



JAPAN PUBLISHES GUIDELINES ON CORPORATE HUMAN RIGHTS DUE DILIGENCE

20 September 2022 | Japan

Legal Briefings - By **Antony Crockett, Joel Rheuben, Nina O'Keefe and Jefferi Hamzah Sendut**

On 13 September 2022, the Japanese government (**Government**) published its Guidelines on Respecting Human Rights in Responsible Supply Chains (**Guidelines**) (available in Japanese [here](#)). The Guidelines set out how businesses active in Japan should address the human rights risks arising in their operations and supply chains.

They mirror existing international standards, including the UN Guiding Principles on Business and Human Rights (**UNGPs**) and the OECD Guidelines for Multinational Enterprises (**OECD Guidelines**). This Briefing discusses some of the Guidelines' key features.

SCOPE

The Government expects compliance with the Guidelines from any business conducting activities in Japan, not just those incorporated in the country. The Guidelines underline that all businesses, regardless of size, have a responsibility to respect human rights. This requires that businesses address the actual and potential adverse human rights impacts connected with their activities, whether inside or outside Japan.

The Guidelines emphasise that the human rights responsibilities of a business extend to its arrangements with a wide range of other entities, including those in its corporate group, joint enterprise partners, service providers, and suppliers. The Guidelines make clear that they cover both "*upstream*" elements of value chains, such as raw material and resource procurement, as well as "*downstream*" elements including sale or consumption of goods and services.

The Guidelines cover all internationally recognised human rights but highlight that businesses should be especially aware of risks to human rights in the areas of forced labour and child labour, freedom of association, collective bargaining, discrimination and freedom of movement and residence. The Guidelines are also clear that the human rights guaranteed by the Japanese Constitution should be respected in Japan.

ADOPTION OF A HUMAN RIGHTS POLICY

The Guidelines state that businesses should adopt a comprehensive policy expressing a commitment to respect for human rights. The policy must be approved at the most senior level of the business, informed by appropriate expertise, effectively communicated, and embedded into operational policies such as procurement guidelines. The policy must also set out the business' expectations of employees, business partners, and any other relevant parties in relation to human rights.

HUMAN RIGHTS DUE DILIGENCE

The Guidelines emphasise that businesses should conduct human rights due diligence. This requires continuously evaluating human rights risks, including through stakeholder dialogues, and undertaking steps to prevent and mitigate adverse human rights impacts involving the business.

The Guidelines recommend that businesses collect information to track the effectiveness of measures taken to address adverse human rights impacts, which may involve, amongst other things, conducting employee interviews, site visits, and third-party audits. Businesses are also expected to disclose details to the public and affected stakeholders regarding the steps they are taking in relation to human rights risks, in a manner which is accessible, but which has due regard to confidentiality considerations. The UNGPs and the OECD Guidelines contain similar recommendations but it is notable that the Government has not decided to impose mandatory human rights due diligence obligations, as has been done in other OECD countries.

Although the Guidelines state that the content and scope of human rights disclosures are a matter for each business to decide, they recommend including basic information covering issues such as how the business is identifying, prioritising between, and preventing or mitigating human rights risks. The Guidelines also reference the Tokyo Stock Exchange's Corporate Governance Code, which prescribes disclosures on similar matters by companies within its scope.

Importantly, as well as evaluating human rights risks, the Guidelines set out that businesses have responsibilities to "*make efforts*" to prevent and mitigate adverse human rights impacts with which they are linked through both their direct and indirect suppliers. This will mean exercising "*leverage*" to ensure that suppliers and other business partners also respect human rights. The Guidelines recognise that the influence businesses have over their suppliers will vary, and treat the directness of a business' link to a supplier as relevant when prioritising between different adverse human rights impacts. The Guidelines also caution that leverage exercised over suppliers and other entities must remain compliant with Japanese competition law. This is likely a reference to the Japanese competition law prohibition on "*abuse of superior bargaining position*", meaning imposing unfair disadvantages on counterparties by virtue of their economic dependence.

The Guidelines state that disengagement from entities causing or contributing to adverse human rights impacts is a measure of last resort, which should only be considered in exceptional circumstances. Further guidance is provided in the Guidelines on doing business in places affected by conflict or other systemic human rights issues.

APPROPRIATE REMEDIATION

Finally, the Guidelines state that businesses are responsible for implementing and supporting appropriate remedies for adverse human rights impacts they have caused or contributed to. Under the Guidelines, businesses are not responsible for remediating adverse human impacts they are merely linked to through third parties. However, the Guidelines emphasise that it is often difficult to distinguish between such impacts and those which a business has more directly contributed to. The Guidelines recommend that businesses establish an effective grievance mechanism in accordance with the UNGPs, through which individuals affected by adverse human rights impacts may seek remediation.

COMMENT

The Government's Guidelines represent a significant evolution in public expectations applicable to businesses with activities in Japan in relation to human rights. The Guidelines are broad in scope and provide detailed guidance on the elements of an effective human rights due diligence process. Although the Guidelines are not legally binding, they clearly set out the Government's expectations in relation to business and human rights. While the Government has stopped short of imposing mandatory human rights due diligence obligations (as is currently [proposed in the EU](#)), the Guidelines are aligned with international standards and will increase pressure on Japanese companies to ensure that their own governance and risk management processes accord with these international standards. Indeed, guidelines are commonly used in preference to "*hard*" law to shape corporate behaviour in Japan, with the expectation that companies will follow them notwithstanding their non-binding nature.

The Guidelines make reference to the Japanese National Contact Point (**NCP**) established under the OECD Guidelines. The NCP has a role in resolving complaints against businesses which fail to adhere to the OECD Guidelines; this is also an avenue via which companies' implementation of Japan's own Guidelines may be subject to scrutiny.

Businesses should give the Guidelines serious consideration, both in anticipation of future regulatory developments in Japan, and in view of international standards requiring companies to respect human rights through implementation of human rights policies and due diligence.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



ANTONY CROCKETT
PARTNER, HONG
KONG
+852 21014111
Antony.Crockett@hsf.com



DAVID GILMORE
MANAGING PARTNER,
JAPAN & SOUTH
KOREA, TOKYO
+81 3 5412 5415
David.Gilmore@hsf.com



JOEL RHEUBEN
SENIOR ASSOCIATE
(ENGLAND AND
WALES, AUSTRALIA),
TOKYO
+81 3 5412 5480
joel.rheuben@hsf.com



NINA O'KEEFE
ASSOCIATE
(AUSTRALIA), TOKYO
+81 3 5412 5457
nina.okeefe@hsf.com

LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2022

SUBSCRIBE TO STAY UP-TO-DATE WITH INSIGHTS, LEGAL UPDATES, EVENTS, AND MORE

Close