

CONSULTATION RESPONSE

JAPAN MINISTRY OF ECONOMY, TRADE AND INDUSTRY (METI): INVITATION FOR PUBLIC COMMENTS REGARDING DRAFT GUIDELINES ON RESPECT FOR HUMAN RIGHTS IN RESPONSIBLE SUPPLY CHAINS

August 2022

The information contained in this consultation response is provided for informational purposes only and should not be construed as legal advice on any subject matter. Except where expressly stated otherwise, the opinions, recommendations, findings, interpretations and conclusions expressed in this report are those of PRI Association, and do not necessarily represent the views of the contributors to the consultation response or any signatories to the Principles for Responsible Investment (individually or as a whole).

This consultation response represents the view of the PRI Association and not necessarily the views of its individual members.

INTRODUCTION

The Principles for Responsible Investment (PRI) works with its international network of signatories to put the six Principles for Responsible Investment into practice. Its goals are to understand the investment implications of environmental, social and governance (ESG) issues and to support signatories in integrating these issues into investment and ownership decisions. The PRI acts in the long-term interests of its signatories, of the financial markets and economies in which they operate and ultimately of the environment and society as a whole.

Globally, the PRI has over 5,000 asset owner, asset manager and service providers signatories, which combined have over \$121 trillion in assets under management. In Japan there are 117 signatories.

The six Principles for Responsible Investment are a voluntary and aspirational set of investment principles that offer a range of possible actions for incorporating ESG issues into investment practice. The Principles were developed by investors, for investors. In implementing them, signatories contribute to developing a more sustainable global financial system.

The PRI develops policy analysis and recommendations based on signatory views and evidence-based policy research. In Japan, the PRI has previously submitted consultation responses to the Ministry of Economy, Trade and Industry (METI) on the [6th Basic Energy Plan for Japan](#). The PRI has also responded to consultations on revisions to [Japan's Corporate Governance Code](#) and the [Japanese Stewardship Code](#).

On the broader topic of human rights due diligence, the PRI has previously responded to consultations on the EU Corporate Sustainability Due Diligence Directive (CSDD) which covers due diligence obligations on human rights and environmental issues, the [Call to Action to G7 Leaders for a Just, Affordable, and Urgent Transition](#), the European Commission's proposal for a new [Corporate Sustainability Reporting Directive \(CSRD\) revising the Non-Financial Reporting Directive \(NFRD\)](#), and various consultations on strengthening Modern Slavery Acts in [Canada](#), [UK](#) and [Australia](#).

The PRI welcomes the opportunity to respond to METI's invitation for public comments regarding its Draft Guidelines on Respect for Human Rights in Responsible Supply Chains.

ABOUT THIS CONSULTATION

On 8 August 2022, Japan's Ministry of Economy, Trade and Industry (METI) published the [Draft Guidelines on Respect for Human Rights in Responsible Supply Chains](#) (hereafter the Draft Guidelines) and opened an [invitation to public commenting](#). The Draft Guidelines were made in response to a [survey](#) conducted in November 2021 jointly by METI and the Ministry of Foreign Affairs (MOFA) that presented strong demand from Japanese corporations for the government to take initiative in promoting business efforts to respect human rights, with the establishment of a guideline being chief among these needs. The drafting was supported [by the Study Group on Guidelines for Respecting Human Rights in Supply Chains](#), which consisted of cross-industry and subject matter [experts invited by METI](#). The finalised Guidelines are expected to be published at the end of summer 2022.

For more information, contact:

Daniel Wiseman

Head of APAC Policy

Daniel.Wiseman@unpri.org

Kazuma Osaki

Senior Policy Analyst, Japan

Kazuma.Osaki@unpri.org

Bettina Reinboth

Director of Human Rights and Social Issues,
Acting Director of Governance

Bettina.Reinboth@unpri.org

Soh-Won Kim

Analyst, Human Rights and Social Issues

Soh-Won.Kim@unpri.org

KEY RECOMMENDATIONS

The PRI welcomes the opportunity to provide comment to this consultation on the Draft Guidelines on Respect for Human Rights in Responsible Supply Chains issued by METI, and supports the Draft Guidelines' aims to help companies better manage sustainability-related matters in their own operations and value chains as regards human rights and social issues.

The world is experiencing many systemic issues impacting or arising from environmental, social, and financial systems – e.g. climate change, human rights issues, and widening inequality. Japanese political and private-sector leaders have responded to these global challenges through long-term commitments to social and environmental outcomes that better enable Japan to meet the needs of all whilst keeping within planetary boundaries. Chief among these are net-zero commitments pursuant to the Paris Agreement and commitments to deliver on the Sustainable Development Goals (SDGs).¹

Issues such as human rights harm and intersectionality with other issues such as climate change have relevance both in terms of the financial interests of shareholders and the expectations and rights of other stakeholders. In addition to understanding potential financial risks and opportunities, a focus on social, environmental, governance risks and impacts allows both companies and their underlying investors to:

- Identify opportunities, such as through changes to business models, across value chains and through new products and services;
- Prepare for and respond to legal and regulatory developments;
- Protect their reputation and licence-to-operate particularly in the event of negative outcomes from operations;
- Meet institutional commitments to global goals such as the Sustainable Development Goals (SDGs), and communicate progress towards meeting those objectives; and
- Minimise negative impacts and increase the positive impacts of products, services and operations.

As a result, a substantial growing number of investor PRI signatories are now seeking to understand how companies consider these issues, and encourage a more holistic approach for the maximisation of social, environmental, as well as economic/financial performance. In this respect, investors are increasingly seeking to understand and manage the sustainability outcomes of their investment decisions, as outlined in the report [A Legal Framework for Impact](#).² That includes key ESG topics, such as human rights.

Expectations around human rights and social issues have been driven not only by growing visibility and urgency around many human rights issues, but also by a better understanding of investors' role in shaping real-world outcomes, and of their responsibility to do so – across all their investment

¹ At the government level, former Prime Minister Yoshihide Suga's [2050 net zero commitment](#) was enshrined in law under the [Act on the Promotion of Global Warming Countermeasures revised in 2021](#), and the [SDGs Implementation Guiding Principles \(Revised Edition\)](#) serves as a mid-to-long term national strategy for implementing the 2030 Agenda and achieving the SDGs in Japan and internationally by 2030.

² The [A Legal Framework for Impact](#) project is a joint work programme from the PRI, UNEP FI and the Generation Foundation launched in January 2019. [The A Legal Framework for Impact: sustainability impact in investor decision-making](#) report was authored by Freshfields Bruckhaus Deringer. A [Japanese translation](#) of the executive summary and the Japan annex is also available.

activities. We support the Draft Guidelines' strong alignment with international guidelines such as the UN Guiding Principles on Business and Human Rights (UNGPs) as well as the OECD Guidelines for Multinational Enterprises (OECD Guidelines) which set out companies' responsibility to conduct due diligence to identify, prevent and mitigate, account for and remedy harm in relation to human rights, environmental issues, and anti-corruption.

The Draft Guidelines accurately target all businesses regardless of sector or size, and it is encouraging that they recognise the systemic nature of human rights issues and expectations for business enterprises to address them, which is useful for investors in considering real-world outcomes. It is also positively noted that the Draft Guidelines include reference to and mention of human rights issues in conflict-affected areas and the recommendations outlined by the UNGPs in such a context.

The focus of the Draft Guidelines on harm reduction including continuous consultation and engagement with stakeholders, will support investor's sustainability assessments, enhance risk analysis and processes for impact mitigation, and provide greater understanding of company operations, throughout the value chain. It will enable responsible investors to conduct better-informed engagement with investees, to respect human rights and give due consideration to environmental issues.

However, to ensure a positive impact and enable investors to better manage their own exposure to sustainability issues, we recommend improvements for these Draft Guidelines.

- **Definition and framing of 'Human Rights'**. "Human rights" is a complex and highly intersectional issue. In recognition of this, the definition and scope of "human rights" should be explored in greater detail and depth to adequately set the foundation for the following sections. The Draft Guidelines could benefit from a clearer definition of adverse human rights impacts, in line with the UNGPs and OECD Guidelines, outlining the concept of severity to include reviewing the scale of the outcome, the scope, and the irremediable character. Embedding the concept of severity into the introductory sections of the Draft Guidelines would be helpful to assist companies in determining appropriate actions throughout the due diligence process. Additionally, it should consider exploring the interconnectedness and relationship between human rights and other issues such as widening disparities, poverty, climate change and other environmental problems.
- **Coherency and alignment with existing national and international instruments.** The Draft Guidelines could be made more user-friendly by providing coherence and alignment with existing national and international instruments. The Draft Guidelines do not mention or explain their relationship with other existing instruments that are relevant to human rights due diligence such as [Japan's Corporate Governance Code](#), [Sustainability Linked Loan Guidelines](#) and [Social Bond Guidelines](#), and we would recommend that these be referenced. Doing so would ensure better usability of the Draft Guidelines for companies operating in Japan that interact with these other policy frameworks. We recommend that the METI Draft Guidelines build on international standards and movements toward mandatory legal requirements to ensure alignment with existing laws internationally such as the [French "Duty of Vigilance" law](#) and [Norway's Transparency Act](#), as well as regimes such as the [EU's approach to Corporate Social Responsibility](#), [the minimum safeguards of the EU Environmental Taxonomy](#) and the [Regulation on Sustainability-Related Disclosures in the Financial Services Sector](#). This coherence is also

underlined by the [G7 Communiqué Ensuring Respect for Human Rights and Labour and Environmental Standards in Corporate Operations and Value Chains](#).

- **Scope of the Draft Guidelines.** The Draft Guidelines rightly state that all business enterprises engaging in business activities in Japan should comply with the Draft Guidelines regardless of their company size, sector, etc. However, the current scope of the Draft Guidelines is limited to only business enterprises. To ensure comprehensive coverage and align with global best practice, the [due diligence duty should also explicitly cover the financial sector](#) (including financial loans). Financial sector entities are bound by the same international standards as has been clarified by both the UN Office of the High Commissioner on Human Rights and the OECD. The [PRI supports this understanding](#) as well. The Draft Guidelines should therefore provide greater clarity on how they are relevant to investors and how they can be applied in their context.
- **Due diligence.** Conducting human rights due diligence is a crucial process to identify, assess, mitigate and prevent negative human rights impacts. We have observed that lack of decision-useful information is a common challenge faced by businesses and investors in incorporating human rights considerations in their business and investment activities. Exercising due diligence will make more data on adverse human rights impacts available, thereby enhancing their ability to carry out their activities more responsibly. Furthermore, human rights issues will manifest themselves differently across sectors and geographies, which will be more evident through rigorous human rights due diligence. The Draft Guidelines would benefit from the inclusion of additional guidance for Japanese companies on due diligence processes. This should be based on existing international standards such as [the OECD sectoral due diligence guidance for multinational enterprises](#) around agriculture, apparel and mineral supply chains. We also suggest the Draft Guidelines include examples of how companies and investors in and outside Japan are carrying out human rights due diligence. Case studies of how human rights due diligence has been carried out by investors across different asset classes can be found in [PRI's Human Rights Case Study database](#). The [database includes The Dai-ichi Life Insurance Company Limited](#), a Japanese asset owner.
- **Enforcement of the Guidelines.** Currently, the Guidelines are not legally binding. We recommend that METI establish a legal duty for companies and investors to undertake human rights due diligence. At an international level, beyond Japan, we observe several examples of human rights due diligence responsibilities being converted into domestic law, and we would recommend the Draft Guidelines to not only build on international standards but also ensure alignment with these existing laws. A clear legal due diligence requirement would provide clarity to Japanese companies, investors and other stakeholders and foster a level playing field within the country as well as across jurisdictions. At the very least, we recommend that METI commit to reviewing the implementation of the Guidelines within three years' time, with the intention of considering whether a binding legal requirement should be introduced.

More detailed answers and recommendations below are in response to selected sections from the consultation that draw on specific expertise and evidence from the PRI's work.

DETAILED RESPONSE

1. DEFINITION AND FRAMING OF 'HUMAN RIGHTS'

Relevant section

1. Introduction and 2.1.2.1 Scope of “human rights”

Comments and reasoning

In Section 1 Introduction, the human rights are defined as “the rights of all people to life, liberty and the pursuit of happiness, and inherent rights to live with dignity”. In Section 2.1.2.1, it attempts to further elaborate the scope of the term by referencing the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work. However, given the foundational nature that the Draft Guidelines will take on for human rights due diligence practices in Japan, this is not sufficient to illustrate the definition and scope of human rights.

“Human rights” is a complex and highly intersectional issue. In recognition of this, the definition and scope of “human rights” should be explored in greater detail and depth in the Introduction section. Doing so will adequately set the foundation for the following sections, and enable greater effectiveness of the overall Draft Guidelines. In order to accurately illustrate the full breadth of issues and concepts covered by international human rights agreements, we suggest the Draft Guidelines provide a comprehensive list of human rights as well as a full list of international human rights conventions. If this impacts the readability and user-friendliness of the Draft Guidelines, METI can consider drafting a separate annex section, similar to that of the [Proposal for a Directive on Corporate Sustainability Due Diligence \(CSDD\)](#).

The Draft Guidelines begins with a recognition of the relationship between human rights and other issues as evidenced in the following passage: “While globalization has driven economic development, the world faces difficult issues such as widening disparities and poverty, the escalation of climate change and other environmental problems, the spread of infectious diseases, and the eruption of conflicts, which are closely related to problems involving human rights abuses.” However, this level and amount of detail is not sufficient to assist practitioners who will implement the Draft Guidelines to understand the implications of human rights being impacted by other issues such as those that may seem solely environmental. METI should consider exploring the relationship between human rights and other issues such as widening disparities, poverty, climate change and other environmental problems in further depth.

Relevant section

2.1.2.2 Scope of “adverse human rights impacts” and 4.1.1 Specific processes

Comments and reasoning

Section 2.1.2.2 accurately points out that both actual and potential “adverse human rights impacts” are subject to human rights due diligence. The Draft Guidelines could benefit from a clearer definition of “adverse human rights impacts”, in line with the UNGPs and OECD Guidelines. This should include outlining the concept of “severity” to include reviewing the scale of the outcome (on an individual right(s)), the scope (number of individuals affected) and the irremediable character (any limits on the

ability to restore those affected to a situation at least equivalent to their previous situation). Whilst this is mentioned in the Section 4.1.3.2 on Due Diligence, there could be greater coherence across the sections, especially Section 1. and Section 2., to enable the Draft Guidelines to be more user-friendly.

The table in Section 2.1.2.2 is useful for illustrative purposes by including examples of how a business entity or financial institution is connected to adverse human rights impacts and the corresponding responsibilities to address, mitigate and prevent issues. However, if we consider the applications of the Draft Guidelines in the real world, these specific examples will not suffice in all situations. Greater context and explanation of the underlying concepts would be welcome to enable readers to gain practical decision-making criteria. The deeper exploration of the concept of “severity” would especially be helpful to assist companies in determining appropriate actions.

Relevant section

1.2 The significance of respect for human rights

Comments and reasoning

The current framing puts heavy emphasis on the ‘management risks’ – e.g. “boycotts against products and services due to human rights abuse, downgrading as an investment location, targeting for exclusion from candidate investment locations and withdrawal of investments, etc.” By doing so, the Draft Guidelines appears to place greater emphasis on the risk to business than the risk to people as the primary justification for the need to respect human rights.

In order to provide a more comprehensive justification, the Draft Guidelines should mention that meeting international human rights standards – and preventing and mitigating actual and potential negative outcomes for people – enables companies and investors to align their activities with the evolving demands of beneficiaries, clients and regulators, and in doing so, can also achieve financial risk management.

With regards to investor expectations, the language used in this section currently provides only a narrow and limited perspective on the many ways in which investors are taking action in relation to human rights issues. This section would be improved by placing greater emphasis on investment leverage and the tools investors have at their disposal to address human rights issues. For example, this is highlighted in the leverage matrix by the [Finance Against Slavery and Trafficking Initiative](#), as well as the [Final Report on a Social Taxonomy](#) by the EU Platform on Sustainable Finance, currently considering the development of a social taxonomy similar to the EU Taxonomy for environmentally sustainable economic activities. Unlike investors’ traditional risk management systems – which focus on business risk, operational risk or financial risk – under the UNGPs and OECD Guidelines, the focus is on the risk of negative outcomes for people, which are applicable to both companies and investors. Investors can leverage their powers as investors to make investment decisions, conduct stewardship of investees, and hold dialogues with policy makers and other stakeholders to effectively implement the due diligence and access to remedy requirements, in line with the UNGPs and OECD Guidelines. These activities are expected even when states fall short in the protection of human rights. [The PRI supports this understanding.](#)

2. COHERENCY AND ALIGNMENT WITH EXISTING NATIONAL AND INTERNATIONAL INSTRUMENTS

Relevant section

Overall

Comments and reasoning

We welcome that the Draft Guidelines draw on the UNGPs and OECD Guidelines as the international standards providing the basis for the Draft Guidelines. However, these are not the only rules and standards that influence the expectations of business and human rights. The Draft Guidelines can therefore be strengthened by providing coherence and alignment with a broader range of existing national and international instruments. Whilst there is a reference to Japan's [National Action Plan on Business and Human Rights](#) launched in 2020, the Draft Guidelines could benefit from greater clarity on how they interact with Japan's efforts through the National Action Plan.

Furthermore, the Draft Guidelines do not include any mention or explanation of their relationship with other existing instruments that are relevant to human rights such as [Japan's Corporate Governance Code](#), [Sustainability Linked Bond/Loan Guidelines](#) and [Social Bond Guidelines](#). The Draft Guidelines should explicitly refer to them, and explain how they can be used alongside the Draft Guidelines to better support entities as they navigate and integrate these different expectations and requirements from different governmental ministries and agencies in their business and investment activities. It will also be key to maintain coherence and alignment with the policies implemented pursuant to the [Grand Design and Action Plan for a New Form of Capitalism](#), which has signalled broad policy action on strengthened human capital disclosure in statutory corporate reporting and a specific commitment to making gender wage gap disclosure mandatory – these are both key themes covered under business and human rights.

We recommend that the Draft Guidelines build on international standards to ensure alignment with existing laws internationally such as the [French "Duty of Vigilance" law](#) and [Norway's Transparency Act](#), as well as regimes such as the [EU's approach to Corporate Social Responsibility](#), [the minimum safeguards of the EU Environmental Taxonomy](#). Ensuring alignment can also have potential implications for securing trade relations with such jurisdictions, as legal frameworks such as the EU's Proposal for a Directive on corporate sustainability due diligence, which when comes into effect, can impact Japanese companies that meet the applicability threshold.³

These also draw on key concepts from the OECD [Responsible Business Conduct for Institutional Investors](#). It is important that the legal framework recognises that companies need to address risks and impacts, not only in their supply chains, but also in their own operations – such as gender-related issues regarding employees. A consistent approach will also support international alignment and harmonisation and thus secure a level-playing field for companies operating globally.

This coherence is also underlined by the [G7 who publicly stated in May 2022](#) that they "strive to contribute to a global level playing field aligned with the authoritative standards of the UNGPs, ILO's

³ The [Proposal](#) currently sets the applicability threshold for non-EU based companies at: 1. Companies with a turnover generated in the EU of more than EUR 150 million. 2. Companies with a turnover generated in the EU of more than EUR 40 million, provided at least 50% of its net worldwide turnover is generated in a High-Risk Sector.

MNE Declaration and OECD Guidelines for Multinational Enterprises” and to “ensure coherence in regulatory measures taken at the national level, provide legal clarity to business, reduce compliance costs for companies and, most importantly, prevent business involvement with harms to people and planet in the first instance, and enable access to effective remedy wherever they occur”.

3. SCOPE OF THE DRAFT GUIDELINES

Relevant section

1.3 Target business enterprises of the Draft Guidelines and target scope of efforts for respecting human rights

Comments and reasoning

The Draft Guidelines rightly state that all business enterprises engaging in business activities in Japan should comply with the Draft Guidelines regardless of their company size, sector, etc. This is aligned with the requirements of the UNGPs and OECD Guidelines.

However, the current scope of the Draft Guidelines is limited to only business enterprises. A [due diligence duty should also cover the financial sector](#) which is bound by the same international standards as has been clarified by both the UN Office of the High Commissioner on Human Rights and the OECD. The [PRI supports this understanding](#) as well.

The Draft Guidelines would therefore be strengthened with a greater focus on how they are relevant to investors and how they can be applied by investors in their particular context. We recognise that the scope of the Draft Guidelines refers to financial loans as a relevant economic activity, but think it would provide better clarity on the applicability of the Draft Guidelines to explicitly note the role that companies providing financial services (banks and insurance undertakings) play in this context.

4. DUE DILIGENCE

Relevant section

2.1.2 Human rights due diligence

Comments and reasoning

This section is important in setting the foundation as to why human rights due diligence is a necessary first step to addressing human rights risks from both business enterprises and investors’ point of view. To do this, it should go beyond simply defining the term “human rights due diligence” as outlined in the UNGPs. It should also discuss why conducting human rights due diligence is important for business enterprises and investors.

For instance, information gaps are a common challenge faced by businesses and investors in incorporating human rights considerations in their business and investment activities. Exercising due diligence will make more data on adverse human rights impacts available, thereby enhancing their ability to carry out their activities more responsibly.

Relevant section

2.1 Outline of efforts and 2.1.2.3 “Stakeholders”

Comments and reasoning

Section 2.1 indicates that “dialogue with stakeholders” is essential in establishing human rights policy, conducting human rights due diligence and providing remedy when business enterprises cause or contribute to adverse human rights impacts. Examples of what constitutes “stakeholders” is further outlined in Section 2.1.2.3, without clearly setting out their roles and expectations. Section 2.1.2.3 could benefit from providing a clear definition of the term “dialogue” (or engagement).

Relevant section

4 Human rights due diligence (Details)

Comments and reasoning

The Draft Guidelines generally refers to “supply chains” as the scope of business activities relevant to human rights due diligence. However, as mentioned in Section 1.3, the scope of human rights due diligence goes beyond the limited boundaries of supply chains. The PRI recommends that METI consider using the term “value chains” consistently to align with the scope provided in Section 1.3, which will help to include financial relationships as well as relationships with partners beyond first tier suppliers.

The Draft Guidelines also fails to ensure consistency with the broad scope noted in Section 1.3 by not providing sufficient details on how companies and investors can go about carrying out due diligence across the entire value chain. The broader the scope gets, the bigger and more specific the differences are between companies of different industries and investors of different asset classes.

For industry-specific corporate guidance, the PRI recommends METI consider the examples set by international standards such as [the OECD sectoral due diligence guidance for multinational enterprises](#), which covers the agriculture industry, apparel industry and mineral supply chains.

We suggest the Draft Guidelines, or further guidance published in the future, include examples of how companies and investors in and outside Japan are carrying out human rights due diligence. Case studies of how human rights due diligence has been carried out by investors across different asset classes can be found in [PRI’s Human Rights Case Study database](#). The [database includes The Dai-ichi Life Insurance Company Limited](#), a Japanese asset owner.

Relevant section

4.4 Communication and information disclosure

Comments and reasoning

The Draft Guidelines currently highlight the importance of information disclosure by providing guidance on the disclosure of “basic information” that covers policies and processes in place, as well as on how to disclose the company’s “approach to addressing adverse impacts”. While these concepts are essential to fulfilling corporate reporting responsibility to stakeholders, the Draft Guidelines fall short in

providing practical guidance on a concrete and comprehensive list of disclosure items that companies should consider reporting on, as well as the underlying contexts and issues that help to facilitate better disclosure. Strong focus on disclosure guidance will especially help the wide range of investors and businesses who face information gaps in incorporating human rights considerations in their business and investment activities. Reporting practices that are cognisant of the need for standardised information will also facilitate investors and other stakeholders who make decisions based on the information provided by companies.

We recommend that within the Draft Guidelines, METI recognise the importance of reporting frameworks that aim to standardise transparency and disclosures related to human rights due diligence. For example, METI can consider referring to the [UN Guiding Principles Reporting Framework](#) or the Global Reporting Initiative's [Universal Standards](#)⁴. METI can further consider recommending in its Draft Guidelines that companies align their reporting practices with these internationally recognised reporting frameworks or others equivalent.

Relevant section

5.1 Grievance mechanism

Comments and reasoning

Section 5.1 describes the criteria for non-judicial grievance mechanisms aligned with the UNGPs. However, it currently lacks a narrative-based explanation of the underlying objective and principles that should be considered for effective grievance mechanisms. For example, the concept of anonymity is not mentioned explicitly here, but this is a critical element to ensuring the “accessibility” of the grievance mechanism, especially for those subject to “fear of reprisal”. The Draft Guidelines can therefore benefit from better clarity on the contexts and cautions that are required to implement grievance mechanisms that put the safety of rightsholders at the centre.

5. ENFORCEMENT OF THE GUIDELINES

Relevant section

Overall

Comments and reasoning

Currently, the Draft Guidelines are not legally binding. We recommend that METI establish a legal duty for companies and investors to undertake human rights due diligence. This would support the direction we currently observe in other jurisdictions where human rights due diligence obligations are increasingly converted into domestic laws. Internationally, we observe several examples of due diligence responsibilities being converted into domestic law. Examples include modern slavery reporting legislation in [California](#), [the United Kingdom](#) and [Australia](#); the [French “Duty of Vigilance” law](#) adopted in 2017 which goes further to require human rights and environmental due diligence of the largest

⁴ The Universal Standards of the GRI Standards were most recently revised as the [GRI Universal Standards 2021](#) and incorporates human rights disclosures into the standards applicable to all adopters of the GRI Standards.

French companies, and foreign firms with a significant business presence in France; the [Netherlands Child Labour Due Diligence Act](#) which applies to companies that sell or supply goods or services to Dutch end-users, regardless of where they are based or registered, and involves potential criminal penalties for directors; the [German Supply Chain Due Diligence Act](#) which requires companies to comply with human rights and environmental due diligence obligations in their supply chains, which will enter into force in 2023; and Norway's Transparency Act which obliges large and mid-size companies to conduct human rights and decent work due diligence throughout their supply chain, including all business relationships in their value chain.

Ultimately, legal clarity on human rights due diligence obligations will be essential to ensure that they are implemented effectively in a consistent manner across the market. International guidelines such as the UNGPs as well as OECD Guidelines set out companies and investors' responsibility to conduct due diligence to identify, prevent and mitigate, account for and remedy harm in relation to human rights. However, [research published by the UN Human Rights Council](#) shows that, almost ten years after their formulation, these standards have been only sporadically adopted. This indicates that voluntary measures and disclosure requirements alone have been insufficient to incentivise companies and investors to act responsibly and mitigate negative consequences for people.

A clear legal due diligence requirement would provide clarity to Japanese companies, investors and other stakeholders and foster a level playing field within the country as well as across jurisdictions. Appropriate enforcement mechanisms, such as through a supervisory function, is necessary also to ensure that companies provide access to remedy for people subject to harm from corporate activities.

6. ONGOING GUIDELINE REVIEW

Relevant section

Overall

Comments and reasoning

We suggest METI implements a triennial review and revision process that ensures periodic reviews of the effectiveness and relevance of the Guidelines in the future and revisions. This should also ensure that stakeholders can voice their opinions and comments to the Guidelines for periodic review processes.

Reviewing the Guidelines on a three-year cycle would help ensure that the content of the Guidelines as well as the mechanisms to ensure compliance to the Guidelines are relevant and proportionate to the status of the market. This should include reviews on the state of uptake and implementation of the Guidelines by reviewing the disclosures and practices of companies publicly supporting the Guidelines. Such a review can take a similar approach to the research conducted by METI and MOFA in November 2021, which surveyed the approaches taken by Japanese companies to respect human rights in the broad context of ensuring responsible supply chain practices.

A triennial review would also allow for better alignment between the Guidelines and other relevant policy frameworks such as [Japan's Corporate Governance Code](#) and [Japan's Stewardship Code](#), which in practice are subject to triennial reviews as well. The three-year cycle will also allow for the Guidelines

to be kept up to date at a higher frequency than the five-year cycle of Japan's [National Action Plan on Business and Human Rights](#).

Currently, the Guidelines do not explicitly note any intentions by METI to subject the Guidelines to periodic reviews and revisions. Especially in the early stages of implementing the Guidelines and given the voluntary approach that is being taken, METI should commit to measures to ensure that the Guidelines are operating effectively and that stakeholder expectations are being met. In light of the rapid global developments in this area, the review should be implemented to ensure METI is attuned to the degree to which market practices on human rights due diligence are improving and the market readiness for further regulatory action in alignment with legal frameworks implemented in other jurisdictions.