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## FAQ on Kyoto University Regulations for the Protection etc. of Whistleblowers

### **Purpose**

**Q1. What is the purpose of establishing the Kyoto University Regulations for the Protection etc. of Whistleblowers (hereafter “the Whistleblower Protection Regulations”)?**

**A1.** The Whistleblower Protection Act (hereafter “the Act”) was promulgated on June 18, 2004 and came into effect on April 1, 2006. In response, Kyoto University established the Whistleblower Protection Regulations on March 6, 2006 for the purpose of enabling protection of whistleblowers, including prohibiting termination of employment on the grounds of whistleblowing, and to prescribe measures for the University to take in regard to whistleblowing.

The Act was amended on June 1, 2022, and Kyoto University amended the Whistleblower Protection Regulations on the same day. The content of these FAQ has also been updated following the establishment of the Implementation Guidelines for the Protection of Whistleblowers, etc. at Kyoto University that prescribe necessary matters for the implementation of the Whistleblower Protection Regulations, in accordance with Article 18 of said Regulations.

### **Definition of Whistleblowing**

**Q2. What is whistleblowing?**

**A2.** The Whistleblower Protection Regulations define whistleblowing as: “(1) reporting performed by (2) any officer and staff member of the University (including those who retired within one year before the day of reporting) and those who are engaged in operation of the University under worker dispatch contracts or other contracts, or those who were engaged in such operation (limited to those who finished the contracted work within one year before the day of reporting), (3) without any purpose of obtaining a wrongful gain, any purpose of causing injury to others, or any other wrongful purpose, regarding (4) a Reportable Fact that has occurred, is occurring or is about to occur as a result of any action by the University, or any officer, staff member, agent, or other person in a situation whereby any of the aforementioned is engaged in operation of the University, (5) a) to the University (including an external law firm set forth in Article 4, Paragraph 1 of these Regulations), b) to an administrative

organ with the authority to impose disposition or recommendation, etc. in respect of such Reportable Fact, or to any person predetermined by the administrative organ, or c) to any person who is recognized as a required recipient of reporting regarding such Reportable Fact in order to prevent the occurrence thereof or the spread of injury caused thereby.”

**Q3. What kind of conduct does “whistleblowing” refer to?**

**A3.** Whistleblowing is the act of making another person aware of a certain fact. In the Whistleblower Protection Regulations, whistleblowing refers to the act of informing one of the University’s contact points for whistleblowing and consultation specifically that a criminal or unlawful act has occurred or is about to occur. In contrast, questions such as whether or not a certain act amounts to an unlawful act that is covered by the Whistleblower Protection Regulations, where to make a report in order to receive protection under said Regulations, and other more general queries that do not include specific facts such as the identity of the person responsible for the unlawful act, are classed as “consultations” that occur prior to whistleblowing, and do not fall under the definition of “whistleblowing” itself.

**Q4. What is a “reportable fact”?**

**A4.** This is defined in Article 2 of the Whistleblower Protection Act as follows.

- (i) The fact of criminal act that constitutes the crimes provided for in laws (including the orders based on such laws: the same applies to the following item) listed in the appended table, concerning the protection of interests such as the protection of individuals’ lives and bodies, the protection of interest of the consumers, the conservation of the environment, the protection of fair competition, and the protection of citizens’ lives, bodies, property and other interests;
- (ii) the fact, in the case where a violation of a disposition pursuant to the Act listed in the appended table constitutes the fact provided for in the preceding item, which is the ground of the relevant disposition (including the fact, in the case where the relevant ground is the fact which is the violation of a different disposition or not complying with recommendation, etc. pursuant to the Act listed in the appendix, which is the ground of the relevant different disposition or recommendations, etc.).

In other words:

- A reportable fact must be an infringement of a law;

- The law in question must be related to the protection of interests such as the protection of individuals' lives and bodies, the protection of consumers' interests, the conservation of the environment, the protection of fair competition, or the protection of citizens' lives, bodies, property and other interests;
- The law in question must appear in the appendix to the Whistleblower Protection Act;
- Infringement of the law in question must be a crime or a regulatory infringement that may constitute a crime.

**Q5. What kinds of operations at Kyoto University are covered by whistleblowing?**

**A5.** All operations conducted by the University pursuant to Paragraph 1, Article 22 of the National University Corporation Act (Act No. 112 of 2003), mainly the following.

[Reference] Excerpt from National University Corporation Act (Act No. 112 of 2003):

(Scope of operations)

Article 22. National university corporations shall perform the following operations:

- (1) Establish national universities and operate them.
- (2) Provide students with counseling that relates to their studies, choice of career paths, and physical and mental well-being, as well as other forms of assistance.
- (3) Conduct research commissioned by parties other than the national university corporation concerned, or else conduct joint research together with such parties, and engage in educational and research activities in cooperation with such parties.
- (4) Offer courses open to the general public and other opportunities for study to persons who are not students.
- (5) Disseminate the findings from research undertaken in the national university concerned and promote the use thereof.
- ...
- (10) Perform all work attendant on the operations enumerated in the preceding clauses.

**Q6. What kinds of people are “those who are engaged in operations of the University under worker dispatch contracts or other contracts” as included in the classification of any staff member of the University?**

**A6.** This term includes temporary workers dispatched to the University pursuant to worker dispatch contracts, and employees of contracted service providers that are engaged in operations of the University pursuant to outsourcing contracts.

**Q7. In the definition of whistleblowing, what does “any purpose of obtaining a wrongful gain, any purpose of causing injury to others, or any other wrongful purpose” mean?**

**A7.** “Any purpose of obtaining a wrongful gain” includes receipt of money or goods through reporting or any other purposes to derive improper advantage for oneself or another from contravention of a relationship of good faith with the University, or in a manner contrary to public policy, while “any purpose of causing injury to others” is a purpose to cause damage to property, loss of confidence, or other material or immaterial damage to another staff member of the University or other party. In addition, the definition covers “any other wrongful purpose” with a high degree of illegality under prevailing social standards, such as whistleblowing for purposes contrary to the principle of good faith or public policy.

**Q8. What does Article 15 of the Whistleblower Protection Regulations mean by “whistleblowing as set forth in each Item of Article 3 of the Act”?**

**A8.** The types are shown in (1) to (3) below. Whistleblowers making any of these types of report are eligible for protection under the Whistleblower Protection Regulations.

- (1) Whistleblowing to Kyoto University in the case a Reportable Fact is considered to have occurred, occur or be about to occur;
- (2) Whistleblowing to an Administrative Organ with the authority to impose Disposition or Recommendation, etc. in the case there are reasonable grounds to believe that the Reportable Fact has occurred, occurs or is about to occur, or in the case that the whistleblower considers that the Reportable Fact has occurred, occurs or is about to occur and a written statement of the following matters is submitted:
  - a) the name and address or location of the whistleblower
  - b) details of the reportable fact
  - c) reasons for considering that the Reportable Fact has occurred, occurs or is about the occur

d) reasons for considering that the Reportable Fact should be subject to statutory measures or other appropriate measures; or

(3) Whistleblowing to any person to whom such Whistleblowing is considered necessary to prevent the occurrence of the Reportable Fact or the spread of damage caused by the Reportable Fact in the case there are reasonable grounds to believe that the Reportable Fact has occurred, occurs or is about to occur and when any of the following applies:

a) In the case the Whistleblower has reasonable grounds to believe that he/she will receive dismissal or other disadvantageous treatment if he/she does whistleblowing as provided for in (1) or (2) above;

b) In the case the Whistleblower has reasonable grounds to believe that the evidence pertaining to the Reportable Fact might be concealed, counterfeited, or altered if he/she does whistleblowing as provided for in (1) above;

c) In the case there are reasonable grounds to believe that if the whistleblower does whistleblowing as provided for in item (1), the recipient of services will divulge the information acquired with respect to the whistleblower without just cause despite knowing that the information enables the identification of the whistleblower;

d) In the case the Whistleblower was requested by the recipient of services, without any justifiable reason, not to blow a whistle provided for in (1) or (2) above;

e) In the case the Whistleblower does not receive notice from the said recipient of services, etc., about the commencement of an investigation on the Reportable Fact within twenty days from the day of the Whistleblowing provided for in (1) above made in writing, or the said recipient of services, etc. does not investigate without any justifiable reason; or

f) In the case the Whistleblower has a justifiable reason to believe that some damage to the life or body of an individual, or damage to the property of an individual (excluding those in the case of conducting a business) (limited to irreparable damage or substantial amount of damage to a significant number of individuals, which must be directly caused by the Reportable Fact) has occurred, or there is an imminent danger of occurrence of the same.

**Q9. In what cases is a Reportable Fact “about to occur”?**

**A9.** When the event’s occurrence is imminent and the probability of occurrence is high. However, this does

not necessarily mean that it must be occurring in the immediate future: included are cases where the occurrence is certain but there is still some time before it will actually take place.

**Q10. What kind of person is a “person to whom reporting the reportable fact is recognized as being necessary in order to prevent the occurrence thereof or the spread of damage caused thereby”?**

**A10.** Examples might include a consumer organization or business lobby group. Broadcasters, newspapers, and other news media organizations are also included because making the reportable fact widely known to the public could help prevent its occurrence or the spread of damage caused by it.

**Q11. What kinds of cases are considered “the case there are reasonable grounds to believe” under (2) and (3) of A8?**

**A11.** This is where there is a firm basis for the belief, such as documentary or other evidence that supports the existence of the Reportable Fact rather than simple hearsay, witnessing of the Reportable Fact directly, or a previous case in which the Reportable Fact occurred.

**Q12. What is “justifiable reason” in (3) d) of A8?**

**A12.** An example is a case where a Reportable Fact was about to occur and the whistleblower did not know that corrective measures had already been taken, and the whistleblower’s workplace superior says that “there is no need to report because corrective measures are already in place.”

**Q13. How is the “twenty days” in (3) e) of A8 calculated, and what kind of period is it?**

**A13.** The “twenty days” countable from the time at which the written report arrived at the University (time at which the content of the said report was first knowable by the University), in accordance with the receipt-on-delivery principle under the Civil Code. However, based on the Civil Code’s principle of not counting the initial date, counting of the “twenty days” begins on the day immediately following the day on which the written report reached the university. Moreover, in the event that the final day of the twenty-day period falls on a holiday, the deadline is extended to the next weekday. Please note that this twenty days represents the deadline for notification that an investigation will be conducted, not the deadline for implementing the investigation.

**Q14. What are “justifiable reasons” for not conducting an investigation under (3) e) of A16?**

**A14.** This includes cases where an investigation was conducted before the report was made, which clearly established that the alleged fact did not exist; and cases that occurred in the past where it turned out that there is no means of investigating the details.

**Q15. What kinds of things are excluded from the scope of Reportable Facts?**

**A15.** Whistleblowing is limited to the reporting of facts on criminal conduct and unlawful conduct that ultimately attracts criminal or administrative penalties. Facts on infringements of civil law and the reasonable endeavor obligations of various basic legislation are not Reportable Facts for whistleblowing purposes, and their reporting does not lead to the processes or whistleblower protection measures prescribed in the Whistleblower Protection Regulations. For reporting of facts on infringements of the provisions of regulations stipulated by the President or Executive Vice-President, please see Q23 and Q24.

#### **System for Processing Whistleblowing Reports**

**Q16. What method should be used for lodging whistleblower reports and consulting at a contact point for whistleblowing and consultation?**

**A16.** Whistleblowing and consultations to a contact point can be made in four ways: telephone, e-mail, letter, and in person. (However, whistleblowing and consultations to the contact point outside the University are accepted by telephone, e-mail, and letter.)

When making a whistleblower report, it is not essential to specify the exact legal provision that applies to the fact you are reporting, but if you do not state the details concretely, it is impossible to determine what laws or regulations the conduct in question infringes. You need to inform the contact point in sufficient detail to enable it to conduct investigations and institute remedial measures, etc. after the report, so please enter the essential items in the designated Whistleblower Report form and submit or send it to a contact point.

**Q17. Can I make a whistleblower report anonymously?**

**A17.** Yes you can, but it might not possible to conduct an appropriate investigation unless we are able to request additional information from you. Also, we are unable to notify anonymous whistleblowers of investigation outcomes. For these reasons we ask that whistleblowers use their real names wherever possible (full care is taken to ensure that whistleblowers cannot be identified in the course of investigating a Reportable Fact). In the case of anonymous reports, the whistleblower cannot usually be identified and disadvantageously treated, so s/he is not subject to protection. However, even if a report is made anonymously, the whistleblower is eligible for protection in the event that s/he is identified subsequently for some reason and suffers disadvantageous treatment such as termination of employment.

**Q18. In relation to the receipt of whistleblowing reports, it says that when any staff member other than those serving as contact points for whistleblowing and consultation receives a report, s/he is to notify the matter to a contact point or advise the whistleblower to report the matter to a contact point. What is the purpose of this requirement?**

**A18.** Whistleblowing at Kyoto University extends not only to reports to the contact points prescribed by the University (internal: Office of Audit and Integrity; external: law firm [consulting attorney]) but also to reports made to parties such as managerial staff members with authority over the Reportable Fact and workplace superiors supervising and directing the duties of the staff member in question. In order to ensure consistent and appropriate processing of whistleblower reports, the University has prescribed measures to be taken in cases where reports are made to parties such as managerial staff, while maintaining the basic rule that reports should be made directly to the contact points.

**Q19. Article 13 of the Whistleblower Protection Regulations stipulates that a “Person in Charge, etc.” shall not disclose any confidential information obtained in the course of his/her duties. Who does this term “Person in Charge, etc.” refer to?**

**A19.** This term refers to persons designated by the Executive Vice-President in Charge to engage in work related to whistleblowing pursuant to Article 6-2 of the Whistleblower Protection Regulations, as well as persons engaged in investigations, etc. and in remedial measures, etc. pursuant to Article 11.



**Q20. In the context of work related to handling public whistleblowing, what is a “person who may suffer material disadvantage as a result of the discovery of a Reportable Fact or the outcomes of an investigation” as stipulated in Article 7 of the Implementation Guidelines for the Protection etc. of Whistleblowers at Kyoto University?**

**A20.** Such a person may be, for example, a person affiliated with the same research laboratory or department and undertaking the same research activities or duties, a person in a close supervisory or mentoring relationship, or a person judged to have an interest in the whistleblower or person reported by the whistleblower. Please note that even in cases where no disadvantage may be suffered, work related to handling public whistleblowing should not involve any person whose involvement in such work may be seen to compromise the fairness of investigations, etc.

#### **Prohibition of Dismissal and Disadvantageous Treatment**

**Q21. What is the meaning of “dismissal” in Article 15 of the Whistleblower Protection Regulations, and “disadvantageous treatment” in Article 16 of the Regulations and item (i) in A8 (3)?**

**A21.** These terms cover matters relating to the loss of status as a worker such as the termination of an employment or worker dispatch agreement, as well as such matters as personnel-related treatment including disciplinary action and workplace reassignment, economic treatment including salary reductions and non-payment of retirement allowances, harassment and other psychological and lifestyle related treatment, and any other matters prescribed under Articles 3 through 7 of the Act.

**Q22. How is a whistleblower protected if the report involves two or more different organizations?**

**A22.** As long as the “whistleblowing as set forth in each Item of Article 3 of the Act” satisfies the conditions for a whistleblower report stated in A8, the whistleblower is protected regardless of whether or not multiple organizations are involved in a Reportable Fact. In such cases the whistleblower cannot be dismissed from employment or subjected to other disadvantageous treatment on grounds of having made the said report.

### **Other Matters**

**Q23. What kinds of reports are “reporting by persons other than an officer or staff member of the University (including those who ceased work within one year prior to the date of the report) or persons engaged in operations of the University under worker dispatch contracts or other contracts either currently or previously (limited to those who completed their contracted work within one year prior to the date of the report) (hereafter referred to as “staff members of the University”) or reporting of facts that violate the provisions of the regulations stipulated by the President or Executive Director”?**

**A23.** Such reports are not considered whistleblower reports under the Whistleblower Protection Regulations, but they are treated in the same way as whistleblower reports in the University if a person other than staff members of the University has knowledge of such a fact and reports it to the University. A “fact” in this context means any conduct in the course of the University’s work duties by its staff members, and does not cover unlawful conduct in the course of private life unconnected with the University such as, for example, a speeding offense committed by a staff member in her/his own vehicle.

**Q24. Is there any difference in the handling of reports in cases of mutatis mutandis application to reporting that does not constitute whistleblowing?**

**A24.** We have expanded the scope of the Whistleblower Protection Act and instituted a system that enables reporting of facts on infringements of the provisions of regulations stipulated by the President or Executive Vice-President (hereafter “University Regulations”). Please note that the scope of Reportable Facts in the case of reporting on infringement of University Regulations is extremely wide, including in terms of the severity of the infringement, so when receiving such a report we will check that there are reasonable grounds to believe the content of the report.

**Q25. How are matters raised in a whistleblower report addressed after the report is made?**

**A25.** After receiving the report, the University considers what measures to institute in relation to the matters in the report, and notifies the whistleblower of whether or not an investigation will be conducted to confirm the facts of the case. (Notification will also be made regarding whether or not the matter constitutes a whistleblower report, and which department will respond to it.) Investigations are

conducted by staff of the Administration Bureau. Results are communicated to the whistleblower as soon as the investigation is completed, and if the Reportable Fact is confirmed, necessary measures for correction and prevention of recurrence are instituted immediately, or the head of the department concerned is ordered to institute remedial measures. The whistleblower is notified of the results of remedial measures, etc. subsequently.