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Overview of the Guidelines on Respect for Human Rights

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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. The Guidelines became final after the draft version was examined by the “Study Group on Guidelines on Respecting Human Rights in Responsible Supply Chains” established by the Ministry of Economy, Trade and Industry (the “METI”) and was then published on August 8, 2022 in order to solicit public comments. The final version reflects the correction and addition of some terms as well as the addition of some footnotes, but the terms as a whole remain virtually the same as the draft version. We have outlined the draft version in our newsletter dated August 17, 2022². In this newsletter, we explain (I) the significance of the Guidelines for Japanese companies, (II) prospects for the future, and (III) practical issues.

I. Significance of the Guidelines for Japanese Companies

Companies are responsible for respecting human rights, as is clearly stated in the “Guiding Principles on Business and Human Rights” endorsed unanimously by the United Nations Human Rights Council in 2011 (the “UN Guiding Principles”)³. The responsibility of companies to respect human rights is also reflected in the “OECD Guidelines for Multinational Enterprises, 2011 Edition”⁴ and the “Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy” adopted by the

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. <<https://www.meti.go.jp/press/2022/09/20220913003/20220913003-a.pdf>>

² Newsletter dated August 17, 2022: <https://www.amt-law.com/asset/pdf/bulletins5_pdf/220817.pdf>

³ [Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect Respect and Remedy” Framework](#)

⁴ [OECD Guidelines for Multinational Enterprises](#)

International Labour Office in 2017⁵. None of these documents are legally binding, nor do they oblige companies to respect human rights. Rather, these documents constitute soft law of a kind that expresses the expectations of the international community, and companies are expected to fulfill their responsibilities for respecting human rights based on these documents. Based on the UN Guiding Principles, the Japanese government formulated a “National Action Plan (NAP) on Business and Human Rights” in October 2020, and expressed its expectation that companies fulfill their responsibilities for respecting human rights. The Japanese government then took one step further and released the Guidelines, aiming to ensure that Japanese companies meet these expectations and that they voluntarily make efforts to fulfill their responsibilities for respecting human rights.

Recently, legislation that requires companies to fulfill their human rights responsibilities in the pursuit of their business activities has been developed mainly in the US and Europe.⁶ Japanese companies that do business in these countries are obliged to establish an internal mechanism for respecting certain specified human rights (such as the prohibition of forced labor and child labor) and other more general human rights, and for fulfilling their responsibility to respect these human rights in their business activities in accordance with the legislation enacted in any given country. The Guidelines also offer effective guidance when Japanese companies try to respect human rights as defined under such legislation.

II. Prospects for the Future

According to the results of the “Questionnaire survey on the efforts of Japanese companies to respect human rights in supply chains”⁷ conducted by the government in November 2021, 69 % of the respondent companies have established a human rights policy, and 52 % have been implementing a human rights due diligence process to identify, prevent and mitigate adverse human rights impacts in business activities and to disclose related information (“Human Rights DD”). Triggered by the release of the Guidelines, the number of Japanese companies that have established a human rights policy and implemented a Human Rights DD is expected to increase.

Internationally, it is notable that the European Commission published a Proposal for a Directive on corporate sustainability due diligences in February 2022⁸. This Proposal requires not only EU companies but also non-EU companies with sales exceeding a certain amount in the EU to establish a basic policy on, and implement, a Human Rights DD and an environmental DD. In the future, this Proposal may be approved to form a Directive after discussions and approval by the European

⁵ [Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy](#)

⁶ Foreign legislation is summarized in the reference materials to the Guidelines.

⁷ Of 2,786 target companies including companies listed on the first and second sections of the Tokyo Stock Exchange, 760 companies responded to the questionnaire. See the METI Website, “Publication of the results of the questionnaire survey on the efforts of Japanese companies to respect human rights in supply chains,” November 30, 2021. <<https://www.meti.go.jp/press/2021/11/20211130001/20211130001.html>>

⁸ For the outline of this Proposal, see “Overview of Legislation Overseas” on pp. 10-12 of the reference materials to the Guidelines.

Parliament and the Council of the European Union. Once the Proposal becomes a Directive, all the EU member states are required to transpose the Directive into national law. Since the Directive would be applicable to a number of Japanese companies doing business in the EU, it would be wise to follow future developments as regards the Proposal.

At the moment, Japanese companies have no obligation to establish a human rights policy or implement Human Rights DD according to the Guidelines. They are merely encouraged to voluntarily take such measures, and when and how to take them is up to the management of the companies. Having said that, the release of the Guidelines has raised the expectations on the part of the government and the international community towards Japanese companies. Being known as a company that fulfills its responsibilities for respecting human rights would be beneficial for management since this would serve to enhance its reputation for investors and shareholders and win the trust of employees and other stakeholders. Contrarily, if adverse human rights impacts resulting from the company's corporate activities are discovered, this would undoubtedly reflect negatively on management. For any such negatively impacted Japanese company, regardless of size and international supply chains status, management would need to promptly take measures in line with the Guidelines.

III. Practical Issues

In establishing a human rights policy and implementing a Human Rights DD in accordance with the UN Guiding Principles and other international rules, Japanese companies are expected to refer to the Guidelines as useful guidance. In the following sections, we describe the practical issues which Japanese companies may face in establishing a human rights policy and implementing a Human Rights DD, and provide some suggestions concerning such issues that can be obtained from the Guidelines.

(i) Define the scope of human rights to be respected

The human rights to be respected by companies are the human rights expressed in international human rights documents⁹ as well as the fundamental rights set out in the "ILO Declaration on Fundamental Principles and Rights at Work"¹⁰. To be specific, it is necessary to consider prohibition of forced and child labor, to ensure freedom of association and the right to collective bargaining, and to eliminate discrimination in respect of employment and occupation and discrimination of any kind as to race, disability, religion, social origin, sex, gender or other status. As for suppliers and others concerned in countries or regions with low levels of human rights protection, it is necessary to pay particular attention to forced and child labor.

⁹ Namely, the Universal Declaration of Human Rights of 1948 (https://www.mofa.go.jp/policy/human/univers_dec.html); the International Covenant on Civil and Political Rights (https://www.mofa.go.jp/policy/human/cove_econo/cove_econo.html); and the International Covenant on Economic, Social and Cultural Rights (<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>).

¹⁰ <<https://www.ilo.org/declaration/lang--en/index.htm>>

(ii) How to identify adverse human rights impacts

Adverse human rights impacts are of three types: when companies cause such adverse impacts; when companies directly or indirectly contribute to such adverse impacts; and when such adverse impacts are caused or contributed to by a third party but are directly linked to companies' business operations, products or services. The Guidelines illustrate the respective types with concrete examples.¹¹

Not only actual adverse impacts, but also potential adverse impacts are assessed in a Human Rights DD. To identify adverse impacts, it is useful to have dialogues with stakeholders (such as business partners, employees of the company, its group companies and business partners, labor unions, consumers, NGOs, people living in the neighborhood, investors and shareholders), and to use a grievance mechanism to be described in (vi) below. The Guidelines provide specific examples to suggest how to hold dialogues with stakeholders.¹²

(iii) Prioritization in addressing adverse impacts

It is impractical to address all the adverse impacts identified. Companies prioritize adverse human rights impacts depending on their severity. The severity of adverse human rights impacts is judged based on three criteria: scale, scope and difficulty of remediation. Judgments should be made based not on the magnitude of impacts on the company management, but on the magnitude of adverse impacts on human rights. This point is also explained specifically in the Guidelines.¹³

(iv) How to address adverse human rights impacts that are directly linked to companies' business operations, products or services

When companies neither cause, nor directly or indirectly contribute to adverse human rights impacts, but such adverse impacts are directly linked to companies' business operations, products or services, it is difficult for companies to address the adverse impacts themselves, but they should try to mitigate such adverse impacts by exercising or enhancing their influence on, or assisting, the third party causing or contributing to the adverse impacts. For example, an upstream supplier in a supply chain may act on a tier-2 supplier. This can be a practical issue also in implementing a Human Rights DD, and how to deal with adverse human rights impacts in such cases is also illustrated in the Guidelines with some examples.¹⁴

(v) Suspension of transactions as an action to address adverse human rights impacts

The Guidelines states that companies should be careful in suspending transactions with a third party as a means for mitigating adverse human rights impacts caused by the third party directly linked to their

¹¹ The document in footnote 1 above, p. 9.

¹² *Id.*, pp. 14, 17-18.

¹³ *Id.*, p. 20.

¹⁴ *Id.*, pp. 21-22.

business operations, products or services. This is because the suspension of transactions with such third party eliminates the companies' relation with the adverse human rights impacts, but does not remediate and in fact may worsen the adverse impacts themselves. A company facing such adverse human rights impacts should not immediately terminate the business relationship but should try to mitigate the adverse impacts while maintaining its relationship with the third party. The Guidelines specifically describe responsible responses in such cases.¹⁵

(vi) Design of grievance mechanism

To promptly deal with grievances over adverse human rights impacts and provide relief directly to the victim, a company should either establish a system to address grievances concerning the company and its stakeholders, or take part in a grievance mechanism established by an industry organization and others. The Guidelines explain the eight requirements to be met by a grievance mechanism, as raised in the UN Guiding Principles.¹⁶

These are the major practical issues which Japanese companies may face in establishing a human rights policy and in implementing a Human Rights DD. The Guidelines give useful suggestions for companies dealing with these issues. However, the specific terms of a human rights policy and Human Rights DD will vary depending on the companies' business type, the structure of and participants in their supply chains, and the countries or regions in which they do business. Companies are required to tailor their human rights policy and Human Rights DD in line with their actual circumstances, but the Guidelines only provide general guidance. In the actual process of establishing a human rights policy and in implementing a Human Rights DD, companies would therefore need to build their own internal mechanisms by holding dialogues internally or referring to the expertise of law firms or other external specialists. According to the Guidelines, the METI will be preparing and releasing materials for use by persons in positions of responsibility in businesses, and these will describe in greater detail what companies can do in practice to ensure that they respect human rights. We look forward to an early publication of these materials.

¹⁵ *Id.*, pp. 22-23.

¹⁶ *Id.*, p. 30.

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