term "Procurement Contract" means a contract for procurement of products or services.
- (ii) The term "Procurement Agent" means an agent which conducts the procurement of products or services on behalf of the government of the recipient country (hereinafter referred to as "the Recipient") regarding a project implemented using Japanese finance based on an Exchange of Notes on grant aid.
- (iii) The term "Agent Agreement" means a Procurement Contract which the Recipient concludes with the Procurement Agent for the purpose of procurement of products or services on behalf of the Recipient regarding a project implemented using Japanese finance based on an Exchange of Notes on grant aid.
- (iv) The term "Supplier Contract" means a Procurement Contract which the Procurement Agent concludes with the supplier for the purpose of providing the products or services to the Recipient regarding a project implemented using a Japanese finance based on an Exchange of Notes on grant aid.
- (v) The term "Qualified Person" means a person who is qualified to enter into a contract pertaining to Japan's ODA projects based on an Exchange of Notes (including the operations incidental thereto) or a person who has participated in the said projects (including bidding procedures).
- (vi) The term "Measures Requirements" means the requirements prescribed in each item of the Appended table No. 1 and No. 2 of the "Criteria of Measures" (hereinafter referred to as "Each Item of the Appended Tables").
- (vii) The term "JICA Measures" means the measures imposed by the Japan International Cooperation Agency (hereinafter referred to as "JICA") to exclude a person from participation in bidding for contracts pertaining to the projects which JICA implements pursuant to Article 13 of the Japan International Cooperation Agency Act (Act No. 136 of 2002) or to reject the approval of a person as a party to the Procurement Contract necessary for the implementation of ODA loan and grant aid projects, or to eliminate the said Contract from the scope of those projects.

### (Measures and Elimination Requests)

Article 2 The Government of Japan shall, when a Qualified Person falls under any of the Measures Requirements, determine the period commensurate with the circumstances within the range of period specified in the corresponding the Each Item of the Appended Tables (hereinafter referred to as "Period of Measure") (when the Government of Japan extends or reduces the Period of Measures pursuant to Article 7 or Article 8, the said range of the period shall be the one after applying the extension or reduction; hereinafter referred to as "Range of the Period of Measures") and impose the measures of not approving the Agent Agreement which was concluded with the said Qualified Person based on bidding and contract procedures during the Period of Measures

(hereinafter simply referred to as “Measures” and the Qualified Person who is subject to the Measures is hereinafter referred to as “Person subject to Measures”).

(2) The Government of Japan may, when it imposes the Measures or requests elimination pursuant to paragraph (4) (hereinafter collectively referred to as “Measures, etc.”), consult with JICA on imposing JICA Measures.

(3) The Government of Japan may, when a person who has concluded an Agent Agreement becomes a Person subject to Measures after receiving approval of the said Agreement, revoke the approval, taking into account the reason for the Measures and the progress of the works under the said Agreement, etc.

(4) The Government of Japan may make a request to a Procurement Agent to eliminate a person who falls under any of the following items from the subject to procedures pertaining to the Supplier Contract (hereinafter referred to as “Elimination Request”) during the period (hereinafter referred to as “Period of Elimination Request” and a person who is subject to an Elimination Request is hereinafter referred to as “Person subject to Elimination Request”) prescribed in the said items.

(i) A Person subject to Measures: Period of Measures

(ii) A person, other than a Qualified Person, who falls under any of the Measures Requirements: period determined in accordance with the Period of Measures

(iii) A person subject to JICA Measures: period of the JICA Measures

(5) The Government of Japan may, when a person who has concluded a Supplier Contract with a Procurement Agent becomes a Person subject to Elimination Request, request the Procurement Agent to cancel the said Contract, taking into account the reason for the Elimination Request and the progress of the works under the contract, etc.

(6) The Government of Japan may, when a person in the Period of Measures or in the Period of Elimination Request (hereinafter referred to as “Period of Measures, etc.”), newly falls under any of the Measures Requirements due to another reason, impose further Measures, etc. without waiting for the end of the Period of Measures, etc. already being imposed against the said person. (In such case, the Period of Measures, etc. shall not be precluded from exceeding thirty-six consecutive months.)

(Measures against Subcontractors and Consortiums)

Article 3 The Government of Japan may, when it becomes clear that a certain subcontractor shall have responsibility for the cause for the Measures, etc. imposed against the main contractor, determine the Period of Measures, etc. commensurate with the circumstances and within the range of the Period of Measures, etc. imposed against the said main contractor and also impose Measures etc. against the said subcontractor. In addition, the Government of Japan may not approve an Agent Agreement in which a Person subject to Measures and a Person subject to Elimination Request (hereinafter collectively referred to as “Person subject to Measures, etc.”) are entrusted with all or part of the Supplier Contract during the Period of Measures, etc.

(2) The Government of Japan may, when it imposes Measures, etc. against a consortium, determine the Period of Measures, etc. commensurate with the circumstances and within the range of the Period of Measures, etc. imposed against the said consortium and also impose Measures,

etc. against any member of the said consortium (except those members considered clearly not to have responsibility for the cause for the said Measures, etc.) .

(3) The Government of Japan may, when it is found that a Person subject to Measures, etc. is a member of a consortium, determine the Period of Measures, etc. commensurate with the circumstances and within the range of the Period of Measures, etc. imposed against the said Person subject to Measures, etc. and also impose Measures, etc. against the said consortium.

(Measures against Corporate Groups, etc.)

Article 4 The Government of Japan may, when a Person subject to Measures, etc. has an association with a legal entity or an individual mentioned in the following items, determine the Period of Measures, etc. commensurate with the circumstances and within the range of the Period of Measures, etc. imposed against the said Person subject to Measures, etc. and also impose Measures, etc. against the said legal entity or individual.

(i) A legal entity the management of which is substantially controlled by a Person subject to Measures, etc. including, but not limited to, a stock company in which a majority of all votes is held by a Person subject to Measures, etc.

(ii) A legal entity or an individual which substantially controls the management of a Person subject to Measures, etc. (excluding national governments, local governments or other organizations similar thereto).

(iii) A legal entity the management of which is substantially controlled by a legal entity or an individual prescribed in the preceding items including, but not limited to, a stock company in which a majority of all votes is held by a legal entity or an individual prescribed in the preceding items.

(2) The Government of Japan may, when it determines a case in which a Person subject to Measures, etc. has transferred their business, assets or rights and obligations to a legal entity or an individual as a result of merger, demerger, transfer of business or dissolution, and the management or business conditions of the other legal entity or individual can be recognized as being identical or similar to that of the Person subject to Measures, etc. (including the case that the said Person subject to Measures, etc. and the said other legal entity or individual belong to the same corporate group [it means a group composed of the persons prescribed in items (i) to (iii) of the preceding paragraph]), determine the Period of Measures, etc. commensurate with the circumstances and within the range of the Period of Measures, etc. imposed against the said Person subject to the Measures, etc. and also impose Measures, etc. against the said legal entity or individual.

(Determination of Measures)

Article 5 The Government of Japan may, when it deems it necessary in determining whether a Qualified Person falls under the Measures Requirements, request relevant organizations to report the facts.

(Violation of Foreign Laws and Regulations)

Article 6 The Government of Japan may, when a Qualified Person is arrested, prosecuted without arrest, subject to a final and binding judgment by a judicial organ or a final decision by an

administrative authority for violating any foreign law or regulation equivalent to the Japanese laws and regulations prescribed in the Measures Requirements of items 1 to 5 of Appended table No. 2, deem the Qualified Person as falling under any of the Measures Requirements taking into account the current situation regarding the criminal justice or administrative procedures in the said foreign country.

(Special Provisions on Period of Measures)

Article 7 When a Qualified Person falls under two or more of the Measures Requirements in a single case, the longest minimum period and the longest maximum period among the Ranges of the Period of Measures corresponding to each Measures Requirements shall be applied as the minimum and maximum period of the Range of the Period of Measures pertaining to that case respectively.

(2) When a Qualified Person falls under any of the following items, the minimum period of the Range of the Period of Measures will be extended as prescribed in the following paragraphs.

(i) When a Qualified Person newly falls under any of the Measures Requirements during the Period of Measures or within one year after the end of the said Period of the Measures.

(ii) When a Qualified Person newly falls under the Measures Requirements of item 1 of Appended table No. 2 during the period exceeding one year and less than three years after the end of the Period of Measures pursuant to item 1 of Appended table No. 2.

(iii) When a Qualified Person newly falls under the Measures Requirements of item 2 of Appended table No. 2 during the period exceeding one year and less than three years after the end of the Period of Measures pursuant to item 2 of Appended table No. 2.

(iv) When a Qualified Person newly falls under any of the Measures Requirements of item 3, 4 or item 5 of Appended table No. 2 during the period exceeding one year and less than three years after the end of the Period of Measures pursuant to item 3, 4 or item 5 of Appended table No. 2.

(v) When a Qualified Person newly falls under any of the Measures Requirements of item 1 to 5 of Appended table No. 2 (excluding those set forth in each of the preceding items) within five years after the end of the Period of Measures pursuant to any of the preceding items.

(3) The minimum period of the Range of the Period of Measures pursuant to the preceding paragraph shall be extended as prescribed respectively in the following items.

(i) When the initial Period of Measures is less than one month: one and a half times

(ii) When a Qualified Person falls under the Measures Requirements of item 2 or item 5 of Appended table No. 2: two and a half times

(iii) When a Qualified Person falls under the Measures Requirements excluding each of the preceding items: two times

(4) The Government of Japan may, when a Qualified Person has any extenuating circumstances, not impose the Measures or reduce the minimum period of the Range of the Period of Measures up to one half.

(5) The Government of Japan may, when it becomes necessary to determine the Period of Measures beyond the maximum period of the Range of the Period of Measures pursuant to the Each Items of the Appended Tables and the preceding paragraph (1) or paragraph (2) due to

extremely malicious nature or extremely serious consequences related to a Qualified Person, double the length of the maximum period of the Range of the Period of Measures (the maximum period of the Range of the Period of Measures is set to be thirty-six months in case its doubled length becomes longer than thirty-six months).

(6) The Government of Japan may, when it becomes clear that there is any extenuating special circumstance or special reason that the Period of Measures should be extended in relation to the reason for Measures against a Person subject to Measures, change the Period of Measures within a range of the period pursuant to the Each Items of the Appended tables, each of the preceding paragraph and Article 8.

(7) The Government of Japan may, when it becomes clear there is any reason of extremely malicious nature related to a person after the Period of Measures which are imposed to the said person pertaining to item 2 or item 5 of Appended table No. 2 has ended, newly impose the Measures to the said person for a period determined by deducting the initial Period of Measures from the Period of Measures which is assumed to have been changed from the initial Period of Measures.

(8) The Government of Japan shall, when it becomes clear that a Person subject to Measures have no responsibility for the cause for the Measures, cancel the Measures against the said Person subject to Measures.

(9) The provisions in each of the preceding paragraphs shall apply mutatis mutandis to the Period of Elimination Request.

(Special Provisions for Period of Measures against Fraudulent Practices Including Violation of the Antimonopoly Act, etc.)

Article 8 The Government of Japan shall, when a Qualified Person falls under any of the following items due to fraudulent practices such as a violation of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947; hereinafter referred to as “Antimonopoly Act”), extend the minimum period of the Range of the Period of Measures as prescribed in the respective items.

(i) When information on bid rigging or facts sufficient to suspect bid rigging are found, and when a Qualified Person falls under any of the Measures Requirements of items 3, 4 or item 5 of Appended table No. 2 despite the said Qualified Person’s submission of a written oath stating that he/she had not engaged in the said bid rigging: two times (when he/she falls under the Measures Requirements of item 5 of Appended table No. 2: two and a half times)

(ii) When it becomes clear that, in a final and binding judgment, a final and binding cease and desist order or a surcharge payment order concerning violation of the Antimonopoly Act or in a final and binding judgment (including that by a foreign judicial organ), concerning obstruction of auctions (paragraph 1, Article 96-6 of the Penal Code [Act No. 45 of 1907]; the same shall apply hereinafter), bid rigging (paragraph 2, Article 96-6 of the Penal Code; the same shall apply hereinafter) or obstruction of business (Article 233 or 234 of the Penal Code; the same shall apply hereinafter), a Qualified Person who falls under the Measures Requirements of items 3, 4 or item 5 of Appended table No. 2 is the ringleader of the violation of the Antimonopoly Act, obstruction of auctions, bid

rigging or obstruction of business: two times (when he/she falls under the Measures Requirements of item 5 of Appended table No. 2: two and a half times)

(iii) When a Qualified Person who falls under the Measures Requirements of item 3, 4 or item 5 of Appended table No. 2 is subject to paragraph 7, Article 7-2 of the Antimonopoly Act: two times (if he/she falls under the Measures Requirements of item 5 of Appended table No. 2: two and a half times)

(iv) In case where it becomes clear that there is or was an act of involvement in bid rigging, etc. as a result of investigation by the head of the competent ministry or agency under the paragraph 4, Article 3 of the Act on Elimination and Prevention of Involvement in Bid Rigging, etc. and Punishments for Acts by Employees that Harm the Fairness of Bidding, etc. (Act No. 101 of 2002), when a Qualified Person who falls under the Measures Requirements of items 3 or item 5 of Appended table No. 2 has any reason of malicious nature in relation to the said act of involvement: by one month (when he/she falls under the Measures Requirements of item 5 of Appended table No. 2: by one and a half months)

(v) In cases where an official of the Government of Japan or any other public institution is arrested or prosecuted without arrest on suspicion of obstruction of auctions, bid rigging or obstruction of business, when a Qualified Person who falls under the Measures Requirements of items 4 or item 5 of Appended table No. 2 has any reason of malicious nature in relation to the suspected offense by the said official: by one month (when he/she falls under the Measures Requirements of item 5 of Appended table No. 2: by one and a half months)

(2) The provisions in each of the preceding paragraphs shall apply mutatis mutandis to the Period of Elimination Request.

#### (Report of Improvement Measures)

Article 9 The Government of Japan shall demand submission of a report of improvement measures pertaining to the reason for the Measures from the Person subject to Measures (when the Measures were imposed against a corporate group, etc. pursuant to Article 4, it means the said corporate group, etc.; the same shall apply in the following paragraphs) prior to the expiration of the Period of Measures.

However, this shall not apply in case the Government of Japan imposed the Measures due to acts not related to a Japan's ODA Procurement Contract or canceled the Measures.

(2) The Government of Japan shall, when the Period of Measures has expired without the submission of a report of improvement measures by the Person subject to Measures or before the Government of Japan determines that the content of the submitted report is appropriate, continue to impose the Measures until the report is submitted and the Government of Japan has deemed it appropriate.

(3) The Government of Japan shall, when it continues to impose the Measures against a Person subject to Measures pursuant to the provision of the preceding paragraph, continue to apply the Elimination Request until the end of the Measures as well.

(Notice, etc. of Measures)

Article 10 The Government of Japan shall, when it imposes the Measures, changes the Period of Measures, cancels, continues or terminates the Measures, notify the Person subject to Measures without delay.

(2) The Government of Japan shall, when it imposes the Measures, changes the Period of Measures, cancels or continues the Measures, publish such facts of the Measures. However, if the Government of Japan determines that publication of the said facts of the Measures will cause serious disadvantage to a third party, it may not publish the said facts of the Measures.

(Circumstances not resulting in Measures)

Article 11 The Government of Japan may, in case it decides not to impose the Measures, when it deems it necessary, issue a warning or call attention either in written form or verbally to a Qualified Person (hereinafter collectively referred to as "Warning, etc.").

(2) The Government of Japan may, when a person who has received a Warning, etc. repeatedly creates situations resulting in receiving a Warning, etc. within one year from the day of the initial Warning, etc., impose Measures against the said person.

(Delegation of Administrative Affairs)

Article 12 The administrative affairs prescribed in Article 9 and Article 10 shall be carried out by the Director General of the International Cooperation Bureau of the Ministry of Foreign Affairs.

(2) The administrative affairs prescribed in paragraph (4) and paragraph (5) of Article 2, Article 5 and Article 11 shall be carried out by the Director of the International Cooperation Bureau of the Ministry of Foreign Affairs.

Supplementary Provisions

(1) These Rules shall come into effect as of February 17, 2011.

(2) "Guidelines for Measures against a Person Engaged in Fraudulent Practices in Japanese Official Development Assistance Projects, etc." dated July 25, 2000 is abolished.

(3) With regard to the application of Measures to the acts committed prior to the enforcement of these Rules, the provisions then in force shall remain applicable.

Supplementary Provisions (Partial Revision of February 2, 2012)

These Rules shall come into effect as of February 2, 2012.

Supplementary Provisions (Partial Revision of October 9, 2014)

(1) These Rules shall come into effect as of October 9, 2014.

(2) Except as prescribed in paragraph 3 of Article 5, with regard to the application of Measures to the acts committed prior to the revision of these Rules, the guidelines then in force shall remain applicable.

Supplementary Provisions (Partial Revision of October 1, 2018)

- (1) These Rules shall come into effect as of October 1, 2018.
- (2) With regard to the application of Measures to the acts committed prior to the revision of these Rules, the guidelines then in force shall remain applicable.

Supplementary Provisions (Partial Revision of March 1, 2019)

- (1) These Rules shall come into effect as of March 1, 2019.
- (2) With regard to the application of Measures to the acts committed prior to the revision of these Rules, the guidelines then in force shall remain applicable.

Supplementary Provisions (Partial Revision of June 15, 2023)

- (1) These Rules shall come into effect as of June 15, 2023.
- (2) With regard to the application of Measures to the acts committed prior to the revision of these Rules, the guidelines then in force shall remain applicable.

Appended table No. 1

Criteria of Measures against Accidents, etc.

Measures Requirements	Period
(False statements) 1 When it is determined that a contractor has made a false statement in any of the related documents of a Japan's ODA Procurement Contract.	Not less than 1 month and not more than 6 months from the date of the determination.
(Negligent operations) 2 When it is determined that a contractor has caused any defect (excluding minor defects) due to negligence in the course of performance of a Japan's ODA Procurement Contract.	Not less than 1 month and not more than 6 months from the date of the determination
(Breach of contract) 3 In addition to the cases set forth in the preceding items, when it is determined that a contractor is an inappropriate counterparty to a contract due to breach of the contract in the course of performance of the Japan's ODA Procurement Contract.	Not less than 2 weeks and not more than 4 months from the date of the determination
(Damage or injury to the public) 4 When it is determined that a contractor caused injury or death or property damage (excluding minor cases) to the public due to the contractor's improper safety management in the course of performance of a Japan's ODA Procurement Contract.	Not less than 1 month and not more than 6 months from the date of the determination
(Damage or injury to a person involved in the operation) 5 When it is determined that a contractor caused injury or death to a person involved in its operation due to the	Not less than 2 weeks and not



contractor's improper safety management in the course of performance of a Japan's ODA Procurement Contract.	more than 4 months from the date of the determination
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Note: ODA is defined as funds provided by the Government of Japan or by its executive agencies which are administered with the main objective of promoting the economic development and welfare of developing countries, consisting of grant aid, technical cooperation, subscriptions and contributions to UN agencies and international organizations and government loans whose grant element meets or exceeds certain criteria which are defined by the Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD) (hereinafter the same shall apply to Appended table No. 2).

#### Appended table No. 2

##### Criteria of Measures against Bribery and Fraudulent Practices, etc.

Measures Requirements	Period
<p>(Bribery)</p> <p>1 When an officer or an employee of an entity, or an individual or an employee of such person, is arrested or prosecuted without arrest on suspicion of violation of Article 198 (Giving of Bribes) of the Penal Code regarding Japan's ODA projects.</p>	Not less than 2 months and not more than 18 months from the date of learning of the arrest or prosecution
<p>(Violation of the Unfair Competition Prevention Act)</p> <p>2 When an officer or an employee of an entity, or an individual or an employee of such person, is arrested or prosecuted without arrest on suspicion of violation of Article 18 (Prohibition of the provision of illicit profits, etc. to foreign public officials, etc.) of the Unfair Competition Prevention Act (Act No. 47 of 1993) regarding Japan's ODA projects.</p>	Not less than 6 months and not more than 36 months from the date of learning of the arrest or prosecution
<p>(Violation of the Antimonopoly Act)</p> <p>3 When it is determined that a contractor is an inappropriate counterparty to a contract due to a violation related to Article 3, Article 6 or item 1 or 2 of Article 8 of the Antimonopoly Act regarding a Japan's ODA Procurement Contract.</p>	Not less than 3 months and not more than 12 months from the date of the determination
<p>(Obstruction of Auctions, Bid rigging or Obstruction of Business)</p> <p>4 When a person set forth in the following items (a) or (b) is arrested or prosecuted without arrest on suspicion of violation of paragraph 1 (Obstruction of Auctions) of Article 96-6 of the Penal Code, paragraph 2 (Bid rigging) of the same Article, or Article 233 or Article 234 (Obstruction of Business) of the same Act regarding a Japan's ODA Procurement Contract.</p> <p>(a) An individual or an officer authorized to represent an</p>	From the date of knowing of the arrest or prosecution

<p>entity (including an officer with a title recognized as conferring the right to represent the entity)</p> <p>(b) An officer, including an executive officer, a representative of the relevant branch office or business office, or an employee, other than persons set forth in the preceding item</p> <p>(a)</p>	<p>Not less than 4 months and not more than 12 months</p> <p>Not less than 3 months and not more than 12 months</p>
<p>(Serious Violation of the Antimonopoly Act)</p> <p>5 When a person faces a criminal charge for violating Article 3, Article 6 or item 1 or 2 of Article 8 of the Antimonopoly Act (including cases in which an officer or an employee of an entity, or an individual or an employee of such person, faces a criminal charge, is arrested or is prosecuted without arrest) regarding a Japan's ODA Procurement Contract.</p>	<p>Not less than 6 months and not more than 36 months from the date of knowing of the criminal charge, arrest or prosecution</p>
<p>(Wrongful or dishonest acts)</p> <p>6 In addition to the cases set forth in the Appended table No. 1 and each of the preceding items, when it is determined that a person has conducted a wrongful or dishonest act in connection with an operation and is therefore determined to be an inappropriate counterparty to a contract</p>	<p>Not less than 1 month and not more than 18 months from the date of the determination</p>
<p>7 In addition to the cases set forth in the Appended table No. 1 and each of the preceding items, when it is determined that a representative officer or any other equivalent person is prosecuted on suspicion of an offense punishable by imprisonment or heavier penalty or is sentenced to imprisonment or heavier penalty or to a fine under the Penal Code and is therefore determined to be an inappropriate counterparty to a contract.</p>	<p>Not less than 1 month and not more than 9 months from the date of the determination</p>