

Legal 500

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Japan

Environmental, Social and Governance

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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. There is no statutory duty to implement net zero business strategies in Japan.

b. No. The Japanese government does not regulate the use of carbon offsets to meet net zero or carbon neutral commitments through legislation. Instead, various policies and guidelines have been published, including the Policy for Carbon Offsetting in Japan and the Guidelines for Carbon Offsetting published by the Ministry of the Environment. They effectively govern carbon offsetting activities in Japan as soft laws.

c. No cases have been brought before the Japanese courts against companies regarding undeliverable net-zero strategies.

d. No cases have been brought before the Japanese courts against companies that directly challenge their liability regarding proportionate contributions to global levels of GHGs. On the other hand, there have been a couple of cases where plaintiffs have incorporated corporate responsibility for carbon dioxide emissions into their claims. However, neither type of cases has been accepted by the courts. Please see responses to Question 11.

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

No. In respect of ESG, new projects are not required to demonstrate biodiversity net gains to receive

development consent.

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

No. 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)?

We are not aware of any test cases that have been brought against companies for product liability or pollution of the environment related to forever chemicals such as PFAS.

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 certain types of products, which stipulate certain regulations on the collection, recycling, and reuse of resources, waste, and other materials. For example:

- i. Under the Act for Recycling of Specified Household Equipment, manufacturers and importers are obligated to collect and recycle household electrical products;
- ii. Under the Act on 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;
- iii. Under the Act for the Promotion of Recycling

of Food Waste, manufacturers, processors, and distributors of food products are obliged to promote the recycling of food waste;

- iv. Under the Act on the Promotion of Sorted Garbage Collection and Recycling of Containers and Packaging, business operators that use bottles and PET bottle containers are required to recycle the bottles and containers;
- v. The Act on Promotion of Resource Circulation for Plastics seeks to indirectly promote recycling by allowing plastic manufacturers to conduct plastic recycling as a business without a business license under the Act on Waste Disposal and Public Cleansing; and
- vi. Under the Construction Material Recycling Act, construction contractors are required to recycle certain construction materials.

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, Japanese law does not penalize, tax or prohibit the use of certain plastics. However, there are laws that require companies to reduce and recycle plastics. For example:

- i. In order to lower the use of plastics, plastic bags in all retail stores have generally been provided to customers on a chargeable basis since July 1, 2020, in accordance with the Act on the Promotion of Sorted Collection and Recycling of Containers and Packaging;
- ii. Under the same Act, business operators that use or manufacture plastic containers are obliged to recycle a certain amount of containers and packaging every year by way of either voluntary collection, outsourcing to a designated entity, or outsourcing to a recycling business operator; and
- iii. Under the Act on Promotion of Resource Circulation for Plastics, business operators are required to make efforts to: (a) design plastic-using products in accordance with the design guidelines for plastic-using products (e.g., substitution for materials other than plastic, use of bio-plastics, etc.), (b) select effective measures to rationalize the use of plastic-using products according to the actual conditions of their industries and business categories, and reduce emissions of waste plastic-using products by implementing such

measures, (c) take the initiative in voluntarily collecting and recycling plastic-using products that are manufactured and sold, and (d) reduce the discharge of industrial waste from plastic-using products and implement recycling.

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

In order to ensure EDI in the workplace, various legal obligations are imposed on employers under Japanese law. Some examples are described below.

Obligations with Regard to Gender Diversity

- i. Under the Act on Equal Opportunity and Treatment between Men and Women in Employment, employers are prohibited from discriminating on the basis of sex or from discriminating indirectly without reasonable cause in various activities in relation to employees, such as recruitment, hiring, placement, promotion, demotion, training, benefits, change of job classification, recommendation for retirement, setting of a retirement age, and dismissal, etc.
- ii. Under the Act on the Promotion of Women's Active Engagement in Professional Life, employers with more than 100 employees are required to monitor the status of women's activities, including the percentage of female employees and their length of service, analyze issues to be improved, set numerical targets, and formulate and publish an action plan, and are obliged to implement measures based on the plan and make efforts to achieve the targets.
- iii. Under the 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 established with effect from October 2022. It allows male employees to take childcare leave for a certain period of time after childbirth. In addition, effective from April 1, 2023, companies who regularly employ more than 1,000 employees are required to disclose the status of employees that take childcare leave at least once every year.

Obligations with Regard to Sexual Orientation and Gender Identity

- iv. Under the Act on Comprehensively Advancing Labor Measures, and Stabilizing the Employment of Workers, and Enriching Workers' Vocational Lives, employees are required to take measures to prevent SOGI (Sexual Orientation and Gender Identity) harassment.
- v. Under the Act on Promotion of Public Understanding of Diversity of Sexual Orientation and Gender Identity, employers are required to endeavor to promote understanding of the basic principle that there should be no unfair discrimination on the basis of sexual orientation or gender identity, by promoting awareness, improving the working environment, and ensuring opportunities for consultation.

Obligations with Regard to Persons with Disabilities

- vi. Under the Act to Facilitate the Employment of Persons with Disabilities, when recruiting and hiring, employers are required to provide persons with disabilities opportunities equal to those given to persons without disabilities. In addition, with respect to wages, education and training, benefits, and other types of treatment, employers are prohibited from treating persons with disabilities in an unfair and discriminatory manner compared to non-disabled persons, on the basis of the former's disability. Furthermore, employers are required to employ a minimum of 2.3% of persons with disabilities relative to the total number of employees employed on a regular basis.

Obligations with Regard to Employment of Senior Workers

- vii. Under the Act on Stabilization of Employment of Elderly Persons, employers are required to: (a) set the retirement age at 60 or above, (b) ensure employment up to the age of 65, and (c) make efforts to ensure employment up to age 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?

In addition to the laws as mentioned in our response to Question 7. above, 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 of the said Act also prohibits discriminatory treatment of female workers in terms of wages, compared to men, simply because they are 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 the international standards of labor rights under ILO treaties, in respect of ESG, Article 25 of the Japanese Constitution stipulates 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 workers to whom the minimum wage applies.

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 statutory duty to perform human rights due diligence in Japan. However, in September 2022, the Japanese government formulated and published the "Guidelines for Respecting Human Rights in Responsible Supply Chains" (the "Guidelines"). The Guidelines are not legally binding, but since they are the first guidelines formulated by the government in relation to human rights due diligence, they have a significant impact on companies in Japan. The backdrop of the Guidelines is that according to a survey conducted in November 2021 regarding efforts by Japanese companies in relation to human rights in supply chains, there was a strong demand for the Japanese government to establish guidelines among companies as well as stakeholders.

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 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.

In addition, in April 2023, the Japanese Government (led by METI) published the "Reference Material on Practical Approaches for Business Enterprises to Respect Human Rights in Responsible Supply Chains" (the "Reference Material"). Although the Guidelines were published in September 2022, it may be still difficult for business enterprises to implement measures to respect human rights, especially since it may be difficult for small and medium-sized business enterprises to visualize what they should do at the practical level. The Reference Material has therefore been published to provide examples of points to consider and the implementation flow for "establishing a human rights policy," which business enterprises should do first and for "identifying and assessing adverse human rights impacts," which is the first step in the human rights due diligence process.

b. In respect of ESG, there has been no test case brought against companies regarding adverse effects on human rights. However, there are a number of cases where employees filed a lawsuit against their employer claiming that the employer had infringed their labor rights.

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. There is no statutory duty to perform due diligence regarding adverse impacts on host communities, the environment or indigenous populations in Japan. However, the Guidelines provide that all business enterprises engaging in business activities in Japan should respect human rights in host communities in accordance with the Guidelines. Furthermore, in the Guidelines, the term "Stakeholders" is defined as persons or groups who have interests that could be adversely impacted by a business and includes nearby residents and indigenous people.

b. There is a couple of cases where residents in a host community filed a lawsuit against an operator of the coal-fired power plant:

- i. In September 2017, residents in a host

community filed a lawsuit in the Sendai District Court against the operator of a coal-fired power plant seeking an injunction against the operation of the plant, claiming that their lives, health, bodies and ecosystems would be harmed by air pollutants such as sulphur oxides and nitrogen oxides emitted by operating the plant, as well as by CO2 emissions that cause climate change. The Sendai District Court dismissed the plaintiffs' claims. The plaintiffs appealed, but the Sendai High Court also dismissed the appeal.

- ii. In September 2018, the residents filed a civil lawsuit in Kobe District Court against the operator of the project and its subsidiary, and the electric power company purchasing the electricity from the power plant, to stop the construction and operation of the coal-fired power plant. The administrative lawsuit against the government was filed in November 2018, claiming the cancellation of the finalized notice of the environmental impact assessment report that the project operator gives proper consideration to the preservation of the environment. As for the civil lawsuit, the Kobe District Court dismissed the plaintiffs' claims. The plaintiffs appealed and the case is now before the Osaka High Court. As for the administrative lawsuit, the Kobe District Court dismissed the plaintiffs' claims. The plaintiffs appealed, but the Osaka High Court also dismissed the appeal. The plaintiffs again appealed, but the Supreme Court dismissed the appeal and the judgment of the Osaka High Court became final.
- iii. In May 2019, the administrative lawsuit similar to one in the Kobe District Court was filed in Tokyo District Court against the government in relation to the project of a coal-fired power plant in Yokosuka City. The Tokyo District Court dismissed the plaintiffs' claim. The plaintiffs appealed, but the Tokyo High Court also dismissed the appeal. The plaintiffs also appealed and the case is now before the Supreme Court.

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

In Japan, there are no "advertising authorities" who regulate advertising activities in general, but the Consumer Affairs Agency, which has jurisdiction over the

Act against Unjustifiable Premiums and Misleading Representations, regulates consumer labeling by business enterprises, including advertisements for unsubstantiated sustainability claims (so-called "greenwashing"). In addition, the Ministry of the Environment has established the "Environmental Labeling Guidelines" for environmental labeling.

From December 2022 to the present, the Consumer Affairs Agency has issued an order to implement measures and a surcharge payment order against sellers of plastic products who labeled their products "biodegradable" or "biodegradable plastic" as constituting "misleading representations" under the said Act.

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

In the past, the Fair Trade Commission (the "FTC") was the competent authority under the Act against Unjustifiable Premiums and Misleading Representations, and there have been cases in which it has issued cease and desist orders against businesses that have made advertisements that fall under "misleading representations." Specifically, in April 2008, the FTC issued an order for action against eight paper manufacturers on the grounds that their labeling of recycled copy paper with a higher percentage of recovered paper pulp than was actually present constituted "misleading representations." However, since then there has been almost no cases in which environmentally friendly labelling was deemed as misleading. The Consumer Affairs Agency is now the competent authority under the Act against Unjustifiable Premiums and Misleading Representations, and the FTC does not currently enforce such advertising regulations.

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

We are not aware of any cases that have been brought against businesses for unsubstantiated enterprise-wide sustainability commitments.

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 we have not found any case that recognizes such a duty.

In addition, General Principle 2 of the Corporate Governance Code, a soft law established by the Tokyo Stock Exchange, takes a "comply or explain" approach, providing that the board and the management should exercise their leadership in establishing a corporate culture where the rights and positions of stakeholders (including employees, customers, business partners, creditors and local communities) are respected and sound business ethics are ensured. In addition, Principle 2-3 of the said Code, which applies only to companies listed in the Prime or Standard Markets of the Tokyo Stock Exchange, provides that companies should take appropriate measures to address sustainability issues, including social and environmental matters.

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

We are not aware of any test cases that have been brought against directors for presenting misleading information on environmental and social impacts.

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

In respect of ESG investment, there is no statutory duty imposed on financial institutions or large/listed companies to report on sustainable investment criteria. However, the Japanese Stewardship Code, a soft law taking a "comply or explain" approach, requires institutional investors to develop and publish a clear policy for fulfilling their stewardship responsibilities, to develop and publish a clear policy regarding conflicts of interest to be managed in fulfilling their stewardship responsibilities, and to report regularly to clients and beneficiaries on how they are fulfilling their stewardship responsibilities, including the exercise of voting rights.

In addition, in March 2023, the Financial Services Agency (the "FSA") partially amended the "Comprehensive Supervisory Guidelines for Financial Instruments Business Operators, etc." in order to address the global concern that funds with ESG in their names and investment strategies may not be commensurate with their actual performance (i.e., greenwashing). The

amendment defines the scope of ESG investment trusts, and also sets forth specific items to be verified with respect to the disclosure of ESG-related information by publicly offered investment trusts and the preparation of systems by investment trust management companies. Although the Supervisory Guidelines are not laws and regulations, companies who fail to comply with the Guidelines may be subject to administrative penalties, and so it is considered that, in effect, investment trusts are obliged to operate in conformity with the Guidelines.

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

Under the Financial Instruments and Exchange Act (the "FIEA"), listed companies, etc. are required to file an annual securities report with the local finance bureau within three months of the end of each fiscal year. The mandatory disclosure items in the annual securities report are stipulated in the Cabinet Office Order on Disclosure of Corporate Affairs (the "Disclosure Order").

On January 31, 2023, the FSA amended the Disclosure Order to require the disclosure of sustainability information in annual securities reports for the fiscal year ending March 31, 2023 and thereafter. At the same time, the "Guidelines for Disclosure of Corporate Information, etc." was amended and the principles-based guidance "Principles for Disclosure of Descriptive Information (Appendix) – Disclosure of Sustainability Information" (the "Principles") was published, making the disclosure of sustainability information mandatory. The said Guidelines provide specific items to be disclosed in the disclosure of sustainability information, as well as the principles behind the disclosure of sustainability information.

Specifically, a new section entitled "Sustainability-related Policies and Initiatives" has been established in the "Business Status" section of the annual securities report, and the report must state the four components of consolidated companies' sustainability: "Governance," "Risk Management," "Strategy," and "Indicators and Objectives." Of these, "Governance" and "Risk Management" are required to be stated, while "Strategy" and "Indicators and Objectives" are required only for those related to human capital, and the others are required only for important items.

Disclosure on responses to climate change is not a mandatory but optional item. However, if a company discloses that responses to climate change is important, it should be disclosed within the framework of the above four items. Disclosure of GHG emissions, including

reduction plans, is not mandatory. However, the FSA's Principles, which outlines the concept of disclosure and recommended content and approaches to disclosure of information other than financial information, states that, in light of the fact that GHG emissions have become an effective indicator that contributes to constructive engagement between investors and companies, companies are expected to actively disclose their GHG emissions, especially those in Scope 1 (direct emissions by the company itself) and Scope 2 (indirect emissions from the use of electricity, heat, and steam supplied by other companies) as defined in the GHG Protocol, based on a determination of materiality in light of each company's business conditions and management environment.

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

Under the Act on Rationalizing Energy Use, business operators that use 1,500 kl/year or more of energy in crude oil equivalent are obliged to report on their energy consumption and other energy usage conditions. The said Act was amended and renamed as the "Act on Rationalizing Energy Use and Shifting to Non-fossil Energy" which took effect on April 1, 2023. Under the amended Act, the scope of "energy" covered by the Act was changed to include not only fossil fuels but also non-fossil fuels, and the Act also requires the preparation of a medium- to long-term plan regarding the goals of the shift to non-fossil energy and periodic reporting on the status of non-fossil energy use.

In addition, under the Act on Promotion of Global Warming Countermeasures, business operators that (a) use 1,500 kl/year or more of crude oil equivalent energy at all of their business locations and (b) have a total of 3,000 tons or more of CO₂ and other GHG emissions from non-energy sources and 21 or more regular employees are obliged to calculate their own GHG emissions and report them to the Minister having jurisdiction over their business locations. Furthermore, the amendment to the said Act, which has come into effect on April 1, 2024 and will be applied from the reporting of fiscal year 2025 results, has led to a review of activities subject to calculation, emission factors and global warming potentials, which will expand the scope of business operators subject to reporting obligations.

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

gaps?

Under the Act on the Promotion of Women's Active Engagement in Professional Life, employers with 101 or more full-time workers are required to publish information on their performance in providing opportunities for women workers in their professional lives and in creating an employment environment conducive to balancing their professional and family lives. (Employers with 301 or more full-time workers are required to publish more detailed information than those with 300 or less.) In addition, the system revision in July 2022 under the said Act has required employers with 301 or more full-time workers to publish the differences in wages between men and women. If the publication is required, the difference in wages between men and women must be published for all categories of workers, including full-time workers, part-time workers, and fixed-term workers (non-regular workers).

In addition, under the amendment to the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members, which came into effect in April 2023, business operators with 1,000 or more full-time workers are required to disclose the percentage of male workers taking childcare leave.

Furthermore, based on the amendment to the Cabinet

Office Order on Disclosure of Corporate Affairs in January 2023, in the annual securities reports for the fiscal year ending on March 31, 2023 and thereafter, as disclosure of human capital, which is a mandatory disclosure item, the company is required to state the percentage of female managers, the percentage of male employees taking childcare leave, and the wage gap between men and women, in addition to its policy on human resource development, including ensuring diversity of human resources, and its policy on the development of the workplace environment and the content, targets and results using the relevant indicators related to the said policy.

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

There are no laws in Japan similar to the modern slavery acts of the UK, Australia or Canada, nor are there laws that impose an obligation to report the status of modern slavery activities. However, based on the UN Guiding Principles and the Japanese Government's Guidelines for Respecting Human Rights in Responsible Supply Chains, all business enterprises engaging in business activities in Japan should disclose information on their efforts to respect human rights as part of the human rights due diligence process.

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