

June 12, 2019

## In Rare Move, Japan Extradites Two of Its Own Citizens to the U.S. to Face DOJ Prosecution

Extradition from Japan is rare, and even more so for Japanese nationals in connection with white collar offenses. But on April 17, 2019, Japan extradited two of its own citizens to the United States—Junzo Suzuki, and his son, Paul Suzuki—in connection with their alleged roles in a \$1.5 billion Ponzi scheme. The extradition followed the Suzukis’ arrest in January 2019 by Japanese authorities at the request of the United States.

**Attorneys**  
[Michael G. McGovern](#)  
[Kaede Toh](#)  
[Ethan M. Weinberg](#)

Both men are former executives of MRI International, a Las Vegas-based investment company that purportedly specialized in acquiring accounts receivable at a discount and seeking to recover the amount due for a profit. They were first charged in a July 2015 federal indictment filed in the District of Nevada. The indictment included multiple counts of mail and wire fraud for each.<sup>1</sup> The Suzukis’ trial is set for October 2019, and they have been ordered detained for the duration of the proceedings, which they are currently appealing.<sup>2</sup>

As discussed below, the legal framework surrounding extradition enables Japan to resist requests to extradite its own citizens. Accordingly, it is noteworthy that Japan cooperated with the United States Government and facilitated the Suzukis’ extradition in this instance, and this could signal a greater willingness for Japan to extradite its nationals for white collar offenses in the future.

### The MRI Case

The indictment alleges that, from at least 2009 until 2013, the Suzukis and their now-convicted co-defendant, Edwin Fujinaga, fraudulently solicited and induced investments from thousands of Japanese residents primarily, if not exclusively, through MRI’s Service Center in Tokyo, where the Suzukis resided. Investors were led to believe that MRI would use their investments to purchase medical accounts receivable (“MARS”) and pursue the debtors for profit, and that investors’ funds would be held and managed by an independent, third-party escrow agent in Nevada. But the defendants, according to the indictment, regularly used investor funds to enrich themselves through sales commissions, gambling, personal travel by private jet, and other personal expenditures.<sup>3</sup>

The Suzukis’ co-defendant, Mr. Fujinaga, was convicted on November 27, 2018, following a five-week trial. After just three hours of deliberation, the jury found him guilty of eight counts of mail fraud, nine counts of wire fraud, and three counts of money laundering. According to the U.S. Attorney’s Office in Nevada, evidence presented at trial showed that Mr. Fujinaga fraudulently solicited over \$1 billion in investments from over 10,000 Japanese residents, who wired funds from Japan to bank accounts in Las Vegas under his control. But he allegedly spent less than two percent of investor funds on MARS and instead used the vast majority to pay off old investors, with the balance going to impermissible business and personal expenses. At the time the Japanese government revoked MRI’s license to market securities in

<sup>1</sup> Press Release, U.S. Attorney’s Office (D. Nev.), [Japanese Investment Company Executives Extradited On Charges Relating To \\$1.5 Billion Ponzi Scheme](#) (Apr. 18, 2019).

<sup>2</sup> See Order to Continue, *U.S. v. Fujinaga*, 2:15-CR-198 (D. Nev. May 10, 2019) [Dkt. 318]; Orders of Detention, *U.S. v. Fujinaga*, 2:15-CR-198 (D. Nev. May 13, 2019) [Dkts. 320, 321]; Notice of Appeal, *U.S. v. Fujinaga*, 2:15-CR-198 (D. Nev. May 20, 2019) [Dkt. 318].

<sup>3</sup> See Indictment, *U.S. v. Fujinaga*, 2:15-CR-198 (D. Nev. July 8, 2015) [Dkt. 1] ¶¶ 1–11.

April 2013, MRI owed investors more than \$1.5 billion.<sup>4</sup> Mr. Fujinaga was sentenced on May 23, 2019 to 50 years in prison, with ordered restitution of \$1,129,409,449 and a forfeiture of \$813,297,912.65.<sup>5</sup>

## Legal Background on Extradition

Japan has signed mutual legal assistance treaties with the U.S., Korea, China, Hong Kong, the E.U., and Russia, reflecting its intent to cooperate with international criminal investigations and prosecutions.<sup>6</sup> In order for a U.S. request for extradition from Japan to succeed, the request must meet certain requirements under Japan's extradition law and the bilateral extradition treaty between the countries. The request then proceeds through both administrative and judicial review.

### *A. Requirements for Extradition between the U.S. and Japan*

Extradition from Japan is governed by its domestic Act of Extradition of 1953 ("Extradition Act") as well as the Treaty on Extradition between the U.S. and Japan. The Extradition Act sets forth the guidelines for extradition and restricts the extradition under certain circumstances.<sup>7</sup> But where a treaty exists, as between the U.S. and Japan, its provisions supersede any contrary language in the Extradition Act.<sup>8</sup>

The Treaty of Extradition between the U.S. and Japan proclaims that each country "undertakes to extradite" to the other "any person found in its territory and sought by the other Party for prosecution, for trial, or to execute punishment" for certain designated offenses.<sup>9</sup> Extradition is authorized only where the offense is punishable by the laws of both countries by death, life imprisonment, or "deprivation of liberty" for a period of more than one year. The Treaty also carves out exceptions from extradition for political offenses and for crimes over which Japanese jurisdiction could be exercised but some function of Japanese law, such as a statute of limitations, would bar prosecution.<sup>10</sup> Most critically, Article V of the Treaty affords each country ample discretion regarding extradition of its own nationals.<sup>11</sup>

Both the Extradition Act and the Treaty contain a probable cause requirement: extradition is permissible only if there is probable cause to believe that the person sought for extradition committed the offense charged (or there is sufficient evidence to prove that the person sought is the person already convicted of the offense by a court of the requesting country).<sup>12</sup> A request for extradition must be accompanied by certain documents, including a statement of the facts of the case, as well as "such evidence as would provide probable cause to suspect, according to the laws of the requested Party, that the person sought has committed the offense for which extradition is requested."<sup>13</sup> Additionally, with limited exceptions, extradited individuals may be prosecuted and punished only for the offense for which extradition was granted. (This provision, however, does not apply to any offenses committed by an extradited individual after his or her extradition.)<sup>14</sup>

---

<sup>4</sup> Press Release, U.S. Attorney's Office (D. Nev.), [President And CEO Of Las Vegas Investment Company Convicted Of \\$1.5 Billion Ponzi Scheme](#) (Nov. 28, 2018).

<sup>5</sup> Press Release, U.S. Attorney's Office (D. Nev.), [President And CEO Of Las Vegas Investment Company Sentenced to 50 Years in Prison for Running \\$1.5 Billion Ponzi Scheme](#) (May 23, 2019).

<sup>6</sup> MOJ, [MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS](#).

<sup>7</sup> Tōbō Hanzainin Hikiwatashi Hō [Act of Extradition], Act No. 68 of July 21, 1953 (Japan).

<sup>8</sup> *Id.*

<sup>9</sup> TIAS 9625, 31 U.S.T. 892; 1978 U.S.T. LEXIS 301, Article I, in force March 26, 1980, *available here*.

<sup>10</sup> *Id.* art. IV.

<sup>11</sup> *Id.* art. V.

<sup>12</sup> *Id.* art. III.

<sup>13</sup> *Id.* art. VIII.

<sup>14</sup> *Id.* art. VII.

### B. Review by the Minister of Justice and the Tokyo High Court

A request for extradition from Japan must be made in writing via diplomatic channels and directed to the Minister of Foreign Affairs, who forwards the request to the Minister of Justice.<sup>15</sup> Unless the Minister of Justice determines that the Extradition Act bars extradition, the Minister of Justice will order the Superintending Prosecutor of the Tokyo High Court Public Prosecutor's Office ("PPO") to apply directly to the Tokyo High Court for examination of whether the individual sought can be extradited. The Tokyo High Court's review is focused on whether any of the extradition exceptions apply, rather than the propriety of the extradition.<sup>16</sup> If and when the Tokyo High Court rules that an individual can be extradited, the Minister of Justice will make the final determination of whether extradition is appropriate. The Minister may then order the Tokyo High Court PPO to extradite the fugitive, and the extradition will occur within thirty days from the date of the Minister's order.

### The Practicalities of Extradition from Japan

Japanese nationals who have been criminally charged by DOJ generally must choose between voluntarily submitting to American jurisdiction or remaining in Japan as a "fugitive" while avoiding international travel. As of July 2016, there were an estimated 24 Japanese citizens living in Japan who had been indicted in the United States between 1990 and June 2016 on alleged "cartel" offenses.<sup>17</sup>

An Interpol Red Notice ordinarily will be issued for an individual who refuses to submit to U.S. jurisdiction, notifying Interpol member countries that the individual is wanted for extradition.<sup>18</sup> Each country has its own rules regarding whether to arrest or detain a listed individual.

Ten individuals were extradited from Japan to the United States and other countries between 2003 and 2012.<sup>19</sup> Because the Ministry of Justice ("MOJ") does not identify all extradition requests received, it is unclear how many requests were received, how many failed, and how many were made by the U.S. According to *The Japan Times*, a refusal to extradite in 2004 was the "first time that a Japanese court had turned down a U.S. extradition demand."<sup>20</sup> More recently, Japan has extradited individuals, including a Chinese national, to answer murder charges in the Czech Republic and the United States.<sup>21</sup>

Though only a handful of published Tokyo High Court decisions discuss extradition, the Court does not appear to distinguish between white-collar and other defendants facing extradition.<sup>22</sup> Additionally, it is unclear whether, in considering an extradition request, the Tokyo High Court distinguishes between Japanese citizens and those of other

<sup>15</sup> Act of Extradition, *supra* note 7.

<sup>16</sup> 平成 2 ( て ) 37 逃亡犯罪人引渡審査請求事件 平成 2 年 4 月 20 日 東京高等裁判所; see [China Highjacker Returned From Japan to Beijing](#), LOS ANGELES TIMES (April 29, 1990).

<sup>17</sup> See [On the Alleged Disproportionate Sentencing of Cartel Managers](#), COMPETITION POLICY INTERNATIONAL (Aug. 2016) at 3–4.

<sup>18</sup> See generally DOJ, [EXECUTIVE OFFICE OF U.S. ATTORNEYS, U.S. ATTORNEYS' CRIMINAL RESOURCE MANUAL](#).

<sup>19</sup> 平成 25 年版 犯罪白書 第 7 編/第 4 章/第 2 節/3.

<sup>20</sup> [Editorial: Lessons from the Okamoto Case](#), JAPAN TIMES (Apr. 2, 2004).

<sup>21</sup> [Japan extradites Chinese murderer to Czech Republic](#), CTK NATIONAL NEWS WIRE (Mar. 20, 2019); [Woman who fled to Japan after 2011 slaying brought back, booked into King County Jail](#), THE SEATTLE TIMES (Dec. 4, 2018).

<sup>22</sup> See カルテル被告、米への引渡しも東京側の対策急務、日本経済新聞、2014 年 5 月 4 日、電子版。; 米への身柄引き渡し妥当 FBI 摘発の男、東京高裁決定、日本経済新聞電子版、2012 年 8 月 31 日。; [Man Sentenced to Federal Prison for Credit Card Fraud and Aggravated Identity Theft](#), TARGETED NEWS SERVICE (Dec. 6, 2011); [Plea Deal Worked Out in Awana Extortion Case](#), THE HONOLULU ADVERTISER (July 6, 2007); [Richard Borreca, Indian Man Charged in Attempted Extortion of Awana](#), HONOLULU STAR-BULLETIN (June 13, 2007); [David Lague, China Seeks Extradition Packs in Spite of Death Penalty](#), NEW YORK TIMES (May 29, 2007); [Japan Extradites Chinese Wanted for Embezzlement](#), JAPAN TIMES (May 13, 2007); [Le Tian, Japan to Extradite Criminal Suspect](#), CHINA DAILY (May 10, 2007); [Japan Extradites 2 to U.S. in Alleged 9/11 Fraud](#), CHICAGO TRIBUNE (Oct. 26, 2005).

nationalities. While it is possible that leniency for Japanese nationals is afforded by the Tokyo High Court, the Court has refrained from even mentioning the defendants' nationalities in publicly available opinions.

### **Implications**

The laws and procedures explained above offer Japan various means by which it could resist extradition of its own citizens, including the explicit grant of discretion in the bilateral extradition treaty. Accordingly, it is noteworthy that Japan cooperated with the United States Government and facilitated the Suzukis' extradition to the United States.

We can speculate a few reasons favoring extradition in this instance. For example, according to the indictment, many of the victims of the fraud were Japanese nationals themselves, so Japan arguably has a greater interest in vindicating the interests of those citizens than protecting the two defendants. Additionally, though the Suzukis were indicted back in 2015, they were extradited only after their co-defendant, Mr. Fujinaga, was convicted late last year. Perhaps the evidence presented at Mr. Fujinaga's trial or the publicity surrounding his conviction factored into Japan's decision to extradite the Suzukis (or the U.S.'s decision to seek it). And of course, the scale of the alleged fraud—\$1.5 billion—makes the subject crime even more notable. Regardless, it is worth keeping an eye on Japanese extraditions in the near term to see if this episode is anomalous or, instead, a harbinger of increasing cooperation between the U.S. and Japan in the extradition of Japanese nationals charged in the United States with white-collar and other offenses.