

# Act on Cooperation with the International Criminal Court

(Act No. 37 of May 11, 2007)

## Table of Contents

Chapter I General Provisions (Article 1 and Article 2)

Chapter II Cooperation with the International Criminal Court

Section 1 General Rules (Articles 3 through 5)

Section 2 Provision of Evidence

Subsection 1 Provision of Evidence (Articles 6 through 13)

Subsection 2 Judicial Examination of Evidence and Service of Documents  
(Articles 14 through 16)

Subsection 3 Transfer of a Sentenced Person for Testimony (Article 17 and  
Article 18)

Section 3 Surrender of an Offender Sought for Surrender and Related  
Matters

Subsection 1 Surrender of an Offender Sought for Surrender (Articles 19  
through 33)

Subsection 2 Provisional Detention (Article 34 and Article 35)

Subsection 3 Miscellaneous Provisions (Article 36 and Article 37)

Section 4 Cooperation with Enforcement (Articles 38 through 48)

Section 5 Miscellaneous Provisions (Articles 49 through 51)

Chapter III Measures Taken for the International Criminal Police  
Organization (Article 52)

Chapter IV Offenses that Obstruct the Administration of the International  
Criminal Court (Articles 53 through 65)

Supplementary Provisions

## Chapter I General Provisions

(Purpose)

Article 1 The purpose of this Act is to ensure the proper implementation of the Rome Statute of the International Criminal Court (hereinafter referred to as the "Statute") by prescribing procedures concerning the cooperation necessary for investigations, trials, execution of a sentence, etc. by the International Criminal Court (hereinafter referred to as the "ICC") with regard to the crime of genocide and 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 investigation or a trial by the ICC (hereinafter referred to as "proceedings by the ICC"), based on the request by the ICC pursuant to 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 the request by the ICC pursuant to the provisions of Article 93, paragraph 1 of the Statute, as assistance for the examination of evidence carried out by the Appeals Chamber or the 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 the request by the ICC pursuant to the provisions of Article 93, paragraph 1 of the Statute, as assistance for the service of documents carried out by the Appeals Chamber, the Trial Chamber, or the Pre-Trial Chamber prescribed in Article 39, paragraph 2 of the Statute;
- (vii) the term "transfer of a sentenced person for testimony" means transferring a domestic sentenced person (meaning a person being detained 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 applies hereinafter), based on the request by the ICC pursuant to the provisions of Article 93, paragraph 1 and paragraph 7 of the Statute, in order to have the person appear as a witness or other persons relevant to the proceedings by the ICC (excluding a person subject to an investigation or a trial by the ICC);

- (viii) the term "surrender of an offender sought for surrender" means surrendering, based on the request by the ICC for surrender pursuant to the provisions of Article 89, paragraph 1 or Article 111 of the Statute, a person who is subject to the surrender (hereinafter referred to as an "offender sought for surrender");
- (ix) the term "provisional detention" means provisionally detaining, based on the request for provisional arrest by the ICC pursuant to the provisions of Article 92, paragraph 1 of the Statute, a person who is subject to the provisional arrest (hereinafter referred to as an "offender sought for provisional detention");
- (x) the term "cooperation with enforcement" means enforcing a final and binding decision for 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 applies hereinafter), forfeiture (meaning forfeiture ordered by the ICC pursuant to the provisions of Article 77, paragraph 2 (b) of the Statute; the same applies 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 applies 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 person for testimony, 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 International Criminal Court**

### **Section 1 General Rules**

(Acceptance of Requests for Cooperation)

Article 3 The following administrative affairs concerning cooperation with the ICC are carried out by the Minister for Foreign Affairs:

- (i) acceptance of requests for cooperation from the ICC;
- (ii) consultation with the ICC and reports that should be made to the ICC; and
- (iii) sending of evidence to the ICC, and delivery of property in connection with the enforcement of a final and binding decision for a fine, forfeiture, or reparations order and notification of the results of the service of documents, to the ICC.

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

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

(Consultation with the ICC)

Article 5 (1) The Minister for Foreign Affairs is to 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, the Minister is to request the Minister for Foreign Affairs to seek consultation under the provisions of the preceding paragraph.

## **Section 2 Provision of Evidence**

### **Subsection 1 Provision of Evidence**

(Measures by the Minister of Justice)

Article 6 (1) If the Minister of Justice has received documents sent by the Minister for 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 is to take the measures prescribed in the following paragraph or paragraph (3):

- (i) if the request for cooperation competes with a request for assistance as prescribed in Article 1, item (i) of the Act on International Assistance in Investigation 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 it is possible to give priority to the request for assistance pursuant to the provisions of the Statute, when the Minister of Justice finds it reasonable to provide the investigation assistance;
- (ii) if complying with the request for cooperation is to result in a breach of obligations under international law prescribed in Article 98, paragraph 1 of

- the Statute;
- (iii) if complying with the request for cooperation is likely to cause harm to national security;
  - (iv) if 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 if the act was committed in Japan;
  - (v) if complying with the request for cooperation is likely to obstruct 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 the request; or
  - (vi) if there are legitimate 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 are to be the measures under one of the following items, except in the case prescribed in the following paragraph:
- (i) sending the relevant documents to the Chief Prosecutor of the district public prosecutor's office the Minister finds to be appropriate and ordering the collection of evidence that is necessary for cooperation through the 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 other national government organs to which persons who are to carry out the duties as judicial police officials prescribed in Article 190 of the Code of Criminal Procedure (Act No. 131 of 1948) belong.
- (3) When the request for cooperation prescribed in paragraph (1) pertains to the provision of documents that are connected with a litigation and that are retained by a court, a public prosecutor, or a judicial police official, the Minister of Justice is to 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 other measures concerning cooperation through provision of evidence, the Minister 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 is to send the relevant documents to the prefectural police headquarters it finds to be appropriate, and instruct the headquarters to collect the evidence necessary for cooperation through provision of evidence.

(Implementation of Cooperation)

Article 8 The provisions of Article 7, Article 8, Article 10, Article 12, and Article 13 of the Act on International Assistance in Investigation and Other Related Matters apply mutatis mutandis to cooperation through provision of evidence based on 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 the same Act is 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 that Article is 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 that Article is 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 that Act is deemed to be replaced with "provided for in Article 8, Article 10, and Article 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 Investigation and Other Related Matters as applied mutatis mutandis pursuant to the preceding Article has submitted a false certificate, the person is 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 do 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)

Article 10 (1) When the Chief Prosecutor has completed the collection of evidence that is necessary for cooperation through provision of evidence, the Chief Prosecutor must promptly send the collected evidence to the Minister of Justice, with his/her opinion attached thereto. The same applies when the head of a national government organ 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 must 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 under the preceding paragraph, it must promptly send the evidence to the Minister of Justice, with its opinion attached thereto.
- (4) A custodian of documents that are connected with a litigation who has received documents concerning a request for cooperation through the provision of evidence sent pursuant to the provisions of Article 6, paragraph (3), must promptly send the documents or certified copies thereof to the Minister of Justice, with his/her opinion attached thereto; provided, however, that when it is found difficult to immediately send them, the custodian must promptly notify the Minister of Justice to that effect.

(Conditions for the Provision of Evidence)

Article 11 In providing the ICC with evidence that has been sent pursuant to the provisions of paragraph (1), paragraph (3), or paragraph (4) of the preceding Article, when the Minister of Justice finds it necessary, the Minister is to set conditions concerning the use or return of the evidence.

(Notice of Non-cooperation)

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

(Consultation with the Minister for Foreign Affairs)

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

- (i) when deciding not to cooperate through the provision of evidence, on the grounds that the case falls under one of the provisions of Article 6, paragraph (1), items (i) through (iii);
- (ii) when postponing cooperation through the provision of evidence, on the grounds 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 Investigation and Other Related Matters apply mutatis mutandis when 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 the provision of evidence.

### **Subsection 2 Judicial Examination of Evidence and Service of Documents**

(Measures by the Minister of Justice)

Article 14 When the Minister of Justice has received documents sent by the Minister for 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, if the case does not fall under any of the items of Article 6, paragraph (1), the Minister of Justice is to send the documents concerning the request for cooperation to the district court the Minister finds to be appropriate.

(Measures by the Court)

Article 15 (1) The provisions of Article 1, paragraph (2), Article 1-2, paragraph (1) (excluding item (i), item (v), and item (vi)), Article 2, and Article 3 of the Act on Assistance Based on Commission by Foreign Courts (Act No. 63 of 1905) 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, the court must promptly send the evidence obtained through the judicial examination of evidence to the Minister of Justice or notify the Minister 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)) apply mutatis mutandis to the case where the Minister of Justice has taken measures related to cooperation through a judicial examination of evidence or the service of documents pursuant to the provisions of Article 14. In this case, the term "paragraph (1), item (i) of that Article" in Article 12 is deemed to be replaced with "Article 6, paragraph (1), item (i)."

### **Subsection 3 Transfer of a Sentenced Person for Testimony**

(Decision on the Transfer of a Sentenced Person for Testimony)

Article 17 (1) When the Minister of Justice has received documents sent by the

Minister for Foreign Affairs pursuant to the provisions of Article 4 concerning a request for cooperation through the transfer of a sentenced person for testimony, if the case neither falls under Article 6, paragraph (1), item (iv) nor falls under any of the following items, and the Minister of Justice finds it reasonable to comply with the request, the Minister is to make a decision to transfer the sentenced person for testimony, by setting a period not exceeding thirty days for the period of transfer of that domestic sentenced person:

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

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

(Measures Concerning the Surrender of a Domestic Sentenced Person)

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 Investigation and Other Related Matters as applied *mutatis mutandis* pursuant to paragraph (4) of the preceding Article, the Minister must send a written permit of custody to the Minister for Foreign Affairs.

- (2) When the Minister for Foreign Affairs has received a permit of custody pursuant to the provisions of the preceding paragraph, the Minister must immediately send the permit to the ICC.
- (3) The warden of a penal institution who has been issued the order prescribed in paragraph (1) or an employee of the penal institution who has been nominated by that warden must promptly escort the domestic sentenced person to the place designated by the ICC, and must surrender the domestic sentenced person to the person designated by the ICC who is in possession of the permit of custody.
- (4) The provisions of Article 21 and Article 22 of the Act on International Assistance in Investigation and Other Related Matters apply *mutatis mutandis* to a domestic sentenced person who is to be surrendered pursuant to the

provisions of the preceding paragraph to the person designated by the ICC. In this case, the term "transfer of a sentenced person for testimony" in Article 21 of that Act is deemed to be replaced with "transfer of a sentenced person for testimony 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 and Related Matters**

#### **Subsection 1 Surrender of an Offender Sought for Surrender**

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

Article 19 (1) When 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 does not apply if 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 does 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; or
- (iii) when the offender sought for surrender is clearly found not to have 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) If 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) if the act constituting the offense underlying the surrender request were to be committed in Japan, the act would not constitute a crime punishable by the death penalty, life imprisonment, or imprisonment with or without work for not less than three years under Japanese laws and regulations;
- (ii) if the act constituting the offense underlying the surrender request were to be committed in 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 the punishment under Japanese laws and regulations;

- (iii) when there are no reasonable grounds sufficient 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 by a Japanese court for the case;
- (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 that case and the offender has neither served out the sentence nor come to no longer be subject to the execution of the sentence; 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 for Foreign Affairs pursuant to the provisions of Article 4 concerning a request for cooperation through the surrender of an offender sought for surrender, the Minister of Justice is to, except when any of the following items applies, send the relevant documents to the Superintending Prosecutor of the Tokyo High Public Prosecutors Office and order a request to be made to the Tokyo High Court for examination as to whether the case falls under a case for 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) or any of the items of paragraph (2) of the preceding Article;
- (ii) in the case where 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 that Act, and 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 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 is likely to obstruct the 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 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) which is pending before a Japanese court, and it is found inappropriate to immediately comply with the request; or

(v) when there are any other legitimate 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 the Minister finds it necessary to do so in order to issue an order pursuant to 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 must, except when the offender sought for surrender is being detained under a provisional detention permit or when the offender's detention under a provisional detention permit has been suspended, have a public prosecutor of the Tokyo High Public Prosecutors Office 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, paragraph (2) and paragraph (3), Article 6, and Article 7 of the Act of Extradition 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 that Act is deemed to be replaced with "the valid period of the permit."

#### (Request for Examination)

Article 22 (1) A public prosecutor of the Tokyo High Public Prosecutors Office must, 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 make a request to the Tokyo High Court for an examination of whether it is a case for which the offender sought for surrender may be surrendered.

(2) The provisions of the second sentence of Article 8, paragraph (1), paragraph (2), and paragraph (3) of the Act of Extradition apply mutatis mutandis to the request 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 must, based on the results of its examination, render its decision as specified in the following items in accordance with the category of the cases listed in each of those items:
- (i) when the request for examination set forth in paragraph (1) of the preceding Article is unlawful: a decision to dismiss the request;
  - (ii) when the case falls under a case for which the offender sought for surrender may be surrendered: a decision to that effect; and
  - (iii) when the case does not fall under a case for which the offender sought for surrender may be surrendered: a decision to that effect.
- (2) The provisions of Article 9 of the Act of Extradition apply *mutatis mutandis* to the examination by the Tokyo High Court in connection with a request for examination as set forth in paragraph (1) of the preceding Article, the provisions of Article 10, paragraph (2) and paragraph (3) of the same Act apply *mutatis mutandis* to the decisions set forth in the preceding paragraph, the provisions of Article 11 of that Act apply *mutatis mutandis* to rescission of an order under the provisions of Article 20, paragraph (1), the provisions of Article 12 of that Act apply *mutatis mutandis* to release of an offender sought for surrender, and the provisions of Article 13 of that Act apply *mutatis mutandis* to a certified transcript of the written judgment in connection with the examination. In these cases, the phrase "paragraph (1), item (i) or item (ii) of the following Article" in the proviso to Article 9, paragraph (3) of the same Act is deemed to be replaced with "Article 23, paragraph (1), item (i) or item (iii) of the Act on Cooperation with the International Criminal Court (Act No. 37 of 2007)," the phrases "of Article 3," "the requesting country," and "receives notification from the requesting country that it will withdraw its extradition request, or when the case has fallen under Article 3, item (ii)" in Article 11, paragraph (1) of that Act are deemed to be replaced with "of Article 4 of the Act on Cooperation with the International Criminal Court," "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 that Article are 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 that Article," and "Article 8, paragraph (3) as applied *mutatis mutandis* pursuant to Article 22, paragraph (2) of that Act," respectively, and the phrase "Article 10, paragraph (1), item (i) or item (ii)" in Article 12 of that Act is deemed to be replaced with "Article 23, paragraph (1), item (i) or item (iii) of the Act on Cooperation with the International Criminal Court."

(Stay of Examination Procedures)

- 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, if the offender sought for surrender files a motion to the effect that the surrender of the offender sought for surrender is not to be approved, on the grounds 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 the case by a court in a foreign country, the Tokyo High Court may stay the examination procedures 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 must 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 is to notify the Minister for 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 for Foreign Affairs is to notify the ICC to the effect that the motion set forth in paragraph (1) has been filed, and is to consult with the ICC concerning the determination on the admissibility of case under the provisions of Article 17, paragraph 1 of the Statute with regard to the offense underlying the surrender request.
- (5) When the examination procedures have been stayed pursuant to the provisions of paragraph (1), when a public prosecutor of the Tokyo High Public Prosecutors Office finds it necessary, the prosecutor may suspend the detention of the offender sought for surrender. In this case, on finding it necessary, the public prosecutor 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) When detention has been suspended pursuant to the provisions of the preceding paragraph, if the ICC has determined that the case is admissible 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 must rescind the suspension of the detention.
- (7) The provisions of Article 22, paragraphs (3) through (6) of the Act of Extradition apply *mutatis mutandis* to the case 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 when examination procedures have been stayed pursuant to the provisions of paragraph (1), the term "two months" in Article 9, paragraph (1) of that Act is deemed to be replaced with "two months (excluding the period during which the examination procedures 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)

- Article 25 (1) When the decision set forth in Article 23, paragraph (1), item (ii) has been issued, if 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), the Minister must 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 the offender sought for surrender is being detained under a detention permit, the order of surrender must be issued within ten days from the day on which the decision set forth in Article 23, paragraph (1), item (ii) was issued.
- (2) When the decision prescribed in the preceding paragraph has been issued, if the Minister of Justice finds that the case falls under either of the provisions of Article 20, paragraph (1), item (ii) or item (iii), the Minister must immediately notify the Superintending Prosecutor of the Tokyo High Public Prosecutors Office and the offender sought for surrender to that effect, and must order the Superintending Prosecutor to release the offender sought for surrender who is being detained under the detention permit.
- (3) When the order under the provisions of the preceding paragraph has been issued, a public prosecutor of the Tokyo High Public Prosecutors Office must immediately release the offender sought for surrender who is being detained under the detention permit.
- (4) When the decision prescribed in paragraph (1) has been issued, if the Minister of Justice finds that the case falls under either of the provisions of Article 20, paragraph (1), item (iv) or item (v), the Minister must notify the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to that effect, and must order the Superintending Prosecutor to suspend the detention of the offender sought for surrender who is being detained under the detention permit.
- (5) When the order to suspend detention under the provisions of the preceding paragraph has been issued, a public prosecutor of the Tokyo High Public Prosecutors Office must 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 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 item (v), the Minister of Justice must 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 must rescind the suspension of detention under the provisions of paragraph (5).
- (8) The provisions of Article 22, paragraphs (3) through (6) of the Act of Extradition apply *mutatis mutandis* to the case where the suspension of 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 the case 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 not reasonable to immediately effect the surrender of an offender sought for surrender, the Minister may postpone the order for surrender notwithstanding the provisions of that paragraph:

- (i) when a case connected with a crime other than the offense underlying the surrender request which 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 the offender has neither served out the sentence nor come to no longer be subject to the execution of the sentence.
- (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, the Minister must notify the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to that effect, and must order the Superintending Prosecutor to suspend 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 must immediately suspend 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) apply *mutatis mutandis*.

- (4) After ordering the suspension of 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 not reasonable to surrender the offender sought for surrender have ceased to exist, the Minister of Justice must issue an order for the surrender pursuant to the provisions of paragraph (1) of the preceding Article to the Superintending Prosecutor of the Tokyo High Public Prosecutors Office.
- (5) When the order of surrender set forth in the preceding paragraph has been issued, a public prosecutor of the Tokyo High Public Prosecutors Office must rescind the suspension of detention under the provisions of paragraph (3).
- (6) The provisions of Article 22, paragraphs (3) through (6) of the Act of Extradition apply *mutatis mutandis* to the case where the suspension of detention of an offender sought for surrender has been rescinded pursuant to the provisions of the preceding paragraph.

(Suspension of Detention Where Detention Is Difficult, and Its Rescission)

- 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 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 detention or when the prosecutor otherwise finds that continuing to detain the offender would be difficult.
- (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 seeks to suspend detention *ex officio*, the Superintending Prosecutor of the Tokyo High Public Prosecutors Office must report the fact to the Minister of Justice.
  - (3) When the Minister of Justice has received a report under the preceding paragraph, the Minister is to notify the Minister for Foreign Affairs to that effect.
  - (4) When the Minister for Foreign Affairs has received the notice under the preceding paragraph, the Minister is to seek the opinion of the ICC with regard to the suspension of detention of the offender sought for surrender.
  - (5) In determining whether or not to suspend detention pursuant to the provisions of paragraph (1), a public prosecutor of the Tokyo High Public Prosecutors Office is to respect the opinion set forth in the preceding paragraph; provided, however, that the prosecutor may suspend detention without the opinion when the situation is urgent and there is no time available to seek the opinion.
  - (6) The provisions of the second sentence of Article 24, paragraph (5) apply *mutatis mutandis* to the case where 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, the prosecutor may rescind the suspension of 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 apply mutatis mutandis to the case where the suspension of detention of an offender sought for surrender has been rescinded pursuant to the provisions of the preceding paragraph.

(Lapse of Detention During Its Suspension)

Article 28 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 ceases to be effective in a case that falls under any of the following items:

- (i) when a certified transcript of the written judgment of the decision set forth in Article 23, paragraph (1), item (i) or item (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 item (iii), pursuant to the provisions of Article 25, paragraph (2).

(Due Date for the Surrender of an Offender Sought for Surrender)

Article 29 (1) The surrender of an offender sought for surrender under an order pursuant to the provisions of Article 25, paragraph (1) must be effected within thirty days from the date of the order (when 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 detention).

- (2) With regard to the application of the provisions of the preceding paragraph to a case in which 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, the period during which the detention was suspended is not to be included in the period set forth in the preceding paragraph.

(Consultation with the Minister for Foreign Affairs)

Article 30 The Minister of Justice is to consult with the Minister for 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 grounds that the case falls under Article 20, paragraph (1), item (i)

- (limited to the part pertaining to Article 19, paragraph (1));
- (ii) when deciding not to cooperate through the surrender of an offender sought for surrender, on the grounds that the case falls under any of the provisions of Article 20, paragraph (1), item (ii) or item (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 grounds that the case falls under any of the provisions of Article 20, paragraph (1), item (iv) or item (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), Article 18, and Article 19 of the Act of Extradition apply *mutatis mutandis* to the surrender of an offender sought for surrender in connection with an order of surrender 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 that Act is 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 (when Article 22, paragraph (6) is applied *mutatis mutandis* pursuant to Article 27, paragraph (8) of that Act, limited to the report given when the suspension of the detention was rescinded after the order of surrender was issued under the provisions of Article 25, paragraph (1) of the Act)," and the term "the requesting country" in Article 19 of that Act is 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 that Article as applied *mutatis mutandis* pursuant to the preceding paragraph must each contain the name of the offender sought for surrender, the offense underlying the surrender request, the place of surrender, the due date 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 must affix his/her name and seal thereto.

Article 32 The warden of a penal institution who has received direction 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 employee of the penal institution who has been nominated by that warden must escort the offender sought for surrender to the place of surrender stated in the notice of surrender, and must surrender the 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 must 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 for Foreign Affairs pursuant to the provisions of Article 4 concerning a request for cooperation through provisional detention, the Minister of Justice must, except for the case that 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 must, when the Superintending Prosecutor has been issued an order under the provisions of the preceding Article, have a public prosecutor of the Tokyo High Public Prosecutors Office 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, paragraph (2) and paragraph (3), Article 6, and Article 7 of the Act of Extradition 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 that Act 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 that Act apply mutatis mutandis to the case where an order under Article 20, paragraph (1) has been issued to an offender sought

for provisional detention for whom a provisional detention permit has been issued; the provisions of Article 28 of that Act apply mutatis mutandis to the case where the ICC notifies, 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 that Act apply mutatis mutandis to an offender sought for provisional detention who is being detained under a provisional detention permit. In these cases, the phrase "the requesting country, the valid period of the permit" in Article 5, paragraph (3) of that Act is 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 that Act are 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 the same paragraph," respectively; the phrase "Article 8, paragraph (1)" in Article 27, paragraph (3) of that Act is 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 that Act is 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 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 detention or when the prosecutor otherwise finds that continuing to detain the offender would be difficult.
- (4) The provisions of Article 27, paragraphs (2) through (7) and the provisions of Article 22, paragraphs (3) through (5) of the Act of Extradition apply mutatis mutandis to the suspension of detention of an offender sought for provisional detention under the provisions of the preceding paragraph and to the case in which the suspension of detention has been rescinded.
- (5) If detention under a provisional detention permit has been suspended pursuant to the provisions of paragraph (3), when the offender sought for provisional detention has received a notification 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 detention under the provisional detention permit is deemed to be the suspension of detention under the

provisions of Article 27, paragraph (1).

- (6) If detention under a provisional detention permit has been suspended pursuant to the provisions of paragraph (3), when the case falls under any of the following items, detention under the provisional detention permit that is being suspended ceases 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 received a notification 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 the 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)

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

(2) The provisions of Article 12, paragraph (4) and paragraph (5) of the Administrative Case Litigation Act (Act No. 139 of 1962) (including as applied mutatis mutandis pursuant to Article 38, paragraph (1) of that Act) do not apply to an action for the judicial review of administrative disposition (meaning an action for the judicial review of administrative disposition as prescribed in Article 3, paragraph (1) of that Act) in connection with an original administrative disposition (meaning an original administrative disposition as prescribed in paragraph (2) of that Article) or an administrative determination (meaning an administrative determination as prescribed in paragraph (3) of that 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 apply mutatis mutandis to the performance of duties of the Tokyo High Court or its judges or of public prosecutors of the Tokyo High Public Prosecutors Office prescribed in the preceding two Subsections.

### **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 does not apply when the ICC has determined that the case is admissible pursuant to the provisions of Article 17, paragraph 1 of the Statute or has commenced trial procedures;
- (ii) cooperation with enforcement entailing preservation for a forfeiture, when a final and binding judgment has been issued by a Japanese court on a case connected with the offense underlying the surrender request; provided, however, that this does not apply when 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;
- (iii) cooperation with enforcement entailing preservation for a forfeiture in cases where, 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 cases in which property connected with the 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 grounds that it belongs to the person or their general successor);
- (iv) cooperation with enforcement entailing preservation for a reparations order that corresponds to preservation for confiscation under Japanese laws and regulations taking into account of its content and nature, in cases where, 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 cases where property connected with the request was obtained from a person who was harmed by an act constituting a serious crime and is to be returned to the person or their general successor by a reparations order, when the property would not be subject to preservation for confiscation, on the grounds that the property belongs to such person); or
- (v) cooperation with enforcement entailing preservation for a reparations order that corresponds to preservation for the collection of an equivalent value under Japanese laws and regulations taking into account of its content and

nature, in cases where, 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 collection of equivalent value under Japanese laws and regulations.

- (2) If the offense underlying the surrender request is a crime prescribed in Article 70, paragraph 1 of the Statute, cooperation with enforcement may be made except for a case that falls under any of the following items:
- (i) 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 on the act;
  - (ii) if 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 by a Japanese court for the case; or
  - (iii) cooperation with enforcement entailing preservation for a forfeiture in cases where, 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 cases where property connected with the 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 grounds that the property belongs to the person or their general successor).

(Measures by the Minister of Justice)

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

- (i) when the Minister of Justice finds that the case falls under any of the items of paragraph (1) or paragraph (2) of the preceding Article;
- (ii) if 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 Crimes and Control of Proceeds of Crime (Act No. 136 of 1999; hereinafter referred to as the "Organized Crime Punishment Act"), or a request for assistance or for investigation 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), and it is possible to give priority to the relevant request pursuant to the provisions of the Statute, when the Minister of Justice finds it reasonable to take the measures under the request;
- (iii) when complying with the request for cooperation with enforcement would result in a breach of obligations under international law prescribed in Article 98, paragraph 1 of the Statute;
  - (iv) when complying with the request for cooperation with enforcement is likely to obstruct 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 the request; or
  - (v) when there are legitimate grounds for not immediately complying with the request for cooperation with enforcement.
- (2) The Minister of Justice is to consult with the Minister for Foreign Affairs in advance in cases that fall under any of the following items:
- (i) when deciding not to render cooperation for cooperation with enforcement on the grounds that the case falls under either item (ii) or item (iii) of the preceding paragraph; or
  - (ii) when withholding an order under the provisions of the preceding paragraph on the grounds that the case falls under any of the provisions of item (i) (limited to the part pertaining to paragraph (1), item (i) or item (ii) of the preceding Article), item (iv), or item (v) of the preceding paragraph.
- (3) The provisions of Article 6, paragraph (4) apply mutatis mutandis to cases 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 Requests for Examination)

- Article 40 (1) A Chief Prosecutor who has been issued an order under the provisions of paragraph (1) of the preceding Article must have a public prosecutor of his/her prosecutors office take the necessary measures for cooperation with enforcement, and retain the property connected with the implementation of cooperation with enforcement.
- (2) When a request for cooperation with enforcement entails enforcing a final and binding decision for a fine, forfeiture, or reparations order, the public prosecutor referred to in the preceding paragraph must file a request for examination with a court as to whether or not it is a case where cooperation

with enforcement may be made. In this case, when the request entails the enforcement of a final and binding decision for a reparations order, the public prosecutor must attach his/her opinion on whether it corresponds to a final and binding decision for forfeiture or that of collection of equivalent value under Japanese laws and regulations taking into account of the content and nature of the reparations order.

(Examination by a Court)

Article 41 (1) Based on the results of the examination, a court must render the decisions specified in the following items in accordance with the category of the cases listed in each of those items:

(i) when the request for examination set forth in paragraph (2) of the preceding Article is unlawful: a decision to dismiss the request;

(ii) when the case falls under a case in which cooperation with enforcement may be rendered with regard to all or a part of the final and binding decision connected with the request for cooperation with enforcement: a decision to that effect; and

(iii) when the case does not fall under a case in which cooperation with enforcement may be rendered with regard to all of the final and binding decision 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 and binding decision for a reparations order, the court must indicate whether the final and binding decision corresponds to a final and binding decision for forfeiture or that of collection of equivalent value under Japanese laws and regulations, in accordance with the content and nature of the 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 and binding decision of forfeiture, the court must simultaneously indicate the amount of money in Japanese yen that is to be collected from the person subject to the final and binding decision in lieu of enforcement of the decision, if it is not possible to enforce the final and binding decision due to loss, damage, or other reasons. The same applies in rendering the decision specified in the item with regard to a request for cooperation with enforcement that entails enforcing a final and binding decision for a reparations order, and the court is to indicate that the final and binding decision corresponds to a final and binding decision for forfeiture pursuant to the provisions of the preceding paragraph.

(4) 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 and binding decision for forfeiture, in cases where, 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 trial on forfeiture under Japanese laws and regulations (excluding cases where property connected with the request was obtained from a person who was harmed by the act constituting the offense underlying the cooperation request, and the property would be found not to be subject to preservation for confiscation, on the grounds that the property belongs to the person or their general successor), the court must simultaneously indicate that fact and the amount of money in Japanese yen that is to be collected from the person subject to the final and binding decision in lieu of enforcement of the final and binding decision.

- (5) 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 and binding decision for a reparations order (limited to cases where the court is to indicate that the final and binding decision corresponds to a final and binding decision for forfeiture pursuant to the provisions of paragraph (2)), in cases where, 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 trial on forfeiture under Japanese laws and regulations (excluding cases where property connected with the request was obtained from a person who was harmed by the act constituting the serious crime and should be returned to the person or their general successor by a reparations order, and the property would be found not to be subject to preservation for confiscation, on the grounds that the property belongs to such person), the court must simultaneously indicate that fact and the amount of money in Japanese yen that is to be collected from the person subject to the final and binding decision in lieu of enforcement of the final and binding decision.
- (6) 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 and binding decision for forfeiture, when the court finds that there are sufficient reasonable grounds to consider that a person who owns the property which is the subject matter of the final judgment or a superficies, mortgage, or any other right to the property was unable to claim their right in the procedures for the final and binding decision due to grounds not attributable to the person, the court must simultaneously indicate that fact and the amount of money in Japanese yen which is to be collected from the person subject to the final and binding decision in lieu of enforcement of the final and binding decision. The same applies when the court renders the decision specified in the same item with regard to a request for cooperation with enforcement that

entails enforcing a final and binding decision for a reparations order (limited to the case where the court is to indicate that the final and binding decision corresponds to a final and binding decision for forfeiture 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 and binding decision for forfeiture when participation in the proceedings of the case for which the request for examination was filed was not permitted for a person for whom there are sufficient reasonable grounds to consider that the person owns the property connected with the request or a superficies, mortgage, or any other right to the property, or for an attaching creditor or a creditor effecting a provisional seizure when a commencement order for a compulsory auction has been issued or a seizure or provisional seizure through compulsory execution has been executed against the property or right prior to its preservation due to forfeiture. The same applies to the decision specified in the item related to a final and binding decision for a reparations order that is found to correspond to a final and binding decision for forfeiture under Japanese laws and regulations taking account of its content and nature.

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

(Effect of Decisions on the Implementation of Cooperation with Enforcement)

Article 42 (1) When 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 the final and binding decisions listed in the following items, the final and binding decisions are

deemed to be the final and binding decisions rendered by a Japanese court that are respectively specified in those items, in terms of the implementation of cooperation with enforcement:

- (i) a final and binding decision on a fine: a final and binding decision on a fine;
  - (ii) a final and binding decision for a reparations order that has been indicated to correspond to a final and binding decision for forfeiture and that for confiscation pursuant to the provisions of paragraph (2) of the preceding Article (excluding the decision set forth in the following item): a final and binding decision for forfeiture;
  - (iii) a final and binding decision for a reparations order that has been indicated to correspond to a final and binding decision for forfeiture or that 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 that Article: a final and binding decision for collection of an equivalent value; and
  - (iv) a final and binding decision for a reparations order that has been indicated to correspond to a final and binding decision for collection of an equivalent value pursuant to the provisions of paragraph (2) of the preceding Article: a final and binding decision for collection of an equivalent value.
- (2) In implementing cooperation with enforcement with regard to the final and binding decision set forth in item (ii) of the preceding paragraph, when it is not possible to enforce the final and binding decision against the property subject to the forfeiture or reparations order due to loss, damage, or other reasons, notwithstanding the provisions of that paragraph, the final and binding decision is deemed to be a final and binding decision 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 the final and binding decision.
- (3) With regard to the property connected with the implementation of cooperation with enforcement of the final and binding decision set forth in paragraph (1), item (ii) that is not suitable to be sent to the ICC, a public prosecutor may sell that property. In this case, the proceeds from the sale are deemed to be the property connected with the implementation of cooperation with enforcement of the final and binding decision.
- (4) When the Chief Prosecutor has finished implementing cooperation with enforcement that entails enforcing a final and binding decision for a fine, forfeiture, or reparations order, the Chief Prosecutor must 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 apply

mutatis mutandis to rescission of the decision specified in paragraph (1), item (ii) of the preceding Article related to 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 is deemed to be replaced with "a fine, confiscation,"; and the term "Article 63" in paragraph (3) of that Article is 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 correspond to preservation for confiscation under Japanese laws and regulations taking into account of its content and nature, a public prosecutor must request a judge to issue a preservation order for confiscation and prohibit the disposition of property connected with the request for cooperation with enforcement. In this case, when the public prosecutor finds it necessary, the prosecutor may request the judge to issue a collateral preservation order and prohibit the disposition of superficies, mortgage, or any other right on the property.

(2) After the request 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 is to be rendered by the court that has received the request for examination.

(Preservation Order for 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) or paragraph (2), the court or the judge is to issue a preservation order for confiscation and prohibit the disposition of property pertaining to the request, pursuant to the provisions of this Section.

(2) When a court or a judge has issued or seeks to issue a preservation order for confiscation with regard to property on which superficies, mortgage, or any other rights exist, when the court or the judge finds that there are sufficient reasonable grounds to consider that the right will be extinguished through the enforcement of a forfeiture and that it is necessary for the enforcement, or when the court or the judge finds that there are sufficient reasonable grounds to consider that the right is fictitious, the court or the judge may, at the request of the public prosecutor, separately issue a collateral preservation order and prohibit the disposition of the right.

- (3) The provisions of Article 22, paragraph (3), paragraph (4), and paragraph (6) and Article 23, paragraph (6) of the Organized Crime Punishment Act apply *mutatis mutandis* to a preservation order for confiscation under paragraph (1) or to a collateral preservation 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 are deemed to be replaced with "person who is to be subject to the trial on forfeiture or trials 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 that Article," respectively; the phrase "paragraph (1) or paragraph (2)" in paragraph (4) of the same Article is deemed to be replaced with "Article 44, paragraph (1) or paragraph (2) of the Act on Cooperation with the International Criminal Court"; and the phrase "paragraph (1) or paragraph (4)" in Article 23, paragraph (6) of the Organized Crime Punishment Act is deemed to be replaced with "Article 43, paragraph (1) of the Act on Cooperation with the International Criminal Court."
- (4) The preservation order for confiscation set forth in paragraph (1) or the collateral preservation 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 apply *mutatis mutandis* to a preservation order for confiscation in the case set forth in the preceding paragraph. In this case, the phrase "with prosecution instituted" and "accused" in Article 23, paragraph (7) of the Organized Crime Punishment Act are 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 with respect to 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 are 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 that 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 the same Article are 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 becomes effective at the time when the public prosecutor is notified thereof.

(Request for Preservation for 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 corresponds to preservation for the collection of an equivalent value under Japanese laws and regulations taking into account of its content and nature, the prosecutor must request a judge to issue a preservation order for collection of an equivalent value and prohibit the person who is to be subject to the trial for a reparations order from disposing of their property.

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

(Preservation Order for Collection of an Equivalent Value)

Article 46 (1) When a court or a judge has received a request under the provisions of paragraph (1) of the preceding Article, if the court or the judge finds that the case does not fall under any of the items of Article 38, paragraph (1) or paragraph (2), the court or the judge must issue a preservation order for collection of an equivalent value to prohibit the person who is to be subject to the trial of a reparations order from disposing of their 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 apply *mutatis mutandis* to the preservation order for collection of an equivalent value set forth in the preceding paragraph. In this case, the phrase "paragraph (1) or paragraph (2)" in Article 22, paragraph (4) of the Organized Crime Punishment Act is deemed to be replaced with "Article 46, paragraph (1) of the Act on Cooperation with the International Criminal Court"; the phrase "paragraph (1) or paragraph (4)" in Article 23, paragraph (6) of the Organized Crime Punishment Act is deemed to be replaced with "Article 45, paragraph (1) of the Act on Cooperation with the International Criminal Court"; the term "accused" in Article 42, paragraph (3) and paragraph (4) of the Organized Crime Punishment Act is deemed to be replaced with "person who is to be subject to the trial 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 that paragraph is deemed to be replaced with "offense

underlying the cooperation request prescribed in item (xii) of that 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 Article 22, Article 23, Article 32, Article 33, Article 42, Article 43, Article 47, and Article 48), and Articles 69 through 72 of the Organized Crime Punishment Act, the provisions of the Code of Criminal Procedure (limited to Part I, Chapter II and Chapters V through XIII, Part II, Chapter I, Part III, Chapter I and Chapter IV, and Part VII), the provisions of laws and regulations on the costs of criminal proceedings and the Act on Emergency Measures in Criminal Procedure to Confiscate Items Owned by Third Parties (Act No. 138 of 1963) apply mutatis mutandis to the examination, 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, paragraph (1) and paragraph (2) of the Act of Extradition apply mutatis mutandis to measures taken when a request for cooperation with enforcement has been accepted, unless contrary to the nature thereof.

(Delegation to Cabinet Order)

Article 48 In addition to what is provided for in this Section, necessary matters for the adjustment of procedures between a prohibition on disposition under a preservation order for confiscation and a disposition of delinquency, which are related to disposition of delinquency, are to be prescribed by Cabinet Order.

## **Section 5 Miscellaneous Provisions**

(Approval of Transit of a Person through Japanese Territory)

Article 49 When a request for approval of transit of a person through Japanese territory (meaning transit in which a foreign official or a person designated by the ICC (referred to as "foreign officials, etc." in the following Article) escorts 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) by passing through the Japanese territory; the same applies in the following Article) has been made by the ICC, the Minister for Foreign Affairs is to, except when the Minister finds that the form of the request does not to comply with the Statute, give his/her approval to the request.

(Measures for Landings in Japan during Escort)

Article 50 (1) When an aircraft carrying a person sought for surrender under

escort by foreign officials, etc. (excluding transit 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 officer or an immigration control officer has discovered the person sought for surrender, the officer may take the person sought for surrender into custody in order to deliver the person to the foreign officials, etc.

- (2) Upon taking a person sought for surrender into custody pursuant to the provisions of the preceding paragraph, an immigration control officer is to immediately deliver the person to a police officer. In this case, the police officer may continue to keep the 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 officer who has taken a person sought for surrender into custody pursuant to the provisions of paragraph (1) or a police officer to whom a person sought for surrender has been delivered pursuant to the provisions of paragraph (2) is to notify the Minister for Foreign Affairs to that effect.
- (5) When the Minister for Foreign Affairs has been notified as set forth in the preceding paragraph, the Minister is to report to the ICC that the person sought for surrender has been taken into custody.
- (6) When the Minister for Foreign Affairs has accepted the request for approval of transit from the ICC referred to in the preceding Article, the Minister is to notify the police officer set forth in paragraph (4) to that effect.
- (7) If a request for approval of transit under the preceding Article has been accepted within the period prescribed in paragraph (3), a police officer may, notwithstanding the provisions of that paragraph, continue to keep the person sought for surrender in custody until the police officer delivers the person sought for surrender to the foreign officials, etc. escorting the person sought for surrender; provided, however, that when the police officer has been notified by the Minister for Foreign Affairs that approval for transit will not be given, the police officer may not continue to keep the person sought for surrender in custody.
- (8) When a police officer becomes unable to continue keeping a person sought for surrender in custody pursuant to the provisions of paragraph (3) or the preceding paragraph, the police officer is to 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 officer are prescribed 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 matters concerning the issuance of warrants for provision of evidence, procedures concerning examination of witnesses and filing of appeals, 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 procedures concerning cooperation with enforcement are prescribed by the Rules of the Supreme Court.

### **Chapter III Measures Taken for the International Criminal Police Organization**

Article 52 (1) 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, the National Public Safety Commission may take one of the following measures, except for the case that falls under Article 6, paragraph (1), item (iv):

- (i) to instruct the prefectural police headquarters found to be appropriate to conduct the necessary inquiry; or
- (ii) to send documents concerning the request for measures to the head of a national government organ 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 Investigation and Other Related Matters apply mutatis mutandis to measures related to the request prescribed in the preceding paragraph. In this case, the phrase "item (ii) of that paragraph" in paragraph (4) of the same Article and the phrase "paragraph (1), item (ii)" in paragraph (7) of that Article are 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 that Article is 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)

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

(2) When 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)

Article 54 A person who, in relation to their own or another person's criminal case before the ICC, has forcibly demanded a meeting with the person found to have knowledge necessary for the investigation or trial of the case or the person's relatives without legitimate grounds, or who has committed an act to intimidate such persons, is punished by imprisonment with work for up to one year or a fine of up to 200,000 yen.

(Bribery of a Witness)

Article 55 A person who, in relation to their own or another person's criminal case before the ICC, has provided money or other benefits, or proposed or promised money or any other benefit in return for not giving testimony, for giving false testimony, for destroying, counterfeiting, or altering evidence, or for using counterfeit or altered evidence, is punished by imprisonment with work for up to one year or a fine of up to 200,000 yen.

(Destruction of Evidence Related to Organized Crime)

Article 56 (1) When an act that constitutes a crime specified by the Statute has been committed as an activity of a group (meaning a continually unified body of many people with a common purpose, where the acts that fulfill the purpose or intent of the group are repeatedly performed 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 applies in this paragraph); the same applies in the following paragraph) by an organization whose purpose is to bring the act to fruition, a person who has performed an act that falls under any of the preceding three Articles (excluding Article 53, paragraph (2); the same applies in the following paragraph) with regard to a criminal case before the ICC related to the crime is 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 to enable a group to acquire illicit interests (meaning control over a specific region or field based on the group's force, which facilitates the group or its members to continuously acquire interests through crime or any other unlawful acts committed by members of that group; hereinafter the same applies in this paragraph) or to maintain or expand the group's illicit interests, a person who has committed an act that falls under any of the preceding three Articles with regard to a criminal case before the ICC related to the crime will also be subject to the provisions of the preceding paragraph.

(Perjury)

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, the witness is punished by imprisonment with work for not less than three months but not more than 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 the person has testified, the punishment may be reduced or the person may be exempted from the punishment.

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

(Acceptance of a Bribe, Acceptance of a Bribe upon Request, and Acceptance of a Bribe in Advance of Assumption of Office)

Article 58 (1) When a judge, a prosecutor or other official of the ICC (hereinafter referred to as an "ICC official") has accepted, solicited, or promised to accept a bribe in connection with their duties, they are punished by imprisonment with work for up to five years. In this case, when they have agreed to perform an act in response to a request, they are punished by imprisonment with work for up to seven years.

(2) When a person who seeks to become an ICC official has accepted, solicited, or promised to accept a bribe in connection with a duty to be assumed with agreement to perform an act in response to a request, the person is punished by imprisonment with work for up to five years in the event the person becomes an ICC official.

(Passing of Bribes to a Third Party)

Article 59 When an ICC official, agreeing to perform an act in response to a request, causes a bribe in connection with the official's duty to be given to a third party or solicits or promises such bribe to be given to a third party, the official is punished by imprisonment with work for up to five years.

(Aggravated Acceptance of a Bribe and Its 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, the official is punished by imprisonment with

work for a definite term of not less than one year.

- (2) The provisions of the preceding paragraph also apply when an ICC official accepts, solicits or promises to accept a bribe, or causes a bribe to be given to a third party or solicits or promises a bribe to be given to a third party, in connection with having acted illegally or having refrained from acting in the exercise of their duty.
- (3) When a person who was formerly an ICC official accepts, solicits or promises to accept a bribe in connection with having acted illegally or having refrained from acting in the exercise of their duty with agreement thereof in response to a request, the person is 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 in return for causing or for having caused another ICC official to act unfairly or to refrain from acting appropriately in the course of their duties, or has agreed to perform an act in response to a request, the official is 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 third party with knowledge is to be confiscated. When the whole or a part of the bribe cannot be confiscated, an equivalent value is to be collected.

(Offering of a Bribe)

Article 63 A person who has given, offered or promised to offer a bribe prescribed in Articles 58 through 61 is punished by imprisonment with work for up to three years or a fine of up to 2,500,000 yen.

(Obstructing or Compelling Performance of Public Duty)

- Article 64 (1) A person who has committed assault or intimidation against an ICC official in connection with the execution of their duties is 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 also apply to a person who has committed assault or intimidation against an ICC official in order to have the official 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 are governed by Article 3 of the

Penal Code.

### **Supplementary Provisions [Extract]**

(Effective Date)

Article 1 This Act comes into effect as of the day on which the Statute becomes effective with regard to Japan; provided, however, that the provisions of Article 55 and Article 56 (limited to the part related to an act that falls under Article 55) come into effect as of the day of enforcement of the Act for the Partial Amendment of the Penal Code to Respond to an Increase in International and Organized 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 do 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 for cases that fall 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 the foreign country or aboard a vessel or aircraft with the nationality of the foreign country, or by a person with the nationality of the foreign country; or

(iii) when the offense underlying the cooperation request or the offense underlying the surrender request has been committed within a country that has accepted the ICC's exercise of jurisdiction over 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 the country, or by a person with the nationality of the country.

(2) The provisions of the preceding paragraph 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.