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Overview of the Guidelines on Respect for Human Rights in Responsible Supply Chains

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On September 13, 2022, the Japanese government released the [Guidelines on Respect for Human Rights in Responsible Supply Chains](#) (the “Guidelines”).^{1 2}

Given that 131 organizations and individuals commented on the draft Guidelines during the public comments period, which lasted only three weeks in August, it is evident that Japanese society is highly interested in the development of business and human rights in Japan. The discussion of business and human rights in Japan is expected to accelerate after the formulation of the Guidelines, but the concept of “business and human rights” remains abstract and hard to grasp for some companies.

Therefore, this newsletter begins with a brief overview of the nature of “business and human rights” issues (at I., below), then clarifies the purpose and position of the Guidelines (at II., below), and explains the framework and contours of the Guidelines (at III., below).

¹ [“Guidelines on Respect for Human Rights in Responsible Supply Chains”](#) released on September 13, 2022 by the Inter-Ministerial Committee on Policy Promotion for the Implementation of Japan’s National Action Plan on Business and Human Rights.

² There is no official English translation of the Guidelines so far. However, there is [the provisional English translation of the draft Guidelines](#), which are published upon the call for public comments.

I. What are “Business and Human Rights”?

The “business and human rights” issue, in a word, has as its focus the tension between modern businesses that have developed globally beyond national frameworks, and human rights.

Traditionally, human rights have been recognized from a nation state perspective. Human rights can be violated primarily by national authorities, and it is also the nation state that has dealt with human rights violations committed by anyone other than the nation state.

However, in the modern business environment of this increasingly globalized world, a business enterprise can take on vast dimensions and constitute a major social power with supply chains extending to multiple countries. It may thus be subjected to human rights protection regulations of the individual countries that are mutually inconsistent, which may result in inadequate protection for the employees of said enterprises.

For example, the business model by which a company manufactures products in developing countries with low labor costs and sells the products in developed countries with high consumer purchasing power is structurally likely to lead to human rights violations because the company may focus on production efficiency in the developing countries to meet the huge demand of the developed countries.

In such situations, human rights protection regulations are normally expected to prevent human rights violations. However, developing countries with low labor costs that often have low levels of statutory human rights protection are facing the problem that their statutory regulations cannot manage human rights issues arising from businesses that have their origins in the sophisticated legal environments found in developed countries.

Modern business is confronted with problems that cannot be solved by any one country’s human rights protection regulations. It is exactly the core of the “business and human rights” issue.

In other words, **the “business and human rights” issue is not something that companies can solve by merely complying with the laws and regulations of any one country. The difficulty lies in the reality that companies need to achieve human rights protection from the perspective of how best to protect their employees over and above the statutory requirements of any one government.**

II. Purpose and Position of the Guidelines

As stated earlier in the previous section, the “business and human rights” issue is different from conventional legal issues in that it is not a matter of compliance with any particular laws or rules, and requires respect for human rights at a level that goes beyond local statutory requirements.

However, this does not mean that there are no guidelines. For example, the following international guidelines have been established to prescribe the concepts, direction or methods of action or measures to be taken by companies in this context:

- [Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect](#)

- ["Respect and Remedy" Framework](#) (UN Guiding Principles)
- [OECD Guidelines for Multinational Enterprises](#)
- [Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy](#) (ILO MNE Declaration)

In light of these and other international standards, and also in line with the actual practices of Japanese companies, the Guidelines have been established to clearly explain and promote the efforts to respect human rights required from companies (Guidelines at 1.1).

Given this situation, **the Guidelines are not legally binding (Guidelines at 1.3) and are not intended to serve as mandatory standards that must be followed by Japanese companies, but rather as soft law in the sense that they propose examples of actions that may be taken by Japanese companies.**

III. Framework and Outline of the Guidelines

The Guidelines provide for a variety of matters that we discuss here in two sections. The first section presents an overview of companies' efforts to respect human rights, and the second section covers a few chosen topics, namely, (a) the establishment of human rights policy, (b) the implementation of human rights DD, and (c) remedies.

1. Overview of companies' efforts to respect human rights

(i) Scope of companies' responsibility for respecting human rights

The companies' responsibility for respecting human rights prescribed in the Guidelines **has a very wide scope, as stated below.**

However, as stated in "II. Purpose and Position of the Guidelines," the Guidelines do not require companies to meet all the requirements. The Guidelines instead accept that potential adverse impacts on human rights may persist (Guidelines at 2.2.2), but state that companies **should address such human rights risks in descending order of severity** (*Id.*, at 2.2.4).

■ **Scope of human rights to be respected by companies:**

Internationally recognized human rights (Draft Guidelines at 2.1.2.1) including:

- ✓ those expressed in the International Bill of Human Rights (Universal Declaration of Human Rights (UDHR), and Covenants on Social Rights, and International Covenant on Economic, Social and Cultural Rights); and
- ✓ the principles concerning fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work

■ **Scope of companies responsible for respecting human rights:**

All companies regardless of their size, sector, status of activities, ownership and organizational structure (Draft Guidelines at 1.2)

■ **Target of the efforts to respect human rights:**

Companies should endeavor to respect human rights in a broad range of companies as follows, to the fullest extent possible (Draft Guidelines at 1.3):

- ✓ The companies themselves and their group companies;
- ✓ All companies in their supply chains inside and outside Japan; and
- ✓ Other companies relating to their business, products or services (such as companies in which they invest, partners of joint enterprises, and business operators providing maintenance, inspection or security services).

(ii) Importance of commitment by management

The Guidelines state that companies should make efforts to respect human rights throughout the course of their corporate activities, including recruitment, procurement, manufacturing and sales, and emphasize the importance of commitment by the management (Guidelines at 2.2.1).

Looking at the efforts actually made by Japanese companies, it seems that the success of their efforts to respect human rights depends on whether the management and all others within the company share an awareness of the issue. It should be noted that a company whose members fail to share an awareness of the issue tend to respect human rights by merely preparing the required integrated reports or otherwise in a superficial manner.

(iii) Importance of engagement with stakeholders

In terms of the “business and human rights” issue, there are no clear standards to be met, and the issue is not to be solved by any legally binding force, as stated earlier in “II. Purpose and Position of the Guidelines.”

It is rather through engagement with stakeholders that companies recognize and solve the issue. Maintaining an engagement with stakeholders is therefore important (Guidelines at 2.2.3).

2. Establishment of Human Rights Policy

Companies are encouraged to express, both internally and externally, their commitment to fulfill their responsibility to respect human rights by establishing a human rights policy that meets the five requirements as follows (Guidelines at 3):

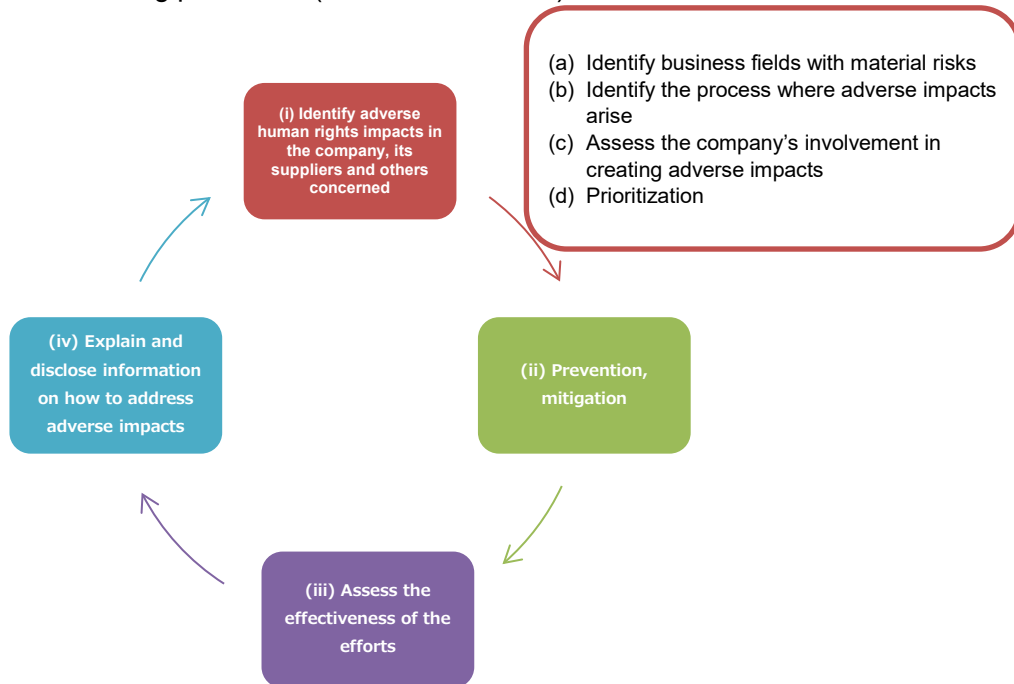
- (i) It is approved by management and others at the most senior position within the company;
- (ii) It is prepared with reference to internal and/or external expertise;
- (iii) It clearly states that the company expects its employees, business partners and others directly involved in the company's business, products or services to respect human rights;
- (iv) It is available to the public and also known internally and externally to all of the company's employees, business partners and others concerned; and
- (v) It is reflected in the business policies and procedures that are necessary to embed the human rights policy across the company.

In establishing a human rights policy, the Guidelines encourage companies to hold an engagement and discussions with their internal departments as well as external stakeholders and others concerned (Guidelines at 3.1), and also emphasize the importance of embedding the policy across the company and implementing it in practice (*Id.*, at 3.2).

In practice, Japanese companies that have successfully obtained a consensus both internally and from their stakeholders in the process of establishing a human rights policy tend to proceed smoothly with the human rights due diligence and other subsequent processes. This indicates that maintaining an engagement, both internally and with stakeholders, is an important process.

3. Human Rights Due Diligence

Human rights due diligence (“Human Rights DD”) means a series of actions to be taken by companies to implement the following processes (Guidelines at 2.1.2):



(i) Identify adverse human rights impacts in the company, its suppliers and others concerned

The process of identifying and assessing adverse human rights impacts can be divided into the steps in (a) to (d), as shown in the above figure (Guidelines at 4.1.1). Companies are to take these steps to identify human rights risks and the severity of such risks, and determine the order of addressing the risks.

As to the step “(c) Assess the company’s involvement in creating adverse impacts,” the Guidelines categorize adverse human rights impacts into the following three types (Guidelines at 2.1.2.2), and then state that companies are requested to prevent and mitigate adverse impacts which are caused by companies (in (ii)) or to which company have contributed (in (ii)), whereas they are requested to endeavor to prevent and mitigate adverse impacts that are directly linked to their business operations, products or services (in (iii)) (*Id.*, at 4.2).

■ Types of adverse human rights impacts

- (i) When companies cause adverse human rights impacts through their own activities;
- (ii) When companies contribute to adverse human rights impacts through their own activities, whether directly or indirectly; and
- (iii) When adverse human rights impacts are neither caused nor contributed to by companies, but their business operations, products or services are directly linked to such adverse impacts due to their business relationship.

These provisions should be interpreted not as being intended to release companies from responsibility in the case of direct linkage in (iii), but as rather requiring companies to recognize human rights risks and fulfill their responsibility to respect human rights even if they do not cause or contribute to the adverse impacts (9. and 13. of Q&A in the end of the Guidelines). Companies should be careful not to misunderstand this point.

(ii) Prevention, mitigation

It is noteworthy that the Guidelines do not oblige companies to prevent and mitigate any and all adverse human rights impacts, as stated below. On the other hand, the Guidelines do not encourage companies to take lightly the termination of their relationship with a company causing adverse human rights impacts, and rather encourage them to fundamentally settle the issue even if it may take time.

- ✓ If it is difficult to immediately stop the relevant activities due to operational, contractual or legal reasons, the Draft Guidelines allow companies to gradually stop the activities (Draft Guidelines at 4.2.1.1).
- ✓ Suspension of transactions with a supplier causing adverse human rights impacts is a final option. Companies should first try to prevent and mitigate such adverse impacts while maintaining their relationship with such supplier (*Id.*, at 4.2.1.3).

(ii) Assess the effectiveness of the efforts

Methods for assessing the effectiveness of the efforts listed in the Guidelines include interviews with employees, suppliers or others concerned, use of questionnaires, on-site visit, audits, and surveys by a third party (Drafted Guidelines at 4.3.1).

The Guidelines also propose methods for revisiting the company's perspective for assessing the effectiveness of its efforts to respect human rights within the framework of its existing internal procedures (*Id.*, at 4.3.2).

(iv) Explain and disclose information on how to address adverse impacts

Disclosure by posting information on the company's Website, integrated reports, sustainability reports, or by other means (*Id.*, at 4.4.2).

4. Remedy

To ensure effective remedies for adverse human rights impacts, companies need to establish a remedial mechanism. Further to the remedial mechanism established by the national government (Guidelines at 5.2), the Guidelines propose that companies also establish their own grievance mechanism (*Id.*, at 5.1).

Looking at how Japanese companies have actually established such grievance mechanism, they seem to ensure the effectiveness of such system by combining their own in-house grievance desk with an external desk offered by a third party. An external desk is particularly useful for addressing grievances

from employees at their overseas subsidiaries due to language and manpower reasons.

IV. What Japanese companies should do in response to the Guidelines

As stated earlier in “II. Purpose and Position of the Guidelines,” the Guidelines provide neither new rules nor standards for the efforts to respect human rights. In that sense, there is nothing that Japanese companies are obliged to do in response to the Guidelines.

On the other hand, the field of “business and human rights” is increasingly being emphasized in Western markets, and the establishment of rules including hard law has also been accelerated. This is an internationally consistent trend, and companies doing business in Japan cannot escape the logic of its progression.

The “business and human rights” issue needs to be addressed through company-wide engagement with stakeholders and is not something that can be resolved overnight. With the publication of the Guidelines, to continue to be valued in global markets Japanese companies would be well advised to take this opportunity to review their efforts and to take more one step forward towards the respect of human rights.

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