



# Business and Human Rights in Japan



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## A. Introduction

What is the status of “business and human rights” in Japan? While there is a growing movement in Western countries to legislate on human rights and environmental issues, particularly in the supply chain, Japan has yet to pass a law on corporate responsibility to respect human rights in the supply chain and is instead taking a soft law approach on this issue.

In this article, I will present the current status of efforts in Japan to address business and human rights and how such efforts are actually working.

## B. Overall Picture of Efforts in Japan to Respect Human Rights

Business and human rights began to attract international attention in 2011 when the United Nations adopted the Guiding Principles on Business and Human Rights (the “UN Guiding Principles”). In response, countries developed national action plans on human rights in supply chains, mainly in Europe and the United States (“U.S.”), such as the Modern Slavery Act 2015 in the United Kingdom, French Corporate Duty of Vigilance Law, German Supply Chain Due Diligence Act, Canada’s Modern Slavery Act, and the California Transparency in Supply Chains Act in the U.S. There has been a noticeable movement toward the legalization of due diligence in supply chains, mainly in Europe and

the U.S.

In October 2020, the Japanese Government formulated the “National Action Plan on Business and Human Rights (2020-2025)” (the “Plan”), which lists the following items as sectoral action plans that cut across matters related to the three pillars of the UN Guiding Principles (i.e., the State’s obligation to protect human rights, corporate responsibility to respect human rights, and access to remedy): labor, protection and promotion of children’s rights, human rights in the context of the development of new technologies, the rights and role of consumers, equality under the law (e.g., persons with disabilities, women, and sexual orientation and gender identity), and acceptance and coexistence with foreign nationals.

The government has been promoting the Plan to the industrial sector. A survey conducted in 2021 by the Ministry of Economy, Trade and Industry (“METI”) and the Ministry of Foreign Affairs of Japan on the status of human rights efforts in the supply chain of listed Japanese companies found that approximately 70% of the 760 companies that responded indicated that they have a human rights policy in place, with over 50% of the respondents answering that they have implemented human rights due diligence.

The government has published the “Guidelines on Respecting Human Rights in Responsible Supply



Chains” (the “**Guidelines**”)<sup>1</sup> in September 2022 while METI has published the “Practical Reference Materials on Respecting Human Rights in Responsible Supply Chains, etc.” (the “**Practical Reference Material**”) in April 2023.

The Guidelines provide a basic framework for soft law on business and human rights in Japan. As to the Practical Reference Material, while it is not an exhaustive document on business and human rights, it provides (a) key points to consider in formulating a human rights policy, and (b) reference examples of the implementation flow for identifying and assessing risks of human rights violations in the first step of human rights due diligence for companies that are going to take full-fledged initiatives to respect human rights.

In the next section, I will explain the Guidelines.

## C. Guidelines on Respecting Human Rights

### 1. Overview

Based on the UN Guiding Principles, the OECD Guidelines for Multinational Enterprises, the ILO MNE Declaration and other international standards, the Guidelines were designed to help deepen the understanding of business enterprises in Japan and encourage their efforts by explaining in a concrete and easy-to-understand manner the activities that they are expected to undertake to respect human rights, and which should be tailored to their actual circumstances.

The Guidelines make no distinction on entity size or sector and are intended to cover all entities. Further, unlike the European Union’s proposed Corporate Sustainability Due Diligence Directive and rules enacted in several European countries, the Guidelines

do not directly address environmental due diligence. They do, however, mention that the UN General Assembly has declared access to a clean and healthy environment as a universal human right in 2022.

The scope of the efforts to respect human rights has been described to include the company, group companies, suppliers (companies on the supply chain and other business partners, without being limited to direct business partners), etc., in Japan and overseas. In the Guidelines, the “supply chain” includes both “upstream,” which relates to the procurement and securing of raw materials, resources, equipment and software for the company’s products and services, and “downstream,” which relates to the sale, consumption and disposal of the company’s products and services.

To fulfill their responsibility to respect human rights, the Guidelines require companies to (a) formulate a human rights policy, (b) conduct human rights due diligence (“**human rights DD**”), and (c) remedy cases where the companies have caused or contributed to an adverse human rights impact.

### 2. Formulation of a human rights policy

Companies are required to formulate a human rights policy that clearly indicates to their internal and external stakeholders their commitment to fulfill their responsibility to respect human rights.<sup>2</sup> This is closely related to a company’s management philosophy as it indicates the company’s basic approach to its overall efforts to respect human rights.<sup>3</sup>

In this context, the “human rights” to be respected by companies refer to internationally recognized human rights, including at least those expressed in the International Bill of Human Rights and the principles

1. A provisional translation of the Guidelines is available at [https://www.meti.go.jp/english/press/2022/pdf/0913\\_001a.pdf](https://www.meti.go.jp/english/press/2022/pdf/0913_001a.pdf).

2. *Id.*, p. 8.

3. *Id.*, p. 16.



concerning fundamental rights listed in the ILO Declaration on Fundamental Principles and Rights at Work.<sup>4</sup> It should be noted, however, that these are only some of the major human rights and reference to and understanding of other international standards may also be required where necessary.

### 3. Human rights DD

Human rights DD refers to a series of steps where a company (a) identifies adverse impacts on human rights related to its corporate activities, (b) prevents or mitigates such impacts, (c) evaluates the effectiveness of its efforts, and (d) provides explanations and discloses information. The Guidelines indicate that companies should not stop once these four steps of human rights DD have been implemented, but rather, they should make it an ongoing process to prevent and mitigate adverse impacts on human rights while constantly engaging in dialogue with their stakeholders.<sup>5</sup>

### 4. Remedy

The Guidelines require companies to implement a remedy or cooperate in the implementation thereof when it becomes clear that they are causing or contributing to any adverse human rights impact.<sup>6</sup>

However, if a company's business, products or services are only "directly linked" to an adverse impact, such company is not required to play a remedial role or to even implement any remedies. Nevertheless, the Guidelines note that in this case, the company should still try to prevent or mitigate the adverse impact by working with the other companies that caused or contributed to such adverse impact.<sup>7</sup> It was also pointed out that, in practice, it may be difficult in many cases to distinguish whether a case falls under the "potential" or "directly linked" category.

## D. Future Developments

Since it has been pointed out that Japan is lagging behind Europe and the U.S. in the development of a legal system for this area of business and human rights, at the end of April of this year, a nonpartisan group at the Diet has reportedly decided to push the government to pass a law to require companies to conduct human rights DD. The group is aiming to submit the bill at the extraordinary session of the Diet in the fall. Companies should keep an eye on future developments concerning the said bill.

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4. *Id.*, p. 9.

5. *Id.*, pp. 16-31.

6. *Id.*, p. 33.

7. *Id.*