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Japan

ENVIRONMENTAL, SOCIAL AND GOVERNANCE

Contributor

Oh-Ebashi LPC & Partners



Toshiyuki Sawai

Partner | toshiyuki.sawai@ohebash.com

Kochi Hashimoto

Associate | kochi.hashimoto@ohebash.com

Akiko Ishida

Associate | akiko.ishida@ohebash.com

Shunta Doki

Associate | shunta.doki@ohebash.com

This country-specific Q&A provides an overview of environmental, social and governance laws and regulations applicable in Japan.

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JAPAN

ENVIRONMENTAL, SOCIAL AND GOVERNANCE



1. Climate - the law governing operations that emit Greenhouse Gases (e.g. carbon trading) is addressed by Environment and Climate Change international guides, in respect of ESG: a. Is there any statutory duty to implement net zero business strategies; b. Is the use of carbon offsets to meet net zero or carbon neutral commitments regulated; c. Have there been any test cases brought against companies for undeliverable net zero strategies; d. Have there been any test cases brought against companies for their proportionate contribution to global levels of greenhouse gases (GHGs)?

a. In respect of ESG, there is no statutory duty to implement net zero business strategies.

b. In respect of ESG, the use of carbon offsets to meet net zero or carbon neutral commitments is currently not regulated. Nevertheless, the Ministry of Environment has issued a guideline, "Carbon Offsetting in Japan," which is not based on domestic laws and regulations. In addition, in preparation for the design of a system, the Ministry of Economy, Trade and Industry (METI) has convened and is leading a study group on the development of the environment for the appropriate use of carbon credits.

c. No test cases brought against companies for undeliverable net zero strategies have been found.

d. No test cases brought against companies for their proportionate contribution to global levels of greenhouse gases have been found. However, there has been a case where residents living near a power station have sued the operator, seeking an injunction against the construction and operation of the plant on the ground that the plan to build a coal-fired power station will accelerate global warming. The Kobe District Court dismissed the plaintiffs' claims in that case on the

ground that there was no concrete risk of infringement on their health from the operation of the plant, but the residents are currently appealing the case.

2. Biodiversity - are new projects required to demonstrate biodiversity net gain to receive development consent?

In respect of ESG, new projects are not required to demonstrate biodiversity net gain to receive development consent.

3. Water - are companies required to report on water usage?

In respect of ESG, companies are not required to report on water usage.

4. Forever chemicals - have there been any test cases brought against companies for product liability or pollution of the environment related to forever chemicals such as Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)?

No test cases brought against companies for product liability or pollution of the environment related to forever chemicals such as PFAS have been found.

5. Circularity - the law governing the waste hierarchy is addressed by the Environment international guide, in respect of ESG are any duties placed on producers, distributors or retailers of products to ensure levels of recycling and / or incorporate a proportionate amount of recycled materials in product construction?

In respect of ESG, there is no law that comprehensively stipulates the duty to ensure levels of recycling and/or incorporate a proportionate amount of recycled materials in product construction. However, there are several laws for each type of article, which stipulate the separate collection, recycling, and reuse of resources, waste, and other materials. For example, under the Law for Recycling of Specified Household Equipment, manufacturers and importers are obligated to collect and recycle household electrical products. Also, based on the Law Concerning Recycling of End-of-Life Vehicles, manufacturers and importers are obligated to collect and handle parts and other materials when disassembling end-of-life vehicles. Moreover, based on the Law for the Promotion of Recycling of Food Waste, manufacturers, processors, and distributors of food products are obliged to promote the recycling of food waste.

6. Plastics - what laws are in place to deter and punish plastic pollution (e.g. producer responsibility, plastic tax or bans on certain plastic uses)?

In respect of ESG, there is no producer responsibility, plastic tax or ban on certain plastic uses. However, in accordance with the Act on the Promotion of Resource Circulation for Plastics, the targeted providers of specific plastic-using products, such as plastic forks, spoons, straws, clothes hangers, etc., must work on rationalizing their use of plastics in order to reduce the amount of specific plastic-using products provided. An example of the rationalization of use includes providing consumers with the specific plastic-using products it offers for a fee and encouraging the repeat use of the products.

7. Equality Diversity and Inclusion (EDI) - what legal obligations are placed on an employer to ensure equality, diversity and inclusion in the workplace?

In terms of gender diversity, the Act on the Promotion of Women's Active Engagement in Professional Life requires employers to monitor the status of women's activities, such as the percentage of women they employ, analyze issues that should be improved, set numerical targets, and formulate and publish action plans. Initially, these requirements were effort-based obligations for employers that employ 301 or more employees, but the law was amended to expand the obligation to employers with 101 or more employees in 2019 (effective in April 2022). The Act also requires employers who employ 301 or more employees to identify and disclose the ratio of women's wages to men's wages.

In addition, in accordance with the amended Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members, paternity leave upon birth was newly established (effective in October 2022). It allows male employees to take childcare leaves for a certain period of time after childbirth and is called the male version of the maternity leave. From April 1, 2023, companies who regularly employ more than 1,000 workers will be required to disclose the status of male employees that take childcare leaves and other related leaves.

EDI in Japan also requires employers to respect not only the biological sex but also the sexual orientation and gender identity of each employee. For example, employees are required to prevent SOGI (Sexual Orientation and Gender Identity) harassment in accordance with the Act on Comprehensively Advancing Labor Measures, Stabilizing the Employment of Workers, and Enriching Workers' Vocational Lives.

With respect to the employment of persons with disabilities, the Act to Facilitate the Employment of Persons with Disabilities stipulates a legally mandated employment ratio of persons with disabilities for companies with more than a certain number of employees. With regard to the employment of senior workers, the Act on the Stabilization of Employment of Elderly Persons promotes the active employment of senior workers by, for example, obliging employers to exert efforts to ensure employment opportunities up to the age of 70.

8. Workplace welfare - the law governing health and safety at work is addressed in the Health and Safety international guide, in respect of ESG are there any legal duties on employers to treat employees fairly and with respect?

The labor law system in Japan provides for the principle of equal treatment in various contexts of employment, which is stipulated in some statutes. For example, Article 3 of the Labor Standards Act prohibits discriminatory treatment of workers with respect to wages, working hours, and other working conditions on the basis of their nationality, creed, or social status. Article 4 also prohibits discriminatory treatment of female workers in terms of wages, compared to men, because they are women. In addition to equal wages, the prohibition on discrimination based on gender at each stage of employment is stipulated in the Act for Equal Employment Opportunity of Men and Women.

9. Living wage - the law governing employment rights is addressed in the Employment and Labour international guide, in respect of ESG is there a legal requirement to pay a wage that is high enough to maintain a normal standard of living?

In addition to international standards of labor rights, Article 25 of the Japanese Constitution specifically declares that all people shall have the right to maintain the minimum standards of wholesome and cultured living. The Minimum Wages Act requires employers to pay wages at or above the minimum wage amount to their employees. Both were enacted a long time ago, but they can serve as basis for an ESG perspective.

10. Human rights in the supply chain - in relation to adverse impact on human rights or the environment in the supply chain: a. Are there any statutory duties to perform due diligence; b. Have there been any test cases brought against companies?

a. There is no legislation that imposes mandatory human rights due diligence on corporations. In October 2020, the Japanese Government formulated the “National Action Plan on Business and Human Rights (2020-2025),” listing the following items as sectoral action plans that cut across matters related to the three pillars of the UN Guiding Principles (State obligation to protect human rights, corporate responsibility to respect human rights and access to remedy): labour, 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 (persons with disabilities, women, sexual orientation and gender identity, etc.), and the acceptance and coexistence with foreign nationals. To promote the corporate responsibility to respect human rights, the Japanese Government has been encouraging companies to take measures with respect to domestic and global supply chains and promote human rights due diligence in their supply chains based on the UN Guiding Principles. And, in response to requests from the business community, in September 2022, the Japanese government reaffirmed that companies have a responsibility to respect human rights in a non-legally binding, soft law manner, by formulating and publishing the “Guidelines for Respecting Human Rights in Responsible Supply Chains, etc.” (the “Guidelines”). Based on the UN Guiding Principles, the OECD Guidelines for Multinational Enterprises, the ILO MNE Declaration,

and other international standards, the Guidelines have been established to help deepen the business enterprises’ understanding and promote their efforts by explaining the activities that business enterprises are requested to undertake to respect human rights in a concrete and easy-to-understand manner, which is tailored to the actual situation of business enterprises engaging in business activities in Japan. The Guidelines make no distinction on entity size or sector and are intended for all entities. Unlike the EU’s proposed Corporate Sustainability Due Diligence Directive and rules enacted in several European countries, the Guidelines do not directly address environmental due diligence, but they do mention that the UN General Assembly has declared access to a clean and healthy environment as a universal human right in 2022.

b. There are no cases that can be considered as test cases regarding adverse effects on human rights and the environment in the supply chain. However, as in the Kobe District Court case described in 1.d. above, the environmental impact of corporate operations has often been questioned in environmental litigation. For example, the residents living in the vicinity of a coal-fired thermal power plant challenged, before the Tokyo District Court, the cancellation of the notification by the Minister of Economy, Trade and Industry on the environmental impact assessment for the project, although the case was subsequently dismissed.

11. Responsibility for host communities, environment and indigenous populations - in relation to adverse impact on human rights or the environment in host communities: a. Are there any statutory duties to perform due diligence; b. Have there been any test cases brought against companies?

a. Although there are no such statutory duties, all business enterprises engaging in business activities in Japan should strive to respect human rights in host communities in accordance with the Guidelines. The term “Stakeholders” in the Guidelines, referring to persons or groups who have interests that could be adversely impacted by a business, includes nearby residents and indigenous people. See Page 11 of the Guideline.

b. No such test cases have been found. Although the Ainu, who are an indigenous people in the northern part of the Japanese archipelago, especially in Hokkaido, have brought lawsuits against the State and the Province (Hokkaido), there is no publicly available information

that indicates they filed a lawsuit against companies due to adverse human rights or environmental impacts.

12. Have the Advertising authorities required any businesses to remove adverts for unsubstantiated sustainability claims?

While there is no government agency dedicated specifically to advertising regulation, all consumer displays by businesses, including advertisements, are regulated by the Act against Unjustifiable Premiums and Misleading Representations, which is administered by the Consumer Affairs Agency. See the next section for the details on this.

13. Have the Competition and Markets authorities taken action, fined or prosecuted any businesses for unsubstantiated sustainability claims relating to products or services?

Since there is no legislation specifically regulating “sustainability claims,” it is unlikely that there are any instances where the relevant authorities have taken action, fined or prosecuted businesses on the grounds of unsubstantiated sustainability claims. Nevertheless, series of administrative orders issued by the Consumer Affairs Agency in December 2022 are noteworthy.

In December 2022, the Consumer Affairs Agency issued an administrative order against (i) five sellers of BB bullets for air guns, (ii) two sellers of garbage bags and plastic bags, (iii) one seller of fishing tackle, and (iv) two sellers of cutlery, straws, cups, etc., on the ground that their use of false representations such as “biodegradable” claims constituted misrepresentations under the Act against Unjustifiable Premiums and Misleading Representations.

The Act prohibits representations by a business that indicate to general consumers that the goods or services it supplies are (i) significantly better than they actually are or (ii) significantly better than those of a business competitor contrary to facts, if such representations are deemed likely to unjustly induce customers and impede general consumers from making independent and rational choices (prohibition on misrepresentation of quality). The term “representation” here refers to all representations, including advertisements and product packaging, through which a business informs consumers about the quality, standards, other contents, prices, and other transactional conditions of the goods or services it supplies, as a means of inducing customers.

The labelling that was the subject of the above administrative order all claimed “biodegradability.” For example, in the publicized materials of the administrative order against the distributor of fishing tackle, the problem was the labelling stating that “this product is made of biodegradable resin that is decomposed by microorganisms in the water, and all of it, including the preservation liquid, is harmless to fish and humans.” The Consumer Affairs Agency determined that this labelling was “a label or representation that shows or indicates that the product in question is biodegradable [...] if it were left in water after use, and is degraded by microorganisms in the water.” In fact, however, the business failed to provide reasonable grounds to support such representation, which was deemed to indicate to general consumers that the product was significantly better than it actually was, and thus was in violation of the Act against Unjustifiable Premiums and Misleading Representations. In other words, the Consumer Affairs Agency considered that the representation that the product utilizes “biodegradable” materials, which was contrary to fact, was deemed as a “significantly better” representation than what the product actually represented.

This was a general case of misrepresentation, and the Consumer Affairs Agency did not explicitly state that the administrative orders were related to “sustainability claims.” Nevertheless, the Consumer Affairs Agency’s December 2022 order on the Unjustifiable Premiums and Misleading Representations Law was the only action order issued against these 10 companies, and since all were cases in which “biodegradable” or similar claims were made contrary to actual conditions, it could be inferred that the action order was in the context of “unfounded sustainability claims,” which have increased in recent years.

In the past, specifically in 2008, the Fair Trade Commission issued an order for action against eight paper manufacturers for labelling their copy paper with a higher content ratio of recycled paper than the actual content, on the grounds that this labelling constituted a “misrepresentation of quality” under the Act against Unjustifiable Premiums and Misleading Representations (at that time, the Fair Trade Commission had authority over unfair labelling regulations). However, since then, there have been almost no cases of environmentally friendly labelling being deemed as misleading.

With regard to the competition law, on January 13, 2023, the Fair Trade Commission, which is the competition law authority, published a draft “Policy under the Anti-trust Law on Activities of Business Operators, etc. toward the Realization of a Green Society” (the “Guidelines under the Anti-trust Law”). The Guidelines under the Anti-trust

Law are based on the understanding that the realization of a “green society,” which balances reduction of environmental impact with economic growth, is indispensable to achieving carbon neutrality and the greenhouse gas reduction targets. The Guidelines under the Anti-trust Law are also intended to prevent competition-restrictive practices that could lead to a loss of innovation in new technologies, etc., and to improve transparency and predictability in the application and enforcement of the law, thereby encouraging businesses and other entities to work toward the realization of a green society. The Guidelines under the Anti-trust Law present the idea that “basically, there are many instances where no problems are encountered under the Anti-trust Law.” In addition, the Guidelines under the Anti-trust Law also state that if the restrictions on price, quantity, customers, sales channels, technology, equipment, etc. of individual businesses have the effect of restricting fair and free competition among businesses, even if the restrictions are nominally efforts by businesses to realize a green society, they may be problematic under the Anti-trust Law. The Guidelines under the Anti-trust Law show the relationship between actual activities of businesses and the Anti-trust Law by providing specific examples from the following four perspectives: (i) joint efforts such as setting voluntary standards and joint research and development, (ii) restrictions on business activities of business partners and selection of business partners, (iii) abuse of a superior bargaining position, and (iv) business combinations. The Guidelines basically present a concept that is related to efforts to reduce greenhouse gas emissions, since such efforts are predominantly implemented in Japan. On the other hand, there are various initiatives implemented for desirable social and public purposes other than those for greenhouse gas reduction, and it is said that the Guidelines under the Anti-trust Law are likely to be applicable to the other efforts of businesses to achieve Sustainable Development Goals, which are also implemented for social and public purposes.

14. Have there been any test cases brought against businesses for unsubstantiated enterprise wide sustainability commitments?

No cases brought against businesses for unsubstantiated enterprise wide sustainability commitments have been found.

15. Is there a statutory duty on directors to oversee environmental and social impacts?

In respect of ESG, there is no law or regulation that creates a statutory duty on directors to oversee environmental and social impacts. There has been some discussion as to whether such a duty can be inferred from the directors’ duty of care, but no case has been found that recognizes such a duty. In addition, although it is a soft law with a “comply or explain” approach that applies only to listed companies, the Corporate Governance Code defines “corporate governance” as a structure for transparent, fair, timely and decisive decision-making by companies, with due attention to the needs and perspectives of shareholders and also customers, employees and local communities. Also, Supplemental Principle 2-3 of the Corporate Governance Code, which applies only to companies listed in the Prime or Standard Markets of the Tokyo Stock Exchange, states that companies should deepen their consideration to actively and proactively address issues surrounding sustainability.

16. Have there been any test cases brought against directors for presenting misleading information on environmental and social impact?

No test cases brought against directors for presenting misleading information on environmental and social impact have been found.

17. Are financial institutions and large or listed corporates required to report against sustainable investment criteria?

Although it is a soft law with a “comply or explain” approach, Japan’s Stewardship Code outlines principles considered to be helpful for institutional investors who behave as responsible institutional investors in fulfilling their stewardship responsibilities with due regard to both their clients and beneficiaries and their investee companies. In the Code, “stewardship responsibilities” refer to the responsibilities of institutional investors to enhance the medium- to long-term investment returns of their clients and beneficiaries (including ultimate beneficiaries; the same shall apply hereafter) by improving and fostering the investee companies’ corporate values and sustainable growth through constructive engagement, or purposeful dialogue, based on an in-depth knowledge of the companies themselves and their business environment, and the consideration of sustainability (medium- to long-term sustainability including ESG factors) consistent with their investment management strategies. Principle 6 of the Code states that institutional investors, in principle, should report periodically on how they fulfil their stewardship

responsibilities, including their voting responsibilities to their clients and beneficiaries.

18. Is there a statutory responsibility on businesses to report on managing climate related financial risks?

Under the Financial Instruments and Exchange Act (FIEA), certain public companies, including listed companies, are obliged to file annual securities reports with the local finance bureau within three months of the end of each fiscal year. The mandatory disclosure items in the annual securities reports are stipulated in the Cabinet Office Ordinance on Disclosure of Corporate Affairs, etc. (the "Disclosure Order"). In January 2023, the amendments to the disclosure rules, which includes a new sustainability disclosure rule, was enacted, and these new mandatory disclosure rules began to apply to the annual securities reports for the fiscal year ending March 2023.

The new disclosure rules under the FIEA set a new framework for the disclosure of sustainability-related information in the format of the annual securities reports. Based on the framework of the Task Force on Climate-related Financial Disclosures (TCFD) and the drafts of the sustainability disclosure standards of the International Sustainability Standards Board (ISSB), the new framework comprises four elements: (i) governance, (ii) strategies, (ii) risk management, and (iv) metrics and targets. Among these four elements, (ii) strategies and (iv) metrics and targets are required to be disclosed only if the reporting company has decided that they are material, while (i) governance and (iii) risk management are required to be disclosed by all reporting companies. The reporting company shall disclose sustainability issues that they consider material from the perspective of their enterprise values and investors' investment decisions, according to the new framework.

For climate change, under the new attachment to the "Principles Regarding the Disclosure of Narrative Information," when a company determines that it is material to respond to climate change, it should disclose relevant information according to the above framework. In such a case, the company is expected to proactively disclose Scope 1 (direct emissions by the business itself) and Scope 2 (indirect emissions associated with the use of electricity, heat, and steam supplied by other companies) of greenhouse gas emissions. On the other hand, no specific disclosure standard is provided under the Disclosure Order, the relevant guidelines and the above principles, but the TCFD recommendations on climate-related financial disclosures are important disclosure standards since they are widely adoptable

and applicable to organizations across sectors especially in Japan. Also, in the near future, a new climate related financial disclosure standard for Japanese companies is expected to be developed by the Sustainability Standards Board of Japan in line with the ISSB disclosure standards.

19. Is there a statutory responsibility on businesses to report on energy consumption?

The Law Concerning the Promotion of Measures to Cope with Global Warming establishes systems for calculating, reporting, and disclosing greenhouse gas emissions. Under the said systems, certain business operators that emit a considerable amount of greenhouse gases in the course of their business activities (referred to as specified emitters, including businesses whose total energy consumption at all their business sites exceeds 1,500 kl/year in terms of crude oil and certain freight transportation business operators, etc.) are obliged to calculate their own greenhouse gas emissions for each business site and report it to the minister having jurisdiction over the business every fiscal year. The minister aggregates the reported information and notifies it to the Minister of the Environment and Minister of Economy, Trade and Industry, who aggregate and publish the information.

In addition, the Law Concerning the Rational Use of Energy, which presents a judgment criteria that serves as a guide when implementing energy conservation efforts, requires certain business operators, such as businesses whose total energy consumption at all business sites exceeds 1,500 kl/year in terms of crude oil and certain freight transportation business operators, etc., to report regularly on the amount of energy used and other energy usage conditions at their business sites, etc., and to create and submit medium- to long-term plans for energy conservation efforts.

20. Is there a statutory responsibility on businesses to report on EDI and / or gender pay gaps?

The Act on the Promotion of Women's Participation and Advancement in the Workplace and the Child Care and Family Care Leave Act mandates the disclosure of information on EDI in employment.

Under the Act on the Promotion of Women's Participation and Advancement in the Workplace, employers with 301 or more workers are required to disclose information on three items: (A) one item to be selected from the eight

items under the “Provision of opportunities for working life for female workers” (i.e., (1) Percentage of female workers among hired workers; (2) Percentage of competition in hiring by gender; (3) Percentage of female workers among workers; (4) Percentage of female workers in chief positions; (5) Percentage of female workers in managerial positions; (6) Percentage of female workers among executives; (7) Change in job type or employment status by gender; and (8) Re-employment or mid-career recruitment by gender), (B) wage gap between men and women, and (C) one item to be selected from the seven items under the “Balance between work life and family life” (i.e., (1) Difference in average years of continuous employment between men and women; (2) Percentage of continued employment by gender among workers hired ten fiscal years ago and in the fiscal years before and after that, (3) Percentage of childcare leaves taken by gender; (4) Average overtime hours of workers per month; (5) Average overtime hours per month for workers by employment management categories; (6) Paid vacation acquisition rate; and (7) Paid vacation acquisition rate by employment management categories). On the other hand, employers with 101 to 300 workers are required to disclose information on at least one of the above 16 items.

Under the Child Care and Family Care Leave Act, from April 1, 2023, employers with more than 1,000 workers are required to disclose the status of childcare leaves taken each year.

In addition to the above, the new disclosure rules under

the FIEA added human resource development policies, policies on improving the workplace environment, gender pay gap, ratio of women in managerial positions and ratio of male workers taking childcare leaves to the disclosure items under the format of the annual securities reports for companies with a certain size.

21. Is there a statutory responsibility to report on modern day slavery in the supply chain?

There is no so-called modern day slavery act in Japan, unlike in the UK and Australia, and there is no such statutory responsibility to specifically report about modern slavery. However, all business enterprises engaging in business activities in Japan are required to disclose information on their efforts to respect human rights in accordance with the Guidelines, as a step under human rights due diligence. Thus, there may be an overlap between the content of the disclosures under the Guidelines and the disclosures under the UK and Australian modern day slavery laws. For disclosures to the general public, the Guidelines stipulate that “information may be posted on the website of the business enterprise, or disclosed in an integrated report, sustainability report, CSR report, or human rights report, for example.” Page 33 of The Guidelines. With respect to the frequency of the disclosure, it can be periodic or non-periodic, but it is desirable to be made at least once a year.

Contributors

Toshiyuki Sawai
Partner

toshiyuki.sawai@ohebash.com



Kochi Hashimoto
Associate

kochi.hashimoto@ohebash.com



Akiko Ishida
Associate

akiko.ishida@ohebash.com



Shunta Doki
Associate

shunta.doki@ohebash.com

