

Act on Cooperation with the International Criminal Court

(Act No. 37 of May 11, 2007)

Table of Contents

- Chapter I General Provisions (Articles 1 and 2)
- Chapter II Cooperation with the International Criminal Court
 - Section 1 General Rules (Articles 3 to 5)
 - Section 2 Provision of Evidence, etc.
 - Subsection 1 Provision of Evidence (Articles 6 to 13)
 - Subsection 2 Judicial Examination of Evidence and Service of Documents (Articles 14 to 16)
 - Subsection 3 Transfer of a Sentenced Inmate for Testimony, etc. (Articles 17 and 18)
 - Section 3 Surrender of an Offender Sought for Surrender, etc.
 - Subsection 1 Surrender of an Offender Sought for Surrender (Articles 19 to 33)
 - Subsection 2 Provisional Detention (Articles 34 and 35)
 - Subsection 3 Miscellaneous Provisions (Articles 36 and 37)
 - Section 4 Cooperation with Enforcement (Articles 38 to 48)
 - Section 5 Miscellaneous Provisions (Articles 49 to 51)
- Chapter III Measures Taken for the International Criminal Police Organization (Article 52)
- Chapter IV Offenses against the Administration of the International Criminal Court (Articles 53 to 65)
- Supplementary Provisions

Chapter I General Provisions

(Purpose)

Article 1 The purpose of this Act is to ensure proper implementation of the Rome Statute of the International Criminal Court (hereinafter referred as the "Statute") by providing for procedures concerning the cooperation necessary for investigations, trials, enforcement, etc. by the International Criminal Court (hereinafter referred as the "ICC") with regard to the crime of genocide and to the other most serious crimes of concern to the international community as a whole that are specified in the Statute, and by providing penal provisions for acts that obstruct the administration of the ICC.

(Definitions)

Article 2 In this Act, the meanings of the terms listed in the following items are as prescribed respectively in those items:

- (i) The term "ICC" means the International Criminal Court prescribed in article 1 of the Statute;
- (ii) The term "criminal case before the ICC" means a case in which the ICC exercises its jurisdiction with respect to a crime over which it has jurisdiction pursuant to the provisions of article 5, paragraph 1 and article 70, paragraph 1 of the Statute;
- (iii) The term "serious crime" means any of the crimes specified in the Statute as the most serious crimes of concern to the international community as a whole over which the ICC has jurisdiction pursuant to the provisions of article 5, paragraph 1 of the Statute;
- (iv) The term "provision of evidence" means providing the ICC with evidence that is necessary for proceedings in connection with an ICC investigation or trial (hereinafter referred to as "ICC proceedings"), based on an ICC request under the provisions of article 93, paragraph 1 of the Statute;
- (v) The term "judicial examination of evidence" means an examination of evidence that is carried out by a Japanese court based on an ICC request under the provisions of article 93, paragraph 1 of the Statute, as assistance for the examination of evidence carried out by the Appeals Chamber or Trial Chamber prescribed in article 39, paragraph 2 of the Statute;
- (vi) The term "service of documents" means service of documents that is carried out by a Japanese court based on an ICC request under the provisions of article 93, paragraph 1 of the Statute, as assistance for the service of documents carried out by the Appeals Chamber, Trial Chamber, or Pre-Trial Chamber prescribed in article 39, paragraph 2 of the Statute;
- (vii) The term "transfer of a sentenced inmate for testimony, etc." means transferring a domestically sentenced inmate (meaning a person being confined in Japan for the execution of a sentence of imprisonment with work, imprisonment without work, or for the execution of assistance punishment as specified in Article 2, item (ii) of the Act on the Transnational Transfer of Sentenced Persons (Act No. 66 of 2002); the same shall apply hereinafter), based on an ICC request under the provisions of article 93, paragraphs 1 and 7 of the Statute, in order to enable him/her to appear as a witness or other person relevant to ICC proceedings (excluding a person subject to an ICC investigation or trial);
- (viii) The term "surrender of an offender sought for surrender" means surrendering, based on an ICC request for surrender under the provisions of article 89, paragraph 1 or article 111 of the Statute, the person whose surrender the ICC seeks in its request (hereinafter referred to as the

- "offender sought for surrender");
- (ix) The term "provisional detention" means provisionally detaining, based on an ICC request for provisional arrest under the provisions of article 92, paragraph 1 of the Statute, the person whose provisional arrest the ICC seeks in its request (hereinafter referred to as an "offender sought for provisional detention");
- (x) The term "cooperation with enforcement" means enforcing a final judgment for a sentence to a fine (meaning a fine ordered by the ICC pursuant to the provisions of article 70, paragraph 3 or article 77, paragraph 2 (a) of the Statute; the same shall apply hereinafter), a sentence of forfeiture (meaning a forfeiture ordered by the ICC pursuant to the provisions of article 77, paragraph 2 (b) of the Statute; the same shall apply hereinafter), or a reparations order (meaning an order issued by the ICC pursuant to the provisions of article 75, paragraph 2 of the Statute; the same shall apply hereinafter) pursuant to the provisions of article 75, paragraph 5 or article 109, paragraph 1 of the Statute, or carrying out preservation for a forfeiture or a reparations order pursuant to the provisions of article 75, paragraph 4 or article 93, paragraph 1 of the Statute;
- (xi) The term "cooperation" means provision of evidence, judicial examination of evidence, service of documents, transfer of a sentenced inmate for testimony, etc., surrender of an offender sought for surrender, provisional detention, and cooperation with enforcement;
- (xii) The term "offense underlying a cooperation request" means the crime that is alleged to have been committed in a request for cooperation (excluding surrender of an offender sought for surrender and provisional detention); and
- (xiii) The term "offense underlying the surrender request" means the crime that is alleged to have been committed by the offender sought for surrender or the offender sought for provisional detention under a request for cooperation through the surrender of an offender sought for surrender or provisional detention.

Chapter II Cooperation with the ICC

Section 1 General Rules

(Acceptance of Requests for Cooperation, etc.)

Article 3 The following administrative affairs concerning cooperation with the ICC shall be carried out by the Minister of Foreign Affairs:

- (i) acceptance of requests for cooperation from the ICC;
- (ii) consultation with the ICC and reports that should be made thereto; and
- (iii) sending of evidence to the ICC, and delivery of property and notification of the results of the service of documents in connection with the enforcement of

a final judgment for a fine, forfeiture, or reparations order, to the ICC.

(Measures to Be Taken by the Minister of Foreign Affairs)

Article 4 Upon accepting a request for cooperation from the ICC, the Minister of Foreign Affairs shall, except where he/she finds that the form of the relevant request does not comply with the Statute, send the written request for cooperation issued by the ICC or documents prepared by the Minister of Foreign Affairs that certify that a request for cooperation has been made to the Minister of Justice, together with any relevant documents and with his/her opinion attached thereto.

(Consultation with the ICC)

Article 5 (1) The Minister of Foreign Affairs shall consult with the ICC, as necessary, with regard to cooperation with the ICC.

(2) When the Minister of Justice finds it necessary to consult with the ICC with regard to cooperation with the ICC, he/she shall request the Minister of Foreign Affairs to seek consultation under the provisions of the preceding paragraph.

Section 2 Provision of Evidence, etc.

Subsection 1 Provision of Evidence

(Measures by the Minister of Justice)

Article 6 (1) Where the Minister of Justice has received documents sent by the Minister of Foreign Affairs pursuant to the provisions of Article 4 concerning a request for cooperation through provision of evidence, when the case does not fall under any of the following items, the Minister of Justice shall take the measures prescribed in the following paragraph or paragraph (3):

(i) when the request for cooperation competes with a request for assistance as prescribed in Article 1, item (i) of the Act on International Assistance in Investigations and Other Related Matters (Act No. 69 of 1980) (hereinafter referred to as "Investigation Assistance" in this item and Article 39, paragraph (1), item (ii)) and, where it is possible to give priority to such request for assistance pursuant to the provisions of the Statute, when the Minister of Justice finds it reasonable to provide said Investigation Assistance;

(ii) when complying with the request for cooperation would result in a breach of any of the obligations under international law prescribed in article 98, paragraph 1 of the Statute;

(iii) when complying with the request for cooperation would prejudice Japan's national security;

- (iv) where the offense underlying the cooperation request is an offense prescribed in article 70, paragraph 1 of the Statute, when the act constituting the offense for which assistance is requested would not constitute a crime under the laws and regulations of Japan were it to have been carried out in Japan;
 - (v) when complying with the request for cooperation would risk obstructing an investigation or trial in a case that is connected with a crime other than the offense underlying the cooperation request, and that is being investigated by a Japanese public prosecutor, public prosecutor's assistant officer, or judicial police official or is pending before a Japanese court, and the Minister of Justice finds it unreasonable to immediately comply with said request;
 - (vi) when there are other justifiable grounds for not immediately complying with the request for cooperation.
- (2) The measures by the Minister of Justice pursuant to the provisions of the preceding paragraph shall be the measures under any of the following items, except in the case prescribed in the following paragraph:
- (i) sending the relevant documents to the Chief Prosecutor of the appropriate District Public Prosecutor's Office and ordering the collection of evidence that is necessary for cooperation through provision of evidence;
 - (ii) sending documents concerning a request for cooperation through provision of evidence to the National Public Safety Commission; or
 - (iii) sending documents concerning a request for cooperation through provision of evidence to the Commandant of the Japan Coast Guard or to the head of any other national agency to which persons prescribed in Article 190 of the Code of Criminal Procedure (Act No. 131 of 1948) who are to exercise the functions of judicial police officials belong.
- (3) When the request for cooperation prescribed in paragraph (1) pertains to the provision of documents that are connected with a legal action and that are being retained by a court, a public prosecutor, or a judicial police officer, the Minister of Justice shall send the custodian of such documents the documents concerning the request for cooperation.
- (4) When the Minister of Justice finds it necessary in order to take the measures prescribed in the preceding two paragraphs or in order to take other measures concerning cooperation through provision of evidence, he/she may conduct an inquiry into the whereabouts of the person concerned and other necessary matters.

(Measures by the National Public Safety Commission)

Article 7 Upon receiving documents sent under paragraph (2), item (ii) of the preceding Article, the National Public Safety Commission shall send the relevant documents to the appropriate prefectural police headquarters, and

shall instruct that headquarters to collect the evidence necessary for cooperation through provision of evidence.

(Implementation of Cooperation)

Article 8 The provisions of Articles 7, 8, 10, 12, and 13 of the Act on International Assistance in Investigations and Other Related Matters shall apply mutatis mutandis to cooperation through provision of evidence based on a request set forth in Article 6, paragraph (1). In this case, the term "Article 5, paragraph (1), item (i)" in Article 7, paragraph (1) of said Act shall be deemed to be replaced with "Article 6, paragraph (2), item (i) of the Act on Cooperation with the International Criminal Court (Act No. 37 of 2007)," the term "the preceding Article" in paragraph (2) of said Article shall be deemed to be replaced with "Article 7 of the Act on Cooperation with the International Criminal Court," the term "Article 5, paragraph (1), item (iii)" in paragraph (3) of said Article shall be deemed to be replaced with "Article 6, paragraph (2), item (iii) of the Act on Cooperation with the International Criminal Court," and the phrase "specifically provided for in this Act" in Article 13 of said Act shall be deemed to be replaced with "provided for in Articles 8, 10, and 12 as applied mutatis mutandis pursuant to Article 8 of the Act on Cooperation with the International Criminal Court."

(Penal Provisions on the Submission of False Certificates)

Article 9 (1) When a person who has been requested to submit a certificate under the provisions of Article 8, paragraph (3) of the Act on International Assistance in Investigations and Other Related Matters as applied mutatis mutandis pursuant to the preceding Article has submitted a false certificate, he/she shall be punished by imprisonment with work for up to one year or a fine of up to 500,000 yen.

(2) The provisions of the preceding paragraph shall not apply if the act constitutes a crime under the Penal Code (Act No. 45 of 1907) or under Chapter IV.

(Measures Upon Completion of a Disposition, etc.)

Article 10 (1) When the Chief Prosecutor has completed the collection of evidence that is necessary for cooperation through provision of evidence, he/she shall promptly send the collected evidence to the Minister of Justice, with his/her opinion attached thereto. The same shall apply when the head of a national agency provided for in Article 6, paragraph (2), item (iii) has completed the collection of evidence that is necessary for cooperation.

(2) When the Superintendent General of the Metropolitan Police Department or the chief of the Prefectural Police Headquarters has completed the collection of

evidence that is necessary for cooperation, the Prefectural Public Safety Commission shall promptly send the collected evidence to the National Public Safety Commission, with its opinion attached thereto.

(3) When the National Public Safety Commission has received the evidence sent thereto under the preceding paragraph, it shall promptly send the same to the Minister of Justice, with its opinion attached thereto.

(4) A custodian of documents that are connected with a legal action who has received documents concerning a request for cooperation through provision of evidence sent thereto pursuant to the provisions of Article 6, paragraph (3), shall promptly send the relevant documents in his/her custody or certified copies thereof to the Minister of Justice, with his/her opinion attached thereto; provided, however, that when he/she finds it difficult to immediately send the same, he/she shall promptly notify the Minister of Justice to that effect.

(Conditions for the Provision of Evidence)

Article 11 Where the Minister of Justice will provide the ICC with evidence that has been sent thereto pursuant to the provisions of paragraph (1), (3) or (4) of the preceding Article, when he/she finds it necessary, he/she shall set conditions concerning the use or return of said evidence.

(Notification of Non-cooperation)

Article 12 After taking measures under the provisions of Article 6, paragraph (2), item (ii) or (iii) or paragraph (3) of said Article, when the Minister of Justice finds that the case falls under any of the provisions of paragraph (1), items (i) through (iv) of said Article and decides not to cooperate through provision of evidence, he/she shall notify the person who received the documents that were sent concerning the request for cooperation through provision of evidence to that effect without delay.

(Consultation with the Minister of Foreign Affairs, etc.)

Article 13 (1) The Minister of Justice shall consult with the Minister of Foreign Affairs in advance in a case that falls under any of the following items:

(i) when deciding not to cooperate through provision of evidence, on the basis that the case falls under any of the provisions of Article 6, paragraph (1), items (i) through (iii);

(ii) when postponing cooperation through provision of evidence, on the basis that the case falls under either of the provisions of Article 6, paragraph (1), item (v) or (vi); or

(iii) when setting the conditions set forth in Article 11.

(2) The provisions of Article 16, paragraph (2) of the Act on International Assistance in Investigations and Other Related Matters shall apply mutatis

mutandis to where the Minister of Justice decides to take the measures set forth in any of the items of Article 6, paragraph (2) with regard to a request for cooperation through provision of evidence.

Subsection 2 Judicial Examination of Evidence and Service of Documents

(Measures by the Minister of Justice)

Article 14 Where the Minister of Justice has received documents sent by the Minister of Foreign Affairs pursuant to the provisions of Article 4 concerning a request for cooperation through a judicial examination of evidence or the service of documents, when the case does not fall under any of the items of Article 6, paragraph (1), the Minister of Justice shall send the documents concerning said request for cooperation to the appropriate district court.

(Measures by the Court, etc.)

Article 15 (1) The provisions of Article 1, paragraph (2), Article 1-2, paragraph (1) (excluding items (i), (v), and (vi)), and Articles 2 and 3 of the Act on Assistance Based on Commission by Foreign Courts (Act No. 63 of 1905) shall apply mutatis mutandis to cooperation through a judicial examination of evidence or the service of documents.

(2) When the district court provided for in the preceding Article has completed the judicial examination of evidence or the service of documents, it shall promptly send the evidence obtained through the judicial examination of evidence to the Minister of Justice or notify him/her of the results of the service of documents.

(Mutatis Mutandis Application)

Article 16 The provisions of Article 12 and Article 13, paragraph (1) (excluding item (iii)) shall apply mutatis mutandis to where the Minister of Justice has taken measures related to cooperation through a judicial examination of evidence or the service of documents under the provisions of Article 14. In this case, the term "paragraph (1), item (i) of said Article" in Article 12 shall be deemed to be replaced with "Article 6, paragraph (1), item (i)."

Subsection 3 Transfer of a Sentenced Inmate for Testimony, etc.

(Decision, etc. on the Transfer of a Sentenced Inmate for Testimony, etc.)

Article 17 (1) Where the Minister of Justice has received documents sent by the Minister of Foreign Affairs pursuant to the provisions of Article 4 concerning a request for cooperation through the transfer of a sentenced inmate for

testimony, etc., when the case neither falls under Article 6, paragraph (1), item (iv) nor falls under any of the following items, and when the Minister of Justice finds it reasonable to comply with the request, he/she shall make an affirmative decision to transfer the sentenced inmate for testimony, etc., setting a period not to exceed thirty days during which the transfer of the domestic sentenced inmate will be in effect:

- (i) when the domestic sentenced inmate does not consent in writing;
- (ii) when the domestic sentenced inmate is under the age of 20; or
- (iii) when a case connected with the crime committed by the domestic sentenced inmate is pending before a Japanese court.

- (2) Where the Minister of Justice makes the affirmative decision set forth in the preceding paragraph, when he/she finds it necessary, he/she shall set conditions concerning the transfer of the sentenced inmate for testimony, etc.
- (3) When the Minister of Justice decides not to effect the transfer of a sentenced inmate for testimony, etc. on finding that it is unreasonable to comply with the request set forth in paragraph (1), or when he/she sets the conditions set forth in the preceding paragraph, the Minister of Justice shall consult with the Minister of Foreign Affairs in advance.
- (4) The provisions of Article 19, paragraph (3) of the Act on International Assistance in Investigations and Other Related Matters shall apply *mutatis mutandis* to a case in which the decision set forth in paragraph (1) has been made.

(Measures Concerning the Surrender of a Domestically Sentenced Inmate, etc.)

Article 18 (1) When the Minister of Justice has issued an order under the provisions of Article 19, paragraph (3) of the Act on International Assistance in Investigations and Other Related Matters as applied *mutatis mutandis* pursuant to paragraph (4) of the preceding Article, he/she shall send a written permit of custody to the Minister of Foreign Affairs.

- (2) When the Minister of Foreign Affairs has been sent a permit of custody under the provisions of the preceding paragraph, he/she shall immediately send the same to the ICC.
- (3) The warden of a penal institution who has been issued the order prescribed in paragraph (1) or an official of the penal institution who has been nominated by that warden shall promptly escort the domestic sentenced inmate to the place designated by the ICC, and shall surrender said domestic sentenced inmate to the person designated by the ICC who is in possession of the permit of custody.
- (4) The provisions of Articles 21 and 22 of the Act on International Assistance in Investigations and Other Related Matters shall apply *mutatis mutandis* to a domestic sentenced inmate with regard to his/her surrender, pursuant to the provisions of the preceding paragraph, to the person designated by the ICC. In

this case, the "transfer of a sentenced inmate for testimony" in Article 21 of said Act shall be deemed to be replaced with "transfer of a sentenced inmate for testimony, etc. as prescribed in Article 2, item (vii) of the Act on Cooperation with the International Criminal Court."

Section 3 Surrender of an Offender Sought for Surrender, etc.

Subsection 1 Surrender of an Offender Sought for Surrender

(Requirements for the Surrender of an Offender Sought for Surrender)

Article 19 (1) Where the offense underlying the surrender request constitutes a serious crime, the surrender of an offender sought for surrender may be carried out, except in a case that falls under any of the following items:

(i) when the case connected with the offense underlying the surrender request is pending before a Japanese court; provided, however, that this shall not apply where the ICC has determined that the case is admissible pursuant to the provisions of article 17, paragraph 1 of the Statute or has commenced proceedings in the case;

(ii) when a final and binding judgment has been issued in the case connected with the offense underlying the surrender request by a Japanese court; provided, however, that this shall not apply where the ICC has determined that the case is admissible pursuant to the provisions of article 17, paragraph 1 of the Statute, or has rendered a judgment of conviction in the case; or

(iii) when the offender sought for surrender is clearly found to have not committed the offense underlying the surrender request, except where the ICC has rendered a judgment of conviction with regard to the offense underlying the surrender request.

(2) Where the offense underlying the surrender request is any of the crimes prescribed in article 70, paragraph 1 of the Statute, the surrender of an offender sought for surrender may be carried out, except in a case that falls under any of the following items:

(i) when, if the act constituting the offense underlying the surrender request were to be committed within Japan, said act would not constitute a crime punishable by the death penalty, life imprisonment, or imprisonment with or without work for no fewer than three years under Japanese laws and regulations;

(ii) when, if the act constituting the offense underlying the surrender request were to be committed within Japan or if the trial for the offense underlying the surrender request were to be carried out by a Japanese court, it would be found impossible to impose a punishment on the offender sought for surrender or to execute such a punishment under Japanese laws and

regulations;

- (iii) when there are no reasonable grounds to suspect that the offender sought for surrender has committed the act constituting the offense underlying the surrender request, except where the ICC has rendered a judgment of conviction with regard to the offense underlying the surrender request;
- (iv) when the case connected with the offense underlying the surrender request is pending before a Japanese court, or when a final and binding judgment has been issued thereon by a Japanese court;
- (v) when a case connected with a crime other than the offense underlying the surrender request that has been committed by the offender sought for surrender is pending before a Japanese court, or when the offender sought for surrender has been sentenced to punishment by a Japanese court with regard to such a case and he/she has neither served out the sentence nor come to no longer be subject to the execution thereof; or
- (vi) when the offender sought for surrender is a Japanese national.

(Measures by the Minister of Justice)

Article 20 (1) When the Minister of Justice has received documents sent by the Minister of Foreign Affairs pursuant to the provisions of Article 4 concerning a request for cooperation through the surrender of an offender sought for surrender, he/she shall, except where any of the following items applies, send the relevant documents to the Superintending Prosecutor of the Tokyo High Public Prosecutors Office and order an application to be made to the Tokyo High Court for examination as to whether the case is one in which the offender sought for surrender may be surrendered:

- (i) when the case is found to clearly fall under any of the items of paragraph (1) of the preceding Article or any of the items of paragraph (2) of said Article;
- (ii) when the request for cooperation competes with a request for the extradition of a fugitive as prescribed in Article 3 of the Act of Extradition (Act No. 68 of 1953) or with a request for the provisional detention of an offender as prescribed in Article 23, paragraph (1) of said Act and, where it is possible to give priority to the relevant request for extradition or provisional detention pursuant to the provisions of the Statute, when it is found appropriate to extradite the fugitive or to provisionally detain the offender;
- (iii) when complying with the request for cooperation would result in a breach of any of the obligations under international law or obligations under international agreements prescribed in article 98 of the Statute;
- (iv) when complying with the request for cooperation would risk obstructing the investigation or trial in a case connected with a crime other than the offense underlying the cooperation request, that is being investigated by a Japanese public prosecutor, public prosecutor's assistant officer, or judicial

police official, or a case connected with a crime other than the offense underlying the cooperation request (limited to a crime committed by a person other than the offender sought for surrender), that is pending before a Japanese court, and it is found inappropriate to immediately comply with said request; or

(v) when there are any other justifiable grounds for not immediately complying with the request for cooperation.

(2) The Minister of Justice may conduct an inquiry into the whereabouts of the offender sought for surrender and other necessary matters, when he/she finds it necessary to do so in order to issue an order under the provisions of the preceding paragraph or to take any other measures concerning the surrender of an offender sought for surrender.

(Detention of an Offender Sought for Surrender)

Article 21 (1) Upon receiving an order under the provisions of paragraph (1) of the preceding Article, the Superintending Prosecutor of the Tokyo High Public Prosecutors Office shall, except when the offender sought for surrender is being detained under a provisional detention permit or when his/her detention under a provisional detention permit has been suspended, cause a public prosecutor of the Tokyo High Public Prosecutors Office to detain the offender sought for surrender under a detention permit that has been issued in advance by a judge of the Tokyo High Court.

(2) The provisions of Article 5, paragraphs (2) and (3), and Articles 6 and 7 of the Act of Extradition shall apply mutatis mutandis to the detention of an offender sought for surrender under a detention permit set forth in the preceding paragraph. In this case, the phrase "the requesting country, the valid period of the permit" in Article 5, paragraph (3) of said Act shall be deemed to be replaced with "the valid period of the permit."

(Application for Examination)

Article 22 (1) A public prosecutor of the Tokyo High Public Prosecutors Office shall, when the order provided for in Article 20, paragraph (1) has been issued, except when the whereabouts of the offender sought for surrender are unknown, promptly apply to the Tokyo High Court for an examination of whether it is possible to surrender the offender sought for surrender.

(2) The provisions of the second sentence of Article 8, paragraph (1), and paragraphs (2) and (3) of said Article of the Act of Extradition shall apply mutatis mutandis to the application for examination set forth in the preceding paragraph with regard to surrender of an offender sought for surrender.

(Examination by the Tokyo High Court)

Article 23 (1) The Tokyo High Court shall, on the basis of the results of its examination, render its decision as specified in the following items in accordance with the cases listed in each of those items:

- (i) when the application for examination set forth in paragraph (1) of the preceding Article is unlawful: a decision for dismissal;
- (ii) when the case is one in which the offender sought for surrender can be surrendered: a decision to that effect; and
- (iii) when the case is not one in which the offender sought for surrender can be surrendered: a decision to that effect.

(2) The provisions of Article 9 of the Act of Extradition shall apply *mutatis mutandis* to the examination by the Tokyo High Court in connection with an application for examination as set forth in paragraph (1) of the preceding Article, the provisions of Article 10, paragraphs (2) and (3) of said Act shall apply *mutatis mutandis* to the orders set forth in the preceding paragraph, the provisions of Article 11 of said Act shall apply *mutatis mutandis* to rescission of an order under the provisions of Article 20, paragraph (1), the provisions of Article 12 of said Act shall apply *mutatis mutandis* to release of an offender sought for surrender, and the provisions of Article 13 of said Act shall apply *mutatis mutandis* to a certified transcript of the written decision in connection with the examination. In the case above, the phrase "paragraph (1), item (i) or (ii) of the following Article" in the proviso to Article 9, paragraph (3) of said Act shall be deemed to be replaced with "Article 23, paragraph (1), item (i) or (iii) of the Act on Cooperation with the International Criminal Court (Act No. 37 of 2007)," the phrases "of Article 3," and "receives notification from the requesting country that it will withdraw its extradition request, or when the case has fallen under item (ii) of Article 3" in Article 11, paragraph (1) of said Act shall be deemed to be replaced with "of Article 4 of the Act on Cooperation with the International Criminal Court" and "receives notification from the International Criminal Court that it will withdraw its surrender request," respectively, the phrases "of Article 4, paragraph (1)," "the items of Article 4, paragraph (1)," and "Article 8, paragraph (3)" in paragraph (2) of said Article shall be deemed to be replaced with "of Article 20, paragraph (1) of the Act on Cooperation with the International Criminal Court," "the items of paragraph (1) of said Article," and "Article 8, paragraph (3) as applied *mutatis mutandis* pursuant to Article 22, paragraph (2) of said Act," respectively, and the phrase "Article 10, paragraph (1), item (i) or (ii)" in Article 12 of said Act shall be deemed to be replaced with "Article 23, paragraph (1), item (i) or (iii) of the Act on Cooperation with the International Criminal Court."

(Stay of Examination Proceedings)

Article 24 (1) In the examination set forth in Article 9 of the Act of Extradition

as applied *mutatis mutandis* pursuant to paragraph (2) of the preceding Article, where the offender sought for surrender files a motion to the effect that the surrender of the offender sought for surrender should not be granted, on the basis that a case connected to the offense underlying the surrender request is pending before a court in a foreign country or that a final and binding judgment has been issued on said case by a court in a foreign country, the Tokyo High Court may stay the examination proceedings, by an order, until the ICC determines the admissibility of the case pursuant to the provisions of article 17, paragraph 1 of the Statute.

- (2) When the motion set forth in the preceding paragraph has been filed, the Superintending Prosecutor of the Tokyo High Public Prosecutors Office shall promptly report to the Minister of Justice to that effect.
- (3) Upon receiving the report set forth in the preceding paragraph, the Minister of Justice shall notify the Minister of Foreign Affairs to the effect that the motion set forth in paragraph (1) has been filed.
- (4) Upon receiving the notice set forth in the preceding paragraph, the Minister of Foreign Affairs shall notify the ICC to the effect that the motion set forth in paragraph (1) has been filed, and shall consult with the ICC concerning the determination on the admissibility of a case under the provisions of article 17, paragraph 1 of the Statute with regard to the offense underlying the surrender request.
- (5) Where the examination proceedings have been stayed pursuant to the provisions of paragraph (1), when a public prosecutor of the Tokyo High Public Prosecutors Office finds it necessary, he/she may suspend the detention of the offender sought for surrender. In this case, when he/she finds it necessary, he/she may entrust the offender sought for surrender to a relative thereof or some other person, or restrict the residence of the offender sought for surrender.
- (6) Where detention has been suspended pursuant to the provisions of the preceding paragraph, when the ICC has then determined to admit the case pursuant to the provisions of article 17, paragraph 1 of the Statute for the offense underlying the surrender request, a public prosecutor of the Tokyo High Public Prosecutors Office shall rescind the suspension of the detention.
- (7) The provisions of Article 22, paragraphs (3) through (6) of the Act of Extradition shall apply *mutatis mutandis* to where the suspension of a detention has been rescinded pursuant to the provisions of the preceding paragraph for an offender sought for surrender.
- (8) With regard to the application of the provisions of Article 9, paragraph (1) of the Act of Extradition as applied *mutatis mutandis* pursuant to paragraph (2) of the preceding Article where examination proceedings have been stayed pursuant to the provisions of paragraph (1), the term "two months" in Article 9,

paragraph (1) of said Act shall be deemed to be replaced with "two months (excluding the period during which the examination proceedings were stayed pursuant to the provisions of Article 24, paragraph (1) of the Act on Cooperation with the International Criminal Court)."

(Order of the Minister of Justice regarding the Surrender of an Offender Sought for Surrender, etc.)

- Article 25 (1) Where the decision set forth in Article 23, paragraph (1), item (ii) has been issued, when the Minister of Justice finds that the case does not fall under any of the provisions of Article 20, paragraph (1), items (ii) through (v), he/she shall order the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to effect the surrender of an offender sought for surrender and notify the offender sought for surrender to that effect. In this case, when said offender sought for surrender is being detained under a detention permit, the order of surrender shall be issued within ten days from the day on which the order set forth in Article 23, paragraph (1), item (ii) was issued.
- (2) Where the decision prescribed in the preceding paragraph has been issued by the Tokyo High Court, when the Minister of Justice finds that the case falls under either of the provisions of Article 20, paragraph (1), item (ii) or (iii), he/she shall immediately notify the Superintending Prosecutor of the Tokyo High Public Prosecutors Office and the offender sought for surrender to that effect, and shall order the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to release the offender sought for surrender who is being detained under the detention permit.
- (3) Where the order under the provisions of the preceding paragraph has been issued by the Minister of Justice, a public prosecutor of the Tokyo High Public Prosecutors Office shall immediately release the offender sought for surrender who is being detained under the detention permit.
- (4) Where the decision prescribed in paragraph (1) has been issued by the Tokyo High Court, when the Minister of Justice finds that the case falls under either of the provisions of Article 20, paragraph (1), item (iv) or (v), he/she shall notify the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to that effect, and shall order the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to suspend the detention of the offender sought for surrender who is being detained under the detention permit.
- (5) Where an order to suspend detention under the provisions of the preceding paragraph has been issued by the Minister of Justice, a public prosecutor of the Tokyo High Public Prosecutors Office shall immediately suspend the detention of the offender sought for surrender who is being detained under the detention permit. In this case, the provisions of the second sentence of paragraph (5) of the preceding Article shall apply *mutatis mutandis*.

- (6) After ordering the suspension of detention under the provisions of paragraph (4), when the case has ceased to fall under either of the provisions of Article 20, paragraph (1), item (iv) or (v), the Minister of Justice shall issue an order of surrender under the provisions of paragraph (1).
- (7) When the order of surrender set forth in the preceding paragraph has been issued, a public prosecutor of the Tokyo High Public Prosecutors Office shall rescind the suspension of the detention under the provisions of paragraph (5).
- (8) The provisions of Article 22, paragraphs (3) through (6) of the Act of Extradition shall apply *mutatis mutandis* where the suspension of the detention of an offender sought for surrender has been rescinded pursuant to the provisions of the preceding paragraph.

(Postponement of an Order for the Surrender of an Offender Sought for Surrender)

- Article 26 (1) In the case prescribed in paragraph (1) of the preceding Article (limited to where the offense underlying the surrender request constitutes a serious crime), when the Minister of Justice finds that the case falls under either of the following items and that it is unreasonable to immediately effect the surrender of an offender sought for surrender, he/she may postpone the order for surrender notwithstanding the provisions of said paragraph:
- (i) when a case connected with a crime other than the offense underlying the surrender request, that has been committed by the offender sought for surrender is pending before a Japanese court; or
 - (ii) when the offender sought for surrender has been sentenced to punishment by a Japanese court with regard to a case prescribed in the preceding item, and he/she has neither served out the sentence nor come to no longer be subject to the execution thereof.
- (2) When the Minister of Justice postpones an order for the surrender of an offender sought for surrender pursuant to the provisions of the preceding paragraph, he/she shall notify the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to that effect, and shall order the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to suspend the detention of the offender sought for surrender who is being detained under the detention permit.
 - (3) When an order under the provisions of the preceding paragraph has been issued, a public prosecutor of the Tokyo High Public Prosecutors Office shall immediately suspend the detention of the offender sought for surrender who is being detained under the detention permit. In this case, the provisions of the second sentence of Article 24, paragraph (5) shall apply *mutatis mutandis*.
 - (4) After ordering the suspension of a detention under the provisions of paragraph (2), when the case has ceased to fall under either of the provisions of

the items of paragraph (1) or when the grounds for finding that it is unreasonable to surrender the offender sought for surrender have ceased to exist, the Minister of Justice shall issue an order for the surrender thereof pursuant to the provisions of paragraph (1) of the preceding Article to the Superintending Prosecutor of the Tokyo High Public Prosecutors Office.

(5) Where the order of surrender set forth in the preceding paragraph has been issued, a public prosecutor of the Tokyo High Public Prosecutors Office shall rescind the suspension of the detention under the provisions of paragraph (3).

(6) The provisions of Article 22, paragraphs (3) through (6) of the Act of Extradition shall apply *mutatis mutandis* to where the suspension of the detention of an offender sought for surrender has been rescinded pursuant to the provisions of the preceding paragraph.

(Suspension of a Detention Where Detention Is Problematic, and the Rescission Thereof)

Article 27 (1) A public prosecutor of the Tokyo High Public Prosecutors Office may, at the motion of an offender sought for surrender who is being detained under a detention permit or *ex officio*, suspend the detention of the offender sought for surrender when there is a risk that the health of the offender sought for surrender will be substantially damaged by the detention or when he/she otherwise finds that continuing to detain him/her would be problematic.

(2) When the motion set forth in the preceding paragraph has been filed or when a public prosecutor of the Tokyo High Public Prosecutors Office intends to suspend a detention *ex officio*, the Superintending Prosecutor of the Tokyo High Public Prosecutors Office shall report to the Minister of Justice to that effect.

(3) When the Minister of Justice has received a report under the preceding paragraph, he/she shall notify the Minister of Foreign Affairs to that effect.

(4) When the Minister of Foreign Affairs has been notified under the preceding paragraph, he/she shall seek the opinion of the ICC with regard to the suspension of the detention of the offender sought for surrender.

(5) In determining whether or not to suspend a detention pursuant to the provisions of paragraph (1), the public prosecutor of the Tokyo High Public Prosecutors Office shall respect the opinion set forth in the preceding paragraph; provided, however, that he/she may suspend the detention without that opinion when the situation is urgent and there is no time available to hear said opinion.

(6) The provisions of the second sentence of Article 24, paragraph (5) shall apply *mutatis mutandis* to where a detention is suspended pursuant to the provisions of paragraph (1).

(7) When a public prosecutor of the Tokyo High Public Prosecutors Office finds it

necessary, he/she may rescind the suspension of a detention under the provisions of paragraph (1) at any time.

- (8) The provisions of Article 22, paragraphs (3) through (6) of the Act of Extradition shall apply mutatis mutandis to where the suspension of the detention of an offender sought for surrender has been rescinded pursuant to the provisions of the preceding paragraph.

(Lapse of a Detention During the Suspension Thereof)

Article 28 A detention that has been suspended pursuant to the provisions of Article 24, paragraph (5), Article 25, paragraph (5), Article 26, paragraph (3), or paragraph (1) of the preceding Article shall lose its effect in a case that falls under any of the following items:

- (i) when a certified transcript of the written judgment in the decision set forth in Article 23, paragraph (1), item (i) or (iii) has been served upon the offender sought for surrender;
- (ii) when the offender sought for surrender has been notified pursuant to the provisions of Article 11, paragraph (2) of the Act of Extradition as applied mutatis mutandis pursuant to Article 23, paragraph (2); or
- (iii) when the offender sought for surrender has been notified by the Minister of Justice to the effect that the case falls under either Article 20, paragraph (1), item (ii) or (iii), pursuant to the provisions of Article 25, paragraph (2).

(Time Limit for the Surrender of an Offender Sought for Surrender)

Article 29 (1) The surrender of an offender sought for surrender under an order issued by the Minister of Justice pursuant to the provisions of Article 25, paragraph (1) shall be effected within thirty days from the date of said order (when a detention has been suspended, within thirty days from the date on which the offender sought for surrender was detained as a result of the rescission of the suspension of his/her detention).

- (2) With regard to the application of the provisions of the preceding paragraph to a case in which a detention was suspended pursuant to the provisions of Article 27, paragraph (1) after an order under the provisions of Article 25, paragraph (1) was issued by the Minister of Justice, the period during which the detention was suspended shall not be included in the period set forth in the preceding paragraph.

(Consultation with the Minister of Foreign Affairs)

Article 30 The Minister of Justice shall consult with the Minister of Foreign Affairs in advance in a case that falls under any of the following items:

- (i) when withholding an order under the provisions of Article 20, paragraph (1) on the basis that the case falls under Article 20, paragraph (1), item (i)

- (limited to the portion pertaining to Article 19, paragraph (1));
- (ii) when deciding not to cooperate through the surrender of an offender sought for surrender, on the basis that the case falls under any of the provisions of Article 20, paragraph (1), item (ii) or (iii);
 - (iii) when withholding an order under the provisions of Article 20, paragraph (1) or when taking measures under the provisions of Article 25, paragraph (4), on the basis that the case falls under any of the provisions of Article 20, paragraph (1), item (iv) or (v); or
 - (iv) when postponing an order for the surrender of an offender sought for surrender pursuant to the provisions of Article 26, paragraph (1).

(Measures Related to the Surrender of an Offender Sought for Surrender)

- Article 31 (1) The provisions of Article 16, paragraphs (1) through (3), Article 17, paragraph (1), and Articles 18 and 19 of the Act of Extradition shall apply *mutatis mutandis* to the surrender of an offender sought for surrender in connection with an order of surrender issued by the Minister of Justice under the provisions of Article 25, paragraph (1). In this case, the phrase "the report from the Superintending Prosecutor of the Tokyo High Prosecutors Office provided for in paragraph (5) of the preceding Article or in Article 22, paragraph (6)" in Article 18 of said Act shall be deemed to be replaced with "the report prescribed under the provisions of Article 22, paragraph (6) as applied *mutatis mutandis* pursuant to Article 25, paragraph (8), Article 26, paragraph (6), or Article 27, paragraph (8) of the Act on Cooperation with the International Criminal Court (where Article 22, paragraph (6) is applied *mutatis mutandis* pursuant to Article 27, paragraph (8) of said Act, the report shall be limited to one given when the suspension of the detention was rescinded after the order of surrender was issued by the Minister of Justice under the provisions of Article 25, paragraph (1) of said Act)," and the term "the requesting country" in Article 19 of said Act shall be deemed to be replaced with "the International Criminal Court."
- (2) The notice of surrender set forth in Article 16, paragraph (1) of the Act of Extradition and the written permit of custody set forth in paragraph (3) of said Article as applied *mutatis mutandis* pursuant to the preceding paragraph shall each contain the name of the offender sought for surrender, the offense underlying the surrender request, the place of surrender, the time limit for the surrender, the date of issuance, and, in the surrender of an offender sought for surrender who escaped during the execution of a sentence of detention rendered by the ICC, the name of the foreign country designated by the ICC as the place where the offender is to be surrendered, and the Minister of Justice shall affix his/her name and seal thereto.

Article 32 The warden of a penal institution who has received an order under the provisions of Article 17, paragraph (1) of the Act of Extradition as applied mutatis mutandis pursuant to paragraph (1) of the preceding Article or an official of the penal institution who has been nominated by that warden shall escort the offender sought for surrender to the place of surrender stated in the notice of surrender, and shall surrender said offender sought for surrender to the person designated by the ICC who is in possession of the written permit of custody.

Article 33 The person to whom an offender sought for surrender has been surrendered in Japan pursuant to the provisions of the preceding Article shall promptly escort the offender sought for surrender to the ICC or to the foreign country designated as the place where the offender sought for surrender is to be surrendered, as prescribed in Article 31, paragraph (2).

Subsection 2 Provisional Detention

(Order of Provisional Detention)

Article 34 When the Minister of Justice has received documents sent by the Minister of Foreign Affairs pursuant to the provisions of Article 4 concerning a request for cooperation through provisional detention, he/she shall, except where the case falls under any of the items of Article 20, paragraph (1) (excluding the part of item (i) that pertains to Article 19, paragraph (1), item (iii)), order the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to provisionally detain the offender sought for provisional detention.

(Measures Concerning Provisional Detention)

Article 35 (1) The Superintending Prosecutor of the Tokyo High Public Prosecutors Office shall, when he/she has been issued an order under the provisions of the preceding Article, cause a public prosecutor of the Tokyo High Public Prosecutors Office to detain the offender sought for provisional detention under a provisional detention permit that has been issued in advance by a judge of the Tokyo High Court.

(2) The provisions of Article 5, paragraphs (2) and (3), and Articles 6 and 7 of the Act of Extradition shall apply mutatis mutandis to the detention of an offender sought for provisional detention under a provisional detention permit set forth in the preceding paragraph, the provisions of Article 26 of said Act shall apply mutatis mutandis to the release of an offender sought for provisional detention who is being detained under a provisional detention permit; the provisions of Article 27 of said Act shall apply mutatis mutandis to where an order under

Article 20, paragraph (1) has been issued with regard to an offender sought for provisional detention for whom a provisional detention permit has been issued; the provisions of Article 28 of said Act shall apply *mutatis mutandis* to where the ICC notifies the relevant person, after the documents prescribed in the preceding Article have been sent, that it will not request the surrender of the offender sought for provisional detention; and the provisions of Article 29 of said Act shall apply *mutatis mutandis* to an offender sought for provisional detention who is being detained under a provisional detention permit. In the case above, "the requesting country, the valid period of the permit" in Article 5, paragraph (3) of said Act shall be deemed to be replaced with "the valid period of the permit"; the phrases "regarding the extradition of an offender who is being detained under a provisional detention permit as provided for in Article 3" and "the items of Article 4, paragraph (1)" in Article 26, paragraph (1) of said Act shall be deemed to be replaced with "prescribed in Article 20, paragraph (1) of the Act on Cooperation with the International Criminal Court" and "the items of said paragraph," respectively; the phrase "paragraph (1) of Article 8" in Article 27, paragraph (3) of said Act shall be deemed to be replaced with "the second sentence of Article 8, paragraph (1) as applied *mutatis mutandis* pursuant to Article 22, paragraph (2) of the Act on Cooperation with the International Criminal Court"; and the phrase "two months from the day on which the offender was taken into custody (or within a period of less than two months if the extradition treaty provides otherwise)" in Article 29 of said Act shall be deemed to be replaced with "sixty days from the day following the day on which the offender was taken into custody."

- (3) A public prosecutor of the Tokyo High Public Prosecutors Office may, at the motion of an offender sought for provisional detention who is being detained under a provisional detention permit or *ex officio*, suspend the detention of the offender sought for provisional detention when there is a risk that the health of the offender sought for provisional detention will be substantially damaged by the detention or when he/she otherwise finds that continuing to detain him/her would be problematic.
- (4) The provisions of Article 27, paragraphs (2) through (7) of this Act and the provisions of Article 22, paragraphs (3) through (5) of the Act of Extradition shall apply *mutatis mutandis* to the suspension of the detention of an offender sought for provisional detention under the provisions of the preceding paragraph and to where the suspension of said detention has been rescinded.
- (5) Where a detention under a provisional detention permit has been suspended pursuant to the provisions of paragraph (3), when the offender sought for provisional detention has been notified pursuant to the provisions of Article 27, paragraph (1) of the Act of Extradition as applied *mutatis mutandis* pursuant to paragraph (2), the suspension of his/her detention under a provisional

detention permit shall be deemed to be the suspension of a detention under the provisions of Article 27, paragraph (1).

- (6) In a case that falls under any of the following items, where a detention under a provisional detention permit has been suspended pursuant to the provisions of paragraph (3), the detention under the provisional detention permit that is being suspended shall cease to be effective:
- (i) when the offender sought for provisional detention has been notified pursuant to the provisions of Article 26, paragraph (1) or Article 28, paragraph (2) of the Act of Extradition as applied mutatis mutandis pursuant to paragraph (2); or
 - (ii) when the offender sought for provisional detention has not been notified pursuant to the provisions of Article 27, paragraph (1) of the Act of Extradition as applied mutatis mutandis pursuant to paragraph (2) within sixty days from the day following the day on which said offender sought for provisional detention was taken into custody under a provisional detention permit.

Subsection 3 Miscellaneous Provisions

(Exclusion from Application of the Administrative Procedure Act, etc.)

Article 36 (1) The provisions of Chapter III of the Administrative Procedure Act (Act No. 88 of 1993) shall not apply to a disposition made based on the provisions of the preceding two Subsections.

(2) The provisions of Article 12, paragraphs (4) and (5) of the Administrative Case Litigation Act (Act No. 139 of 1962) (including the cases where these paragraphs are applied mutatis mutandis pursuant to Article 38, paragraph (1) of said Act) shall not apply to an action for the judicial review of an administrative disposition (meaning an action for the judicial review of an administrative disposition as prescribed in Article 3, paragraph (1) of said Act) in connection with an original administrative disposition (meaning an original administrative disposition as prescribed in paragraph (2) of said Article) or an administrative disposition on appeal (meaning an administrative disposition on appeal as prescribed in paragraph (3) of said Article) that is based on the provisions of the preceding two Subsections.

(Mutatis Mutandis Application)

Article 37 The provisions of Article 32 of the Act of Extradition shall apply mutatis mutandis to the performance of duties prescribed in the preceding two Subsections by the Tokyo High Court or its judges or of public prosecutors of the Tokyo High Public Prosecutors Office.

Section 4 Cooperation with Enforcement

(Requirements for Cooperation with Enforcement)

Article 38 (1) Where an offense underlying a surrender request constitutes a serious crime, cooperation with enforcement may be rendered, except in a case that falls under any of the following items:

- (i) cooperation with enforcement entailing preservation for a forfeiture, when a case for the offense underlying the cooperation request is pending before a Japanese court; provided, however, that this shall not apply where the ICC has determined that the case is admissible pursuant to the provisions of article 17, paragraph 1 of the Statute or has commenced proceedings in the case;
- (ii) cooperation with enforcement entailing preservation for a forfeiture, when a final and binding judgment has been issued by a Japanese court in a case connected with the offense underlying the surrender request; provided, however, that this shall not apply where the ICC has determined that the case is admissible pursuant to the provisions of article 17, paragraph 1 of the Statute or has rendered a judgment of conviction in the case;
- (iii) cooperation with enforcement entailing preservation for a forfeiture in instances when, if a punishment were to be imposed in Japan for the offense underlying the cooperation request, the property connected with the request for cooperation with enforcement would not be subject to preservation for confiscation under Japanese laws and regulations (excluding instances where property connected with said request was obtained from a person who was harmed by the act constituting the offense underlying the cooperation request, when said property would not be subject to preservation for confiscation, on the basis that it belongs to said person or his/her general successor);
- (iv) cooperation with enforcement entailing preservation for a reparations order that is equivalent to preservation for confiscation under Japanese laws and regulations in light of its contents and nature, in instances when, if a punishment were to be imposed in Japan for the offense underlying the cooperation request, the property connected with the request for cooperation with enforcement would not be subject to preservation for confiscation under Japanese laws and regulations (excluding instances where property connected with said request was obtained from a person who was harmed by an act constituting a serious crime and is to be returned to said person or his/her general successor by a reparations order, when said property would not be subject to preservation for confiscation, on the basis that the property belongs to such person); or
- (v) cooperation with enforcement entailing preservation for a reparations order

that is equivalent to preservation for the collection of an equivalent value under Japanese laws and regulations in light of its contents and nature, when, if a punishment were to be imposed in Japan for the offense underlying the cooperation request, the property connected with said request for cooperation with enforcement would not be subject to preservation for collection of equivalent value under Japanese laws and regulations.

(2) Where the offense underlying the surrender request is any of the crimes prescribed in article 70, paragraph 1 of the Statute, cooperation with enforcement may be given except in a case that falls under any of the following items:

(i) when, if the act constituting the offense underlying the surrender request were to be committed within Japan, it would be found impossible to impose a punishment under Japanese laws and regulations;

(ii) when a case connected with the offense underlying the surrender request is pending before a Japanese court, or when a final and binding judgment has been issued thereon by a Japanese court; or

(iii) cooperation with enforcement entailing preservation for a forfeiture in instances when, if a punishment were to be imposed in Japan for the offense underlying the cooperation request, the property connected with said request for cooperation with enforcement would not be subject to preservation for confiscation under Japanese laws and regulations (excluding instances where property connected with said request was obtained from a person who was harmed by the act constituting the offense underlying the cooperation request, when the property would not be subject to preservation for confiscation, on the basis that the property belongs to said person or his/her general successor).

(Measures by the Minister of Justice)

Article 39 (1) When the Minister of Justice has received documents sent by the Minister of Foreign Affairs pursuant to the provisions of Article 4 concerning a request for cooperation with enforcement, he/she shall, except in a case that falls under any of the following items, send the relevant documents to the Chief Prosecutor of the appropriate District Public Prosecutors Office and order him/her to take the necessary measures for cooperation with enforcement:

(i) when the case is found to fall under any of the items of paragraph (1) of the preceding Article or any of the items of paragraph (2) of the preceding Article;

(ii) when the request for cooperation with enforcement competes with a request for assistance under the provisions of Article 59, paragraph (1) of the Act on Punishment of Organized Crime and Control of Crime Proceeds (Act No. 136

- of 1999; hereinafter referred to as the "Organized Crime Punishment Act") or a request for assistance under the provisions of Article 21 of the Act Concerning Special Provisions of the Narcotics and Psychotropics Control Act, etc. and Other Matters for the Prevention of Activities Encouraging Illicit Conduct and Other Activities Involving Controlled Substances through International Cooperation (Act No. 94 of 1991), or a request for Investigation Assistance, where it is possible to give priority to the relevant request pursuant to the provisions of the Statute, and when the Minister of Justice finds it reasonable to take the measures under said request;
- (iii) when complying with the request for cooperation with enforcement would result in a breach of any of the obligations under international law prescribed in article 98, paragraph 1 of the Statute;
 - (iv) when complying with the request for cooperation with enforcement would risk of obstructing an investigation or trial in a case connected with a crime other than the offense underlying the cooperation request, which is being investigated by a Japanese public prosecutor, public prosecutor's assistant officer, or judicial police official, or which is pending before a Japanese court, and the Minister of Justice finds it unreasonable to immediately comply with said request; or
 - (v) when there are any other justifiable grounds for not immediately complying with the request for cooperation with enforcement.
- (2) The Minister of Justice shall consult with the Minister of Foreign Affairs in advance in a case that falls under any of the following items:
- (i) when deciding not to render cooperation for cooperation with enforcement on the basis that the case falls under either item (ii) or (iii) of the preceding paragraph; or
 - (ii) when withholding an order under the provisions of the preceding paragraph on the basis that the case falls under any of the provisions of item (i) (limited to the portion pertaining to paragraph (1), item (i) or (ii) of the preceding Article), (iv), or (v) of the preceding paragraph.
- (3) The provisions of Article 6, paragraph (4) shall apply mutatis mutandis to where an order under the provisions of paragraph (1) is issued or where any other measures are taken in connection with cooperation with enforcement.

(Measures by the Chief Prosecutor and Applications for Examination)

Article 40 (1) A Chief Prosecutor who has been issued an order under the provisions of paragraph (1) of the preceding Article shall cause a public prosecutor of his/her office to take the necessary measures for cooperation with enforcement, and shall retain the property connected with the implementation of cooperation with enforcement.

(2) When a request for cooperation with enforcement entails enforcing a final

judgment for a fine, forfeiture, or reparations order, the public prosecutor set forth in the preceding paragraph shall file an application for examination with a court as to whether or not it is a case where cooperation with enforcement may be rendered. In this case, when the request entails the enforcement of a final judgment for a reparations order, the public prosecutor shall attach his/her opinion on whether it is equivalent to a final judgment of confiscation or that of collection of equivalent value under Japanese laws and regulations in light of the contents and nature of said reparations order.

(Examination by a Court, etc.)

Article 41 (1) A court shall, on the basis of the results of the examination, render the decisions specified in the following items in accordance with the cases listed in each of those items:

- (i) when the application for examination set forth in paragraph (2) of the preceding Article is unlawful: a decision for dismissal;
 - (ii) when the case is one in which cooperation with enforcement may be rendered with regard to all or part of the final judgment connected with the request for cooperation with enforcement: a decision to that effect; and
 - (iii) when the case is not one in which cooperation with enforcement may be rendered with regard to any of the final judgment connected with the request for cooperation with enforcement: a decision to that effect.
- (2) When a court renders the decision specified in item (ii) of the preceding paragraph with regard to a request for cooperation with enforcement of a final judgment for a reparations order, it shall indicate whether said final judgment is equivalent to a final judgment of confiscation or that of collection of equivalent value under Japanese laws and regulations, according to the contents and nature of said reparations order.
- (3) When a court renders the decision specified in paragraph (1), item (ii) with regard to a request for cooperation with enforcement that entails enforcing a final judgment of forfeiture, it shall simultaneously indicate the amount of money in Japanese yen that is to be collected from the person subject to said final judgment in lieu of confiscation, in the event that it is not possible to enforce said final judgment due to loss, damage, or any other reason. The same shall apply where the decision specified in said item is rendered with regard to a request for cooperation with enforcement that entails enforcing a final judgment for a reparations order, when the court must indicate that said final judgment is equivalent to a final judgment of confiscation pursuant to the provisions of the preceding paragraph.
- (4) Where a court renders the decision specified in paragraph (1), item (ii) with regard to a request for cooperation with enforcement that entails enforcing a final judgment of forfeiture, in instances when, if a punishment were to be

imposed in Japan for the offense underlying the cooperation request, property connected with the request would be found not to be subject to a judicial decision for confiscation under Japanese laws and regulations (excluding instances where property connected with said request was obtained from a person who was harmed by the act constituting the offense underlying the cooperation request, when the property would be found not to be subject to preservation for confiscation, on the basis that the property belongs to said person or his/her general successor), the court shall simultaneously indicate such fact and the amount of money in Japanese yen that is to be collected from the person subject to said final judgment in lieu of enforcement of said final judgment.

- (5) Where a court renders the decision specified in paragraph (1), item (ii) with regard to a request for cooperation with enforcement that entails enforcing a final judgment for a reparations order (limited to where the court is to indicate that said final judgment is equivalent to a final judgment for confiscation pursuant to the provisions of paragraph (2)), in instances when, if a punishment were to be imposed in Japan for the offense underlying the cooperation request, the property connected with the request would be found not to be subject to a judicial decision for confiscation under Japanese laws and regulations (excluding instances where property connected with said request was obtained from a person who was harmed by the act constituting the serious crime and should be returned to said person or his/her general successor by a reparations order, when the property would be found not to be subject to preservation for confiscation, on the basis that the property belongs to such person), the court shall simultaneously indicate such fact and the amount of money in Japanese yen that is to be collected from the person subject to said final judgment in lieu of enforcement of said final judgment.
- (6) Where a court renders the decision specified in paragraph (1), item (ii) with regard to a request for cooperation with enforcement that entails enforcing a final judgment of forfeiture, when the court finds that a person by whom there are reasonable grounds to consider that property that is the subject matter of said final judgment or a superficies, mortgage, or any other right to such property is owned was unable to claim his/her right in the proceedings connected with said final judgment due to grounds not attributable to him/her, the court shall simultaneously indicate such fact and the amount of money in Japanese yen which is to be collected from the person subject to said final judgment in lieu of enforcement of said final judgment. The same shall apply where the court renders the decision specified in said item with regard to a request for cooperation with enforcement that entails enforcing a final judgment for a reparations order (limited to where the court is to indicate that said final judgment is equivalent to a final judgment for confiscation pursuant

to the provisions of paragraph (2)).

(7) With regard to an examination under the provisions of paragraph (2) of the preceding Article, the decision specified in paragraph (1), item (ii) may not be rendered for a request for cooperation with enforcement that entails enforcing a final judgment of forfeiture when participation in the proceedings of the case for which the application for examination was filed was not permitted for a person by whom there are reasonable grounds to consider that property connected with said request or a superficies, mortgage, or any other right to such property is owned, or for an obligee effecting a seizure or an obligee effecting a provisional seizure where a commencement order for a compulsory auction has been issued or a seizure or provisional seizure through compulsory execution has been executed against such property or right prior to its preservation due to forfeiture. The same shall apply to the decision specified in said item in connection with a final judgment for a reparations order that is found to be equivalent to a final judgment for confiscation under Japanese laws and regulations in light of its contents and nature.

(8) The provisions of Article 59, paragraph (3) and Article 62, paragraph (3) of the Organized Crime Punishment Act shall apply *mutatis mutandis* to where a court renders the decision specified in paragraph (1), item (ii) with regard to a request for cooperation with enforcement that entails enforcing a final judgment of forfeiture (including where, when the court renders the decision specified in said item with regard to a request for cooperation with enforcement that entails enforcing a final judgment for a reparations order, the court is to indicate that said final judgment is equivalent to a final judgment for confiscation pursuant to the provisions of paragraph (2)), the provisions of paragraphs (5) and (7) through (9) of said Article shall apply *mutatis mutandis* to an examination under the provisions of paragraph (2) of the preceding Article with regard to a request for cooperation with enforcement, and the provisions of Article 63 of the Organized Crime Punishment Act shall apply *mutatis mutandis* to an appeal against the decision on the application for examination set forth in paragraph (2) of the preceding Article, respectively.

(Effect of Decisions on the Implementation of Cooperation with Enforcement, etc.)

Article 42 (1) Where the decision specified in paragraph (1), item (ii) of the preceding Article has become final and binding with regard to a request for cooperation with enforcement that entails enforcing any of the final judgments listed in the following items, said final judgments shall be deemed to be the final judgments rendered by a Japanese court that are respectively specified in those items, in terms of the implementation of cooperation with enforcement:

(i) a final judgment for a fine: a final judgment for a fine;

- (ii) a final judgment of forfeiture and a final judgment for a reparations order that has been indicated to be equivalent to a final judgment for confiscation pursuant to the provisions of paragraph (2) of the preceding Article (excluding that set forth in the following item): a final judgment for confiscation;
 - (iii) a final judgment of forfeiture or a final judgment for a reparations order that has been indicated to be equivalent to a final judgment for confiscation pursuant to the provisions of paragraph (2) of the preceding Article and for which the amount of money in Japanese yen to be collected has been indicated pursuant to the provisions of paragraphs (4) through (6) of said Article: a final judgment for collection of the equivalent value; and
 - (iv) a final judgment for a reparations order that has been indicated to be equivalent to a final judgment for collection of an equivalent value pursuant to the provisions of paragraph (2) of the preceding Article: a final judgment for collection of an equivalent value.
- (2) Where cooperation with enforcement is implemented with regard to the final judgment set forth in item (ii) of the preceding paragraph, when it is not possible to enforce said final judgment against the property subject to the forfeiture or reparations order due to loss, damage, or any other reason, notwithstanding the provisions of said paragraph, the final judgment shall be deemed to be a final judgment rendered by a Japanese court to the effect that the amount indicated pursuant to the provisions of paragraph (3) of the preceding Article is to be collected from the person subject to said final judgment.
- (3) With regard to property connected with the implementation of cooperation through the enforcement of the final judgment set forth in paragraph (1), item (ii) that is not suitable to be sent to the ICC, a public prosecutor may sell said property. In this case, the proceeds therefrom shall be deemed to be property connected with the implementation of cooperation through the enforcement of said final judgment.
- (4) When the Chief Prosecutor has finished implementing cooperation with enforcement that entails enforcing a final judgment for a fine, forfeiture, or reparations order, he/she shall promptly deliver the property connected with the implementation of cooperation with enforcement to the Minister of Justice.
- (5) The provisions of Article 65 of the Organized Crime Punishment Act shall apply mutatis mutandis to rescission of the decision specified in paragraph (1), item (ii) of the preceding Article in connection with the request for cooperation with enforcement prescribed in paragraph (1). In this case, the term "confiscation" in Article 65, paragraph (2) of the Organized Crime Punishment Act shall be deemed to be replaced with "a fine, confiscation,"; and the term "Article 63" in paragraph (3) of said Article shall be deemed to be replaced with

"Article 63 as applied mutatis mutandis pursuant to Article 41, paragraph (8) of the Act on Cooperation with the International Criminal Court (Act No. 37 of 2007)."

(Request for Preservation for Confiscation)

Article 43 (1) When a request for cooperation with enforcement is a request for preservation for a forfeiture or when it is a request for preservation for a reparations order that is found to be equivalent to preservation for confiscation under Japanese laws and regulations in light of its contents and nature, the public prosecutor shall request the judge to issue a protective order in anticipation of confiscation to prohibit the disposition of property connected with said request for cooperation with enforcement. In this case, when the public prosecutor finds it necessary, he/she may request the judge to issue an ancillary protective order to prohibit the disposition of a superficies, mortgage, or any other right that exists to such property.

(2) After the application for examination set forth in Article 40, paragraph (2) has been filed, a disposition to preserve the property for the forfeiture or reparations order under the preceding paragraph shall be rendered by the court that has received the application for examination.

(Protective Order in Anticipation of Confiscation)

Article 44 (1) When a court or a judge has received a request under the provisions of the first sentence of paragraph (1) of the preceding Article, when the court or the judge finds that the case does not fall under any of the items of Article 38, paragraph (1) nor any of the items of paragraph (2) of said Article, the court or the judge shall issue a protective order in anticipation of confiscation to prohibit the disposition of property pertaining to said request, pursuant to the provisions of this Section.

(2) Where a court or a judge has issued or intends to issue a protective order in anticipation of confiscation with regard to property to which there exists superficies, mortgage, or any other rights, when the court or the judge finds that there are reasonable grounds to consider that such rights will be extinguished through the enforcement of a forfeiture and when it is necessary for such enforcement, or when the court or the judge finds that there are reasonable grounds to consider that said right is fake, the court or the judge may, at the request of the public prosecutor, issue an ancillary protective order separately to prohibit the disposition of such rights.

(3) The provisions of Article 22, paragraphs (3), (4), and (6) and Article 23, paragraph (6) of the Organized Crime Punishment Act shall apply mutatis mutandis to a protective order in anticipation of confiscation under paragraph (1) or to an ancillary protective order under the preceding paragraph. In this

case, the terms "defendant" and "charged fact" in Article 22, paragraph (3) of the Organized Crime Punishment Act shall be deemed to be replaced with "person who would be subject to the judicial decision of forfeiture or judicial decision for a reparations order prescribed in Article 2, item (x) of the Act on Cooperation with the International Criminal Court" and "offense underlying the cooperation request prescribed in item (xii) of said Article," respectively; the phrase "paragraph (1) or (2)" in paragraph (4) of said Article shall be deemed to be replaced with "Article 44, paragraph (1) or (2) of the Act on Cooperation with the International Criminal Court"; and the phrase "paragraph (1) or (4)" in Article 23, paragraph (6) of the Organized Crime Punishment Act shall be deemed to be replaced with "Article 43, paragraph (1) of the Act on Cooperation with the International Criminal Court."

- (4) The protective order in anticipation of confiscation set forth in paragraph (1) and the ancillary protective order set forth in paragraph (2) may be issued even before the hearing prescribed in article 61, paragraph 1 of the Statute is held at the ICC.
- (5) The provisions of Article 23, paragraph (7) and Article 68 of the Organized Crime Punishment Act shall apply *mutatis mutandis* to a protective order in anticipation of confiscation in the case set forth in the preceding paragraph. In this case, the phrase "institution of prosecution" and "defendant" in Article 23, paragraph (7) of the Organized Crime Punishment Act shall be deemed to be replaced with "commencement of the hearing prescribed in article 61, paragraph 1 of the Rome Statute of the International Criminal Court" and "person subject to that hearing," respectively; the phrases "a request for assistance through preservation for confiscation or collection of an equivalent value is made in a case for which prosecution has not been instituted," "requesting country," and "that prosecution has been instituted" in Article 68, paragraph (1) of the Organized Crime Punishment Act shall be deemed to be replaced with "a request for cooperation with enforcement prescribed in Article 2, item (x) of the Act on Cooperation with the International Criminal Court entailing preservation for a forfeiture or for a reparations order prescribed in said item is made in a case for which the hearing prescribed in article 61, paragraph 1 of the Rome Statute of the International Criminal Court has not been commenced," "International Criminal Court," and "that the hearing has been commenced," respectively; and the phrases "requesting country" and "prosecution cannot be instituted" in paragraph (2) of said Article shall be deemed to be replaced with "International Criminal Court" and "the hearing prescribed in article 61, paragraph 1 of the Rome Statute of the International Criminal Court cannot be held," respectively.
- (6) The judicial decision for a renewal under the provisions of Article 68, paragraph (2) of the Organized Crime Punishment Act as applied *mutatis*

mutandis pursuant to the preceding paragraph shall become effective at the time when the public prosecutor is notified thereof.

(Request for Preservation for the Collection of an Equivalent Value)

Article 45 (1) When a public prosecutor finds that a request for cooperation with enforcement entails preservation for a reparations order and is equivalent to preservation for the collection of an equivalent value under Japanese laws and regulations in light of its contents and nature, he/she shall request the judge to issue a protective order in anticipation of collection to prohibit the person who would be subject to the judicial decision for a reparations order from disposing of his/her property.

(2) The provisions of Article 43, paragraph (2) shall apply mutatis mutandis to a disposition concerning preservation for a reparations order under the preceding paragraph.

(Protective Order in Anticipation of Collection)

Article 46 (1) Where a court or a judge has received a request under the provisions of paragraph (1) of the preceding Article, when the court or the judge finds that the case does not fall under any of the items of Article 38, paragraph (1) nor any of the items of paragraph (2) of said Article, the court or the judge shall issue an protective order in anticipation of collection to prohibit the person who would be subject to the judicial decision of a reparations order from disposing of his/her property.

(2) The provisions of Article 22, paragraph (4), Article 23, paragraph (6), and Article 42, paragraphs (2) through (4) of the Organized Crime Punishment Act shall apply mutatis mutandis to the protective order in anticipation of collection set forth in the preceding paragraph. In this case, the phrase "paragraph (1) or (2)" in Article 22, paragraph (4) of the Organized Crime Punishment Act shall be deemed to be replaced with "Article 46, paragraph (1) of the Act on Cooperation with the International Criminal Court"; the phrase "paragraph (1) or (4)" in Article 23, paragraph (6) of the Organized Crime Punishment Act shall be deemed to be replaced with "Article 45, paragraph (1) of the Act on Cooperation with the International Criminal Court"; the term "defendant" in Article 42, paragraphs (3) and (4) of the Organized Crime Punishment Act shall be deemed to be replaced with "person who would be subject to the judicial decision for a reparations order prescribed in Article 2, item (x) of the Act on Cooperation with the International Criminal Court," and the term "charged fact" in said paragraph shall be deemed to be replaced with "offense underlying the cooperation request prescribed in item (xii) of said Article."

(Mutatis Mutandis Application)

Article 47 In addition to what is specially provided for in this Section, the provisions of Chapter III, Chapter IV (excluding Articles 22, 23, 32, 33, 42, 43, 47, and 48), and Articles 69 through 72 of the Organized Crime Punishment Act, the provisions of the Code of Criminal Procedure (limited to Part I, Chapters II and V through XIII, Part II, Chapter I, Part III, Chapters I and IV, and Part VII), the provisions of laws and regulations on the costs of criminal procedure and the Act on Emergency Measures in Criminal Procedure to Confiscate Items Owned by Third Parties (Act No. 138 of 1963) shall apply mutatis mutandis to the examination, a disposition, or issuance of a warrant by a court or a judge, a disposition by a public prosecutor or a public prosecutor's assistant officer, or participation of an interested party in an examination by a court, and the provisions of Article 8, paragraph (2) and Article 11, paragraphs (1) and (2) of the Act of Extradition shall apply mutatis mutandis to measures taken where a request for cooperation with enforcement has been accepted, unless contrary to the nature thereof, respectively.

(Delegation to Cabinet Order)

Article 48 In addition to what is provided for in this Section, matters related to a disposition of delinquency that are necessary with regard to the adjustment of procedures between a prohibition on disposition under a protective order in anticipation of confiscation and a disposition of delinquency, shall be specified by Cabinet Order.

Section 5 Miscellaneous Provisions

(Approval of Transportation through Japanese Territory)

Article 49 Where a request for approval of transportation (meaning transportation in which foreign authorities or a person designated by the ICC (referred to as "foreign authorities" in the following Article) escort a person sought for surrender under the provisions of article 89, paragraph 1 of the Statute (referred to as the "person sought for surrender" in the following Article) while passing through the Japanese territory; the same shall apply in the following Article) has been made by the ICC, the Minister of Foreign Affairs shall, except where he/she finds that the form of said request does not to comply with the Statute, give his/her approval to that request.

(Measures for Landings in Japan under Escort)

Article 50 (1) Where an aircraft carrying a person sought for surrender under transportation by foreign authorities (excluding transportation that has been approved under the provisions of the preceding Article) has landed in Japan

due to weather conditions or any other unavoidable grounds, when a police official or an immigration control officer has discovered the person sought for surrender, he/she may take said person sought for surrender into custody in order to deliver him/her to the foreign authorities.

- (2) Upon taking a person sought for surrender into custody pursuant to the provisions of the preceding paragraph, an immigration control officer shall immediately deliver said person to a police official. In this case, the police official may continue to keep said person sought for surrender in custody.
- (3) The duration of custody of a person sought for surrender under the provisions of the preceding two paragraphs may not exceed ninety six hours from the time of landing.
- (4) A police official who has taken a person sought for surrender into custody pursuant to the provisions of paragraph (1) or a police official to whom a person sought for surrender has been delivered pursuant to the provisions of paragraph (2) shall notify the Minister of Foreign Affairs to that effect.
- (5) When the Minister of Foreign Affairs has been notified as set forth in the preceding paragraph, he/she shall notify the ICC that the person sought for surrender has been taken into custody.
- (6) When the Minister of Foreign Affairs has received a request for approval of transportation as set forth in the preceding Article from the ICC, he/she shall notify the police official set forth in paragraph (4) to that effect.
- (7) Where a request for approval of transportation under the preceding Article has been accepted within the period prescribed in paragraph (3), a police official may, notwithstanding the provisions of said paragraph, continue to keep the person sought for surrender in custody until he/she delivers said person sought for surrender to the foreign authorities escorting said person sought for surrender; provided, however, that where a police official has been notified by the Minister of Foreign Affairs that approval has not been given for transportation, he/she may not continue to keep the person sought for surrender in custody.
- (8) When a police official becomes unable to continue keeping a person sought for surrender in custody pursuant the provisions of paragraph (3) or the preceding paragraph, he/she shall deliver the person sought for surrender to an immigration control officer.
- (9) In addition to what is provided for in the preceding paragraphs, the necessary matters with regard to procedures concerning the custody of a person sought for surrender by a police official shall be specified by the Rules of the National Public Safety Commission.

(Rules of the Supreme Court)

Article 51 In addition to what is provided for in this Chapter, the necessary

procedural matters concerning the issuance of warrants, examination of witnesses, and appeals in relation to the provision of evidence, procedures concerning examination by a court and issuance of warrants in relation to the surrender of an offender sought for surrender and provisional detention, and the necessary procedural matters concerning cooperation with enforcement shall be specified by the Rules of the Supreme Court.

Chapter III Measures Taken for the International Criminal Police Organization

Article 52 (1) The National Public Safety Commission may, on receiving a request for measures concerning the investigation of a criminal case before the ICC from the ICC through the International Criminal Police Organization, take one of the following measures, except where the case falls under Article 6, paragraph (1), item (iv):

- (i) instructing the appropriate prefectural police headquarters to conduct the necessary inquiry; or
- (ii) sending documents concerning the request for measures to the head of a national agency set forth in Article 6, paragraph (2), item (iii).

(2) The provisions of Article 18, paragraphs (3) through (8) of the Act on International Assistance in Investigations and Other Related Matters shall apply mutatis mutandis to measures under a request prescribed in the preceding paragraph. In this case, the phrase "item (ii) of said paragraph" in paragraph (4) of said Article and the phrase "paragraph (1), item (ii)" in paragraph (7) of said Article shall be deemed to be replaced with "Article 52, paragraph (1), item (ii) of the Act on Cooperation with the International Criminal Court," and the phrase "paragraph (1), item (i)" in paragraph (6) of said Article shall be deemed to be replaced with "Article 52, paragraph (1), item (i) of the Act on Cooperation with the International Criminal Court."

Chapter IV Offenses That Obstruct the Administration of the ICC

(Destruction of Evidence, etc.)

Article 53 (1) A person who destroys, counterfeits or alters evidence related to a criminal case before the ICC, or who uses counterfeit or altered evidence, shall be punished by imprisonment with work for up to two years or a fine of up to 200,000 yen.

(2) Where the relative of an offender has committed the crime set forth in the preceding paragraph in the interest of the offender, the relative may be exempted from punishment.

(Intimidation of a Witness, etc.)

Article 54 A person who, in relation to his/her own criminal case before the ICC or that of another person, has forcibly demanded a meeting with any person found to have knowledge necessary for the investigation or trial of such case or a relative thereof without justifiable grounds, or who has intimidated any of such persons, shall be punished by imprisonment with work for up to one year or a fine of up to 200,000 yen.

(Bribery of a Witness, etc.)

Article 55 A person who, in relation to his/her own criminal case before the ICC or that of another person, has conferred, offered, or promised money or any other benefit as consideration for not giving testimony, for giving false testimony, for destroying, counterfeiting, or altering evidence, or for using counterfeit or altered evidence, shall be punished by imprisonment with work for up to one year or a fine of up to 200,000 yen.

(Destruction of Evidence of Organized Crime, etc.)

Article 56 (1) Where an act that constitutes a crime specified by the Statute has been committed as the work of a group (meaning a continually unified body of many people with a common purpose, where the acts that fulfill such purpose or intent are repeatedly engaged in, in whole or in part, by an organization (meaning a combination of people whose members act as one according to their predetermined share of duties based on directions and orders; hereinafter the same shall apply in this paragraph); the same shall apply in the following paragraph), by an organization whose purpose is to bring said act to fruition, any person who has committed an act that falls under any of the preceding three Articles (excluding Article 53, paragraph (2); the same shall apply in the following paragraph) with regard to a criminal case before the ICC in connection with such crime shall be punished by imprisonment with work for up to three years or a fine of up to 200,000 yen.

(2) Where a crime specified by the Statute is committed in order to cause a group to acquire illicit interests (meaning control over a specific region or field based on the group's power, facilitating said group or its members in continuously acquiring interests through crime or any other illicit acts committed by members of that group; hereinafter the same shall apply in this paragraph) or in order to maintain or expand the group's illicit interests, any person who has committed an act that falls under any of the preceding three Articles with regard to a criminal case before the ICC in connection with such crime shall also be subject to the provisions of the preceding paragraph.

(Perjury, etc.)

Article 57 (1) When a witness who has sworn an oath pursuant to the provisions of article 69, paragraph 1 of the Statute has given a false statement, he/she shall be punished by imprisonment with work for no fewer than three months and up to ten years.

(2) When a person who has committed the crime set forth in the preceding paragraph confesses before a judicial decision becomes final and binding with regard to the criminal case before the ICC for which he/she has testified, the punishment may be reduced or he/she may be exempted from it.

(3) When an expert witness, interpreter, or translator who has sworn an oath in accordance with procedure at the ICC has given a false expert opinion or interpretation or made a false translation, the provisions of the preceding two paragraphs shall apply.

(Acceptance of a Bribe, Acceptance of a Bribe Involving a Specific Favor, and Acceptance of a Bribe in Advance of Assumption of Office)

Article 58 (1) When a judge, the Prosecutor or any other official of the ICC (hereinafter referred to as an "ICC official") has accepted, solicited, or promised to accept a bribe in connection with his/her duties, he/she shall be punished by imprisonment with work for up to five years. In this case, when he/she has accepted a request for a specific favor in doing so, he/she shall be punished by imprisonment with work for up to seven years.

(2) When a person who wishes to become an ICC official has accepted, solicited, or promised to accept a bribe in connection with a duty he/she will assume, and has accepted a request for a specific favor in doing so, he/she shall be punished by imprisonment with work for up to five years in the event that he/she becomes an ICC official.

(Passing of a Bribe to a Third Party)

Article 59 When an ICC official has caused a bribe to be conferred to a third party or has solicited or promised the conferral of such a bribe to a third party, and has accepted a request for a specific favor in connection with his/her duties in doing so, said official shall be punished by imprisonment with work for up to five years.

(Aggravated Acceptance of a Bribe and Acceptance after Resignation from Office)

Article 60 (1) When an ICC official has committed any of the crimes set forth in the preceding two Articles and has acted unfairly or refrained from acting appropriately as a consequence, he/she shall be punished by imprisonment with work for a definite term of not less than one year.

(2) The provisions of the preceding paragraph shall also apply when an ICC

official has acted unfairly or refrained from acting appropriately in the course of his/her duties, and has accepted, solicited, or promised to accept a bribe, has caused a bribe to be conferred to a third party, or has solicited or promised to cause the conferral of a bribe to a third party in connection therewith.

- (3) When a person who was formerly an ICC official accepted a request for a specific favor during his/her term of office to act unfairly or to refrain from acting appropriately in the course of his/her duties, in connection with which he/she accepted, solicited, or promised to accept a bribe, he/she shall be punished by imprisonment with work for up to five years.

(Acceptance of a Bribe for Exertion of Influence)

Article 61 When an ICC official has accepted, solicited, or promised to accept a bribe as consideration for causing or for having caused another ICC official to act unfairly or to refrain from acting appropriately in the course of his/her duties, and has accepted a request for a specific favor in doing so, he/she shall be punished by imprisonment with work for up to five years.

(Confiscation and Collection of Equivalent Value)

Article 62 A bribe accepted by an offender or by a knowing third party shall be confiscated. When the whole or a part of the bribe cannot be confiscated, an equivalent sum of money shall be collected.

(Offering of a Bribe)

Article 63 A person who confers, offers, or promises to confer any of the bribes prescribed in Articles 58 through 61 shall be punished by imprisonment with work for up to three years or a fine of up to 2,500,000 yen.

(Obstructing or Compelling Official Duties)

Article 64 (1) A person who has committed assault or intimidation against an ICC official in connection with the execution of his/her duties shall be punished by imprisonment with or without work for up to three years or a fine of up to 500,000 yen.

- (2) The provisions of the preceding paragraph shall also apply to a person who has committed assault or intimidation against an ICC official in order to cause the official to make or refrain from making a specific disposition or in order to cause the official to resign.

(Crime by a Japanese National Outside Japan)

Article 65 The crimes set forth in this Chapter shall be governed by Article 3 of the Penal Code.

Supplementary Provisions [Extract]

(Effective Date)

Article 1 This Act shall come into effect as of the day on which the Statute becomes effective with regard to Japan; provided, however, that the provisions of Articles 55 and 56 (limited to the portion related to an act that falls under Article 55) shall come into effect as of the day of enforcement of the Act for the Partial Amendment of the Penal Code Regarding the Internationalization and Organization of Crimes and Advancement of Information Processing (Act No. xxx of 2007) or the day of enforcement of this Act, whichever is later.

(Transitional Measures)

Article 2 (1) The provisions of Chapter II shall not apply to a request for cooperation in connection with an offense underlying a cooperation request or an offense underlying a surrender request that has been committed prior to the enforcement of this Act, except in a case that falls under any of the following items:

- (i) when the ICC exercises jurisdiction pursuant to article 13 (b) of the Statute;
- (ii) when the offense underlying the cooperation request or the offense underlying the surrender request has been committed, after the Statute became effective with regard to a foreign country which is a party to the Statute, within said foreign country, aboard a vessel or aircraft with the nationality of said foreign country, or by a person with the nationality of said foreign country; or
- (iii) when the offense underlying the cooperation request or the offense underlying the surrender request has been committed within a foreign country that has accepted the ICC's exercise of jurisdiction with respect to the offense underlying the cooperation request or the offense underlying the surrender request pursuant to the provisions of article 12, paragraph 3 of the Statute, aboard a vessel or aircraft with the nationality of said foreign country, or by a person with the nationality of said foreign country.

(2) The provisions of the preceding paragraph shall apply *mutatis mutandis* to the application of the provisions of Chapter III in connection with measures related to the investigation of a criminal case before the ICC through the International Criminal Police Organization.