

PANORAMIC

**BUSINESS & HUMAN
RIGHTS**

Japan



LEXOLOGY

Business & Human Rights

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LEGAL AND POLICY FRAMEWORK

International law

Which international and regional human rights treaties has your jurisdiction signed or ratified?

Japan has signed and ratified most of the core human rights treaties including the following conventions:

- Convention on the Elimination of All Forms of Discrimination against Women (ratified in June 1985 and entered into force in Japan in July of the same year);
- Convention on the Rights of the Child (ratified in April 1994 and entered into force in Japan in May of the same year);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified in June 1999 and entered into force in July 1999);
- Convention on Enforced Disappearances (ratified in July 2009 and entered into force in December 2010); and
- Convention on the Rights of Persons with Disabilities (ratified in January 2014 and entered into force in February 2014).

However, the Japanese government has ratified some treaties with partial reservations, including the Convention on the Elimination of All Forms of Racial Discrimination, which was ratified in December 1995 and entered into force in Japan in January 1996 with the reservation that 'the obligations under these provisions shall be fulfilled to the extent that they do not conflict with the guarantees of freedom of assembly, association and expression and other rights under the Constitution of Japan.'

Law stated - 17 2 2024

International law

Has your jurisdiction signed and ratified the eight core conventions of the International Labour Organization?

Japan has ratified seven of the eight core conventions, with the exception of the Convention on Discriminatory Treatment in respect of Employment and Occupation (No. 111).

The ratification years for the other seven treaties are as follows:

- Convention on Forced Labour (No. 29, ratified in 1932);
- Convention on the Application of Principles Concerning the Right to Organize and Collective Bargaining (No. 98, ratified in 1953);
- Convention on Freedom of Association and Protection of the Right to Organize (No. 87, ratified in 1965);
- Convention on Equal Remuneration for Men and Women Workers for Work of Equal Value (No. 100, ratified in 1967);

- Minimum Age for Employment Convention (No. 138, ratified in 2000);
- Convention on Immediate Action for the Prohibition and Abolition of the Worst Forms of Child Labor (No. 182, ratified in 2001); and
- Convention on the Abolition of Forced Labor (No. 105, ratified in 2022).

Law stated - 17 2 2024

International law

How would you describe the general level of compliance with international human rights law and principles in your jurisdiction?

In Japan, legislation to protect human rights has been established and developed by the national government under the Constitution. Further, Japan formulated its National Action Plan on Business and Human Rights (NAP) in 2020 and published its Guidelines on Respecting Human Rights in Responsible Supply Chains in 2022. However, the statement of the UN Working Group on Business and Human Rights at the end of their visit in August 2023 pointed out that further action is needed to completely dismantle structures of inequality and discrimination against women, people with disabilities, indigenous peoples, skilled trainees, migrant workers, LGBTQ+ people and others, and that the establishment of independent national human rights institutions (NHRIs) for effective remedies should be required.

Law stated - 17 2 2024

International law

Does your jurisdiction support the development of a treaty on the regulation of international human rights law in relation to the activities of transnational corporations and other business enterprises?

The Japanese government supports the development of a convention on the regulation of international human rights law concerning the activities of transnational corporations and other business enterprises.

Law stated - 17 2 2024

National law

Has your jurisdiction enacted any of its international human rights obligations into national law so as to place duties on businesses or create causes of action against businesses?

In Japan, no laws or regulations have been enacted that require companies to perform human rights due diligence or that prohibit the importation of products which have been manufactured in a manner that violates human rights. However, human rights including workers' rights in Japan are protected by individual laws and regulations such as the Labor Standards Law, the Equal Employment Opportunity Law, the Industrial Safety and Health

Law and the Workers' Accident Compensation Insurance Law, as well as by other laws such as the Penal Code, the Civil Code, the Basic Environment Law and the Unfair Competition Prevention Law. For example, article 5 of the Labor Standards Law prohibits forced labour, stating that 'employers shall not force workers to work against their will by means of assault, intimidation, confinement, or other unreasonable restraints on mental or physical freedom.'

Law stated - 17 2 2024

National law

Has your jurisdiction published a national action plan on business and human rights?

In Japan, a national action plan on business and human rights (2020 to 2025) was formulated and published in October 2020.

Law stated - 17 2 2024

CORPORATE REPORTING AND DISCLOSURE

Statutory and regulatory requirements

Are businesses in your jurisdiction subject to any statutory or regulatory human rights-related reporting or disclosure requirements?

Companies that will conduct public offerings of their securities in Japan or companies that are subject to ongoing disclosure obligations (ie, companies that are listed in Japan and have to file annual and quarterly securities reports in Japan) must disclose sustainability information and diversity indicators in their securities reports under the Financial Instruments and Exchange Act (FIEA).

Further, companies with 101 or more full-time employees must publish an action plan to promote gender equality and the data on the participation and advancement of women under the Law for the Promotion of Women's Activities.

Additionally, Specified Emitters, which are businesses that emit more than a certain amount of greenhouse gases per year, must calculate and report the amount of greenhouse gas emissions arising from their business activities to the minister overseeing the business, in accordance with the Law Concerning the Promotion of the Measures to Cope with Global Warming. The Minister of the Environment and the Minister of Economy, Trade and Industry, upon receiving notification from the minister overseeing the business, shall then publicly announce the greenhouse gas emissions of the Specified Emitters.

Law stated - 17 2 2024

Statutory and regulatory requirements

What is the nature and extent of the required reporting or disclosure?

Under the FIEA, companies are required to include four disclosure items, 'Governance,' 'Strategy,' 'Risk Management,' and 'Indicators and Targets,' in their annual securities reports (Cabinet Office Ordinance on Disclosure of Corporate Information, etc. Form No. 2, Disclosure Notes (30-2)a and b). Of these items, 'Strategy' and 'Indicators and Targets' are to be determined based on the importance by each company; however, those items must include the human resource development policy, improvement of internal environment policy and the content of indicators related to these policies.

In addition, companies that are obligated to publicise information under the Law for the Promotion of Women's Advancement are required to disclose the difference in wages between male and female workers, as well as their achievements in providing opportunities related to professional life for female workers (eg, the percentage of female executives) and their achievements in developing an employment environment conducive to balancing work and family life (eg, the rate of paid leave taken). Companies that employ 301 or more full-time workers are required to disclose more detailed information.

The Law Concerning the Promotion of the Measures to Cope with Global Warming requires that the report include business name, the location of the business, the fiscal year, the amount of emissions of each type of greenhouse gas, any emission reduction targets and any specific efforts to reduce emissions, etc.

Law stated - 17 2 2024

Statutory and regulatory requirements

Which bodies enforce these requirements, and what is the extent of their powers?

Violations of the FIEA by submitting securities reports with false statements are subject to investigation by the Securities and Exchange Surveillance Commission and investigation by the Public Prosecutor's Office, and are subject to a surcharge payment order against the violating individual or corporation or, in malicious cases, criminal penalties against the offending individual or corporation (an individual shall be punished by imprisonment for not more than 10 years or a fine of not more than ¥10 million, or both, and said corporation shall be punished by a fine of not more than ¥700 million). In practice, however, even if the reported information differs from the actual results, so long as the information was based on reasonable assumptions and underwent appropriate assessment, the individuals or the company involved will be not immediately liable for misstatements.

The Law for Promotion of Women's Activities does not provide penalties for non-compliance with the above obligations. However, a company that commits a violation may be subject to administrative measures, including an administrative warning.

If a company fails to comply with the reporting requirements of the Law Concerning the Promotion of Measures to Cope with Global Warming, it may be subject to an administrative surcharge of up to ¥200,000.

Law stated - 17 2 2024

Voluntary standards

What voluntary standards should businesses refer to for guidance on best practice in relation to any applicable human rights-related corporate reporting and disclosure regimes?

Japan's Corporate Governance Code (CG Code) mentions that boards of directors should deepen their consideration of issues surrounding sustainability, including consideration of global environmental issues such as climate change, respect for human rights, fair and appropriate treatment of employees and their health and working environment, fair and appropriate transactions with business partners, and crisis management in response to natural disasters, etc. Although the CG Code is not legally binding, companies listed in Japan must endeavour to respect the intent and spirit of the CG Codes as best practice and must implement each principle of the CG Code or explain their reasons to shareholders for not implementing the CG Code (article 445-3 of the Securities Listing Regulations).

Law stated - 17 2 2024

CORPORATE DUE DILIGENCE

Statutory and regulatory requirements

Are businesses in your jurisdiction subject to any statutory or regulatory human rights-related due diligence requirements?

Japan has not enacted any laws or regulations requiring companies to perform human rights-related due diligence.

Law stated - 17 2 2024

Statutory and regulatory requirements

What is the nature and extent of the required due diligence?

Japan has not enacted any laws or regulations requiring companies to perform human rights-related due diligence.

Law stated - 17 2 2024

Statutory and regulatory requirements

Which bodies enforce these requirements, and what is the extent of their powers?

Japan has not enacted any laws or regulations requiring companies to perform human rights-related due diligence.

Law stated - 17 2 2024

Statutory and regulatory requirements

What voluntary standards should businesses refer to for guidance on best practice in relation to any applicable human-rights related corporate due diligence regimes?

In September 2022, the Japanese government published Guidelines for Respecting Human Rights in Responsible Supply Chains, which are guidelines for corporate efforts to respect human rights, including human rights due diligence. In April 2023, the Ministry of Economy, Trade and Industry published Practical Reference Materials for Respecting Human Rights in Responsible Supply Chains, which includes more specific guidance for conducting human rights due diligence.

Law stated - 17 2 2024

CRIMINAL LIABILITY

Primary liability

What criminal charges can be asserted against businesses for the commission of human rights abuses or involvement or complicity in abuses? What elements are required to establish guilt?

The Penal Code in Japan provides for crimes against individuals and there are no specific provisions in the Code regarding the criminal responsibility of businesses. Nevertheless, businesses are punishable when a dual-liability provision exists that not only punishes the actual actor (ie, the employee), but also the organisation (ie, the employer). In such cases, in order to pursue criminal liability of a company for human rights violations, it is necessary to prove that the actual offender (employee) committed a violation of law in connection with the business of the employer with regard to matters concerning the business, where a dual-punishment provision exists that covers the act in question. Since the dual-liability provision presumes negligence on the part of the employer in failing to exercise the due care necessary to prevent the violation by the offender, negligence of the company is presumed. By contrast, a company is exempted from liability if it can prove that it took necessary measures to prevent the violation. However, in practice, there have been limited cases where companies have succeeded in proving that defence.

Law stated - 17 2 2024

Primary liability

What defences are available to and commonly asserted by parties accused of criminal human rights offences committed in the course of business?

In the case of an intentional offence, the relevant individual may argue that they had no awareness of the violation. In relation to the dual-liability provisions, as noted above, businesses may also seek to argue that the individual's wrongdoing was not related to the matters of the business, and that they took necessary measures to prevent the violation from occurring.

Director and officer liability

In what circumstances and to what extent can directors and officers be held criminally liable for involvement or complicity in human rights abuses? What elements are required to establish liability?

As directors and officers are generally in a position to oversee and manage overall business operations, they may personally be held criminally liable if they are aware of human rights violations but fail to take measures to prevent or stop such conduct.

Law stated - 17 2 2024

Piercing the corporate veil

When can the courts disregard the separate legal personalities of corporate entities within a group in relation to human rights issues so as to hold a parent company liable for the acts or omissions of a subsidiary?

Generally, a parent company is not criminally liable for human rights violations by its subsidiaries. However, in exceptional cases where the subsidiary and the parent company can be considered to be substantially the same enterprise, it is possible for the parent company to be punished as an 'employer' under the dual punishment provisions.

Law stated - 17 2 2024

Secondary liability

In what circumstances and to what extent can businesses be held liable for human rights abuses committed by third parties?

While businesses may be held criminally liable for the acts of their employees under the dual-liability provisions, a corporation will generally not be held liable for the acts of an independent contractor unless it is determined that there was a conspiracy with respect to the acts in question.

Law stated - 17 2 2024

Prosecution

Who may commence a criminal prosecution against a business? To what extent do state criminal authorities exercise discretion to pursue prosecutions?

Generally, only the public prosecutor has the authority to prosecute and, based on the results of their investigation, decides whether or not to indict the case. The prosecutor is granted broad discretion in prosecuting a case. Even if there is reasonable suspicion of a crime, the prosecutor may decide not to prosecute if he or she believes that prosecution is unnecessary

in light of a variety of circumstances, including the gravity of the crime or the character, age, or circumstances of the offender.

Additionally, the Prosecution Review Board, which is a judicial review panel for non-prosecution cases, may review the decision and recommend that the prosecutor prosecute the case.

Law stated - 17 2 2024

Prosecution

What is the procedure for commencing a prosecution? Do any special rules or considerations apply to the prosecution of human rights cases?

When a suspect is arrested and detained for a criminal investigation, a strict time limit is imposed until the prosecution decision is made (in principle, within 23 days from arrest to indictment). On the other hand, when a suspect is prosecuted without arrest, there is no such time limit. For some crimes, such as defamation, prosecution is not possible without a complaint from the victim. No special rules or considerations apply to the prosecution of human rights cases.

Law stated - 17 2 2024

CIVIL LIABILITY

Primary liability

What civil law causes of action are available against businesses for human rights abuses?

Certain human rights violations can give rise to claims for compensatory damages, as they may constitute torts or breach of contract. In such cases, a violation of a specific law may also be alleged in a cause of action. For example, a claim for damages may be made on the grounds that a company's termination of employment violated the Equal Employment Opportunity Law and was therefore invalid. For a tort, the following must be satisfied: intentional or negligent act, occurrence of damage incurred, illegality (ie, infringement of rights) and a causal relationship between the offending act and the damage. In the above example, a company may argue that the dismissal was within the company's discretion and valid.

Law stated - 17 2 2024

Director and officer liability

In what circumstances and to what extent are directors and officers of businesses subject to civil liability for involvement or complicity in human rights abuses?

Directors have a duty of care to exercise due care in performing their duties for the company, and the same applies to the prevention or correction of human rights violations. In order to

hold directors liable, it must be proven that the directors failed to fulfil their duty of care in preventing or correcting human rights violations, and that as a result, damages occurred. However, the so-called principle of business judgment is applied in relation to the judgment of directors, and a wide range of discretion is allowed. In other words, a business judgment made by a director is not considered to be a breach of duty so long as the decision was (1) made without material and inadvertent error in the recognition of the facts on which the judgment was based and (2) not made in a manner that is particularly unreasonable or inappropriate in respect of the process and substance of the decision-making.

Law stated - 17 2 2024

Piercing the corporate veil

When can the courts disregard the separate legal personalities of corporate entities within a group in relation to human rights issues so as to hold a parent company liable for the acts or omissions of a subsidiary?

If a parent company violates its duty to monitor a subsidiary in relation to human rights violations, then the directors of the parent company may also be found civilly liable. Separate legal personality may also be denied in cases of piercing the corporate veil – that is, where the legal personality is nothing more than a formality or where the legal personality is abused to avoid the application of the law.

Law stated - 17 2 2024

Secondary liability

In what circumstances and to what extent can businesses be held liable for human rights abuses committed by third parties?

Businesses can be held liable for human rights abuses committed by their officers or employees as employer's liability (article 715, Civil Code). Businesses may also be held liable in respect of their management and supervision in the event that third-party contractors commit human rights violations. In either case, as a general matter, the company may assert as a defence that it has not failed in its management and supervision responsibilities.

Law stated - 17 2 2024

Shareholder liability

In what circumstances can shareholders be held liable for involvement or complicity in human rights abuses?

Shareholders are generally not liable for the business's human rights abuses. Although shareholder liability can be theoretically recognised in exceptional cases where the legal personality of the entity is denied, it is highly unlikely, particularly for a listed company.

Law stated - 17 2 2024

JUDICIAL REDRESS

Jurisdiction

Under what criteria do the criminal or civil courts have jurisdiction to entertain human rights claims against a business in your jurisdiction?

With respect to civil actions, in cases between contracting parties, jurisdiction is affirmed if the contracting parties have agreed that Japan shall have jurisdiction over the action or if the parties do not dispute the jurisdiction of Japan. On the other hand, if there is no agreement on jurisdiction between the contracting parties or if the claim is not made by the contracting parties, jurisdiction is affirmed in Japan based on the Civil Procedure Law if the defendant's address is in Japan, if the suit is against a Japanese corporation, or if the suit is in relation to an act committed in Japan.

As for criminal actions, if they are conducted in Japan, they are subject to Japanese jurisdiction. In addition, Japan also has jurisdiction over certain crimes committed outside of Japan if there are provisions for foreign crimes in treaties or laws and regulations.

Law stated - 17 2 2024

Jurisdiction

What jurisdictional principles do the courts apply to accept or reject claims against businesses based on acts or omissions that have taken place overseas and parties that are domiciled or located overseas?

In the case of a civil trial, the case would be dismissed for lack of jurisdiction. In the case of a criminal trial, a judgment of dismissal of the prosecution would be rendered.

Law stated - 17 2 2024

Class and collective actions

Is it possible to bring class-based claims or other collective redress procedures against businesses for human rights abuses?

Although Japanese law permits limited consumer representative lawsuits and lawsuits filed by multiple plaintiffs, it is generally not possible to bring class-based claims because Japan does not have class action legislation.

Law stated - 17 2 2024

Public interest litigation

Are any public interest litigation mechanisms available for human rights cases against businesses?

Although Japanese law permits limited consumer representative lawsuits and lawsuits filed by multiple plaintiffs, public interest litigation mechanisms are generally not available

for human rights cases against businesses because Japan does not have class action legislation.

Law stated - 17 2 2024

STATE-BASED NON-JUDICIAL GRIEVANCE MECHANISMS

Available mechanisms

What state-based non-judicial grievance mechanisms are available to hear business-related human rights complaints? Which bodies administer these mechanisms?

The National Contact Point (NCP) under the OECD Guidelines for Multinational Enterprises is available to receive business-related human rights complaints. In Japan, the Ministry of Health, Labor and Welfare, the Ministry of Economy, Trade and Industry, and the Ministry of Foreign Affairs jointly administer the NCP. Additionally, some local municipal governments may accept complaints through their ombudsman systems, but because the details of the ombudsman system can vary from municipality to municipality, the following sections describe the procedures of the NCP.

Law stated - 17 2 2024

Filing complaints

What is the procedure for filing complaints under these mechanisms?

Complaints are to be submitted to the contact points in writing, and should include information about the complainant, information about the multinational enterprise involved, the contents of the complaint and attachments of relevant supporting documents (where applicable). The number of NCP complaints in Japan is small, with only about one to three cases per year reaching a final decision.

Law stated - 17 2 2024

Remedies

What remedies are provided under these mechanisms?

NCP offers mediation proceedings, and when both parties agree to the remedies that result from the mediation, the remedies are provided under that agreement.

Law stated - 17 2 2024

Enforcement

What powers do these mechanisms have? Are the decisions rendered by the relevant bodies enforceable?

The mediation proceeding is voluntary and not enforceable.

Law stated - 17 2 2024

Publication

Are these processes public and are decisions published?

The process is closed to the public unless otherwise agreed by both parties, but the final decision is published on the NCP website.

Law stated - 17 2 2024

NON-JUDICIAL NON-STATE-BASED GRIEVANCE MECHANISMS

Available mechanisms

Are any non-judicial non-state-based grievance mechanisms associated with your jurisdiction?

The Japan Federation of Bar Associations has set up a contact point for human rights complaints. In addition, other contact points have been set up by several private organisations, such as JP-MIRAI, a contact point for foreign workers.

Law stated - 17 2 2024

UPDATE AND TRENDS

Recent developments

What are the key recent developments, hot topics and future trends relating to business and human rights in your jurisdiction?

The Japanese government released guidelines on human rights due diligence, called Guidelines on Respecting Human Rights in Responsible Supply Chains in September 2022. These guidelines are the first cross-sectoral guidelines published by the Japanese government, and an increasing number of companies are using them as the basis for their human rights initiatives. Specific legislative plans have not been announced by the government at this time.

Law stated - 17 2 2024