Alun Milford, former General Counsel of the Serious Fraud Office, gave an overview of the Deferred Prosecution Agreement system in England and Wales. The system was introduced in 2014 through the Crime and Courts Act, but the building blocks for it were laid in section 7 of Bribery Act 2010, which created a new basis for corporate criminal liability in bribery cases and made convictions against companies much easier.

DPAs allow a prosecutor and a company facing risk of prosecution to enter an agreement where proceedings are initiated and then immediately deferred for a fixed period of time. During that time, the company will have to comply with certain conditions, such as payment of financial penalties, compensation, and disgorgement, as well as complete cooperation with the investigation and corporate reform. If the company complies satisfactorily, the prosecution is discontinued; if not, the deferment is lifted and the company is prosecuted.

DPAs have to be approved by judges, who decide whether or not a DPA is in the interests of justice and whether its terms are fair, reasonable and proportionate. Only the Director of Public Prosecutions and the Director of the SFO can agree to a DPA as prosecutors, and financial penalties paid must be comparable to guilty plea fines. The process must also be clear and transparent: attention must be paid to the seriousness of the crime, the co-operation showed by the corporation, and the corporate reform they undertake. Mr Milford gave us an example of the first case in England to use a DPA, *SFO v Standard Bank*, to illustrate what is necessary from a company before a DPA will be considered and granted.

He also illustrated the complexities of cooperation between legal systems. Prosecutors tend to look at a case from the perspective of their own systems, but cooperation is possible. This jurisdiction is open to coordination with overseas authorities, and also recognises judgements in foreign courts, so corporations will not be judged again in England and Wales for a crime they have already been punished or found not guilty for. Mr Milford also emphasised the importance of trust. If the authorities from two different jurisdictions can agree and cooperate, they should try and secure a settlement in a way that is beneficial to the work of both parties. This requires mutual understanding and communication, but is the best way to proceed with legal cooperation.

Professor Maruhashi, Law Professor at Shinshu University, then gave a presentation on the Japanese plea bargain system, the equivalent to DPAs in the Japanese Criminal Procedure, and the academic viewpoint.

Plea Bargains were introduced into legislation in 2015 but only came into effect in 2018. The procedure involves prosecutors negotiating with suspects or defendants and coming to an agreement with them: charges against the suspects or defendants may be discharged or reduced in exchange for their testimony or cooperation. Prosecutors themselves decide the extent to which such an agreement is necessary, and make the agreement directly.

Unlike the UK system, there is no requirement to get approval from the courts. However, courts may look at the agreement to see if it serves public interest, and once the case comes to trial can make changes to what has been agreed. They can even order that a case is tried where a prosecutor has agreed to drop the charges. Therefore, the court has the final say on what happens to a suspect, regardless of the deal struck between suspect and prosecutor.

Professor Maruhashi, like many other legal acacdemics, believe that during the law-making stage, far more focus was put on the use of plea bargains for *yakuza* and organised crime, and on having individuals be party to agreements rather than organisations. They argue that not enough consideration was put into how a corporation would agree to prosecutor's terms for cooperation

and providing evidence, or how cases would be tried; instead, lawmakers only considered how the system would work if an individual entered into a plea bargain. However, the first case to use the plea bargain system in Japan shows that the system does still work for corporations.

Mr Fukamizu, partner at Japanese law firm Nagashima Ohno and Tsunematsu and associate research professor at Shinshu University, explained to us the first case to use this Japanese plea bargaining system. The case was officially made public in July 2018, and there was a significant reaction from the Japanese public.

Mitsubishi Hitachi Power Systems (MHPS) entered into a plea bargain in regards to an investigation into alleged bribery of Thai officials for use of a port during construction. MHPS conducted an internal investigation with outside council, then submitted their report voluntarily to the Public Prosecutor's Office, and cooperated fully in the official investigation. MHPS entered into the plea bargain at the suggestion of the Public Prosecutor's Office, and by doing so successfully avoided prosecution. Two former executives and one manager of MHPS were instead prosecuted.

Japanese media responded critically of the plea bargain in this case. Several papers accused MHPS of selling out its employees, without taking any criminal responsibility itself. Mr Fukamizu drew parallels with these criticisms to ideas in Japanese society. While an individual is expected to uphold the honour and reputation of their community – in this case, their company – the community should also protect and take care of its members, which MHPS did not do by allowing them to 'take the fall'.

On the other hand, Japanese practitioners have a more mixed response. They argue that this first case is a message from the investigative authority that they intend to crack down on corporate crime. An important element of the case is that a company, not an individual, was a party of the plea bargain, which will encourage companies to make voluntary disclosures and cooperate with investigations. It also sends the message that Japan will not hold back from investigating crimes committed overseas, and that preparing effective compliance and whistle-blowing systems will benefit corporations in the long run.

There are uncertainties about the system. The enforcement policy is currently unclear, and there is no established structure of negotiation between prosecutors and companies. These frameworks will need to be made more transparent and established in order for the system to be clear to both corporations and the public. Mr Fukamizu also pointed out other issues which may appear in the future under this system, including whether the framework allows for disgorgement, whether prosecutors can demand corporate reform, and if there should be an affirmative defence for effective compliance programmes.