Chambers
AND PARTNERS

CHAMBERS GLOBAL PRACTICE GUIDES

Environmental Law 2023

Definitive global law guides offering
comparative analysis from top-ranked lawyers

Japan: Trends and Developments

Akira Nagasaki
City-Yuwa Partners

JAPAN

Trends and Developments

Contributed by:
Akira Nagasaki
City-Yuwa Partners

City-Yuwa Partners was formed on 1 February 2003, upon the merger of Yuwa Partners and the Law Department of Tokyo City Law and Tax Partners. City-Yuwa Partners is now one of Japan's pre-eminent law firms, capable of providing a full range of diversified legal services. The firm routinely counsels its clients in areas ranging from general corporate matters, M&A, international transactions, financial transactions, IP, civil and commercial litigation, and bankruptcy. City-Yuwa's attorneys are knowledgeable in a wide range of legal areas, with particular expertise in corporate law, international banking and finance, securities, M&A, investments, real estate, IP, litigation and ADR, bankruptcy, and virtually all aspects of international and domestic business transactions. Many City-Yuwa attorneys are fluent in English and advise foreign clients on complex transactions in both Japanese and English.

Author

Akira Nagasaki frequently assists City-Yuwa Partners' numerous foreign clients in the areas of employment law, international transactions, international trade law and environmental law. Akira has represented clients in Japan and overseas in numerous M&A deals, cross-border transactions, and environmental law matters. He was one of the examiners for the national Bar examination in the field of environmental law and was also chair of the Environmental Conservation Committee at the Dai-Ni Tokyo Bar Association. Having spent his childhood in the USA, Akira is fluent in both English and Japanese, and holds an LLM degree from the University of Berkeley, California.

City-Yuwa Partners

Marunouchi Mitsui Bldg 7F
2-2-2 Marunouchi
Tokyo 100-0005
Japan

Tel: +81 3 6212 5500
Fax: +81 3 6212 5700
Email: akira.nagasaki@city-yuwa.com
Web: www.city-yuwa.com/global/en/

CITY-YUWA PARTNERS

ESG Disclosure

As is the case throughout the world, awareness of ESG and Sustainable Development Goals is growing in Japan. This is now partially reflected in disclosure requirements for the stock market and was further incorporated as law, as will be explained in this section.

Amendment of Japan's Corporate Governance Code and the Engagement Guideline

In June 2021, the Corporate Governance Code – a regulation issued by the Tokyo Stock Exchange for companies listed thereon – was amended to add the following requirement (Section 3.1.3 of the Corporate Governance Code):

" *Companies should appropriately disclose their initiatives on sustainability when disclosing their management strategies. They should also provide information on investments in human capital and intellectual properties in an understandable and specific manner, while being conscious of the consistency with their own management strategies and issues. In particular, companies listed on the Prime Market should collect and analyse the necessary data on the impact of climate change-related risks and earning opportunities on their business activities and profits, and enhance the quality and quantity of disclosure based on the Task Force on Climate-related Financial Disclosures (TCFD) recommendations, which are an internationally well-established disclosure framework, or an equivalent framework*."

The Corporate Governance Code applies to listed companies in the "Prime Market", which is the top tier of listed companies on the Tokyo Stock Exchange (as of 30 October 2023, the number of listed companies on the Prime Market is 1,659, with the total number of listed companies at 3,913, according to the Japan Exchange Group (JPX) website). To be listed on the Prime Market, a company needs to have at least 20,000 shares circulating in the market with a total market value of JPY100 million or more and the total company value being JPY250 million or more.

This amendment to the Corporate Governance Code coincided with the amendment of the Guidelines for Investor and Company Engagement (the "Engagement Guideline"), which is a guideline issued by Japan's Financial Services Agency to supplement the Corporate Governance Code. The Engagement Guideline provides that a company should ask itself the following questions with regard to ESG and SDGs.

- " *Does the company appropriately respond to changes in the environment surrounding the business – such as increasing social demand for and interest in ESG and SDGs, progress in digital transformation, the need to address cybersecurity, and the need for fair and appropriate transactions – as well as respond to changes surrounding international economic security environments throughout the supply chain in its management strategies and plans?* "
- " *Further, does the company have a structure in place – such as the establishment of a committee on sustainability under the board or the management side – to review and promote sustainability-related initiatives on an enterprise-wide basis?* "

Together, the Corporate Governance Code and the Engagement Guideline are understood to require companies listed on the Prime Market to develop basic policies and disclose initiatives regarding sustainability, as well as make climate-related disclosures based on TCFD recommendations or equivalent international frameworks. The new rules aim to make listed companies "achieve sustainable corporate growth, increase mid- to long-term corporate value, and provide an enhanced return from institutional investors to their ultimate beneficiaries, contributing to economic growth in Japan and globally" (Revision of Japan's Corporate Governance Code and Guidelines for Investor and Company Engagement, November 2021).

Amendment of disclosure rules

On 31 January 2023, the Cabinet Office Order on Disclosure of Corporate Affairs was amended. Listed companies must now add a section in their annual securities report regarding their stance towards sustainability and subsequent measures taken. The new section is to include explanations of the listed company's "governance", "strategy", "risk management" and "measures and goals" when it comes to tackling climate change (in accordance with the TFCD recommendations). Of the four items, companies are not mandated to provide explanations concerning "strategy" and "measures and goals" – although, if they do not, companies are expected to state the reasons why they have decided not to do so. As a result of this amendment, disclosure of sustainability for listed companies is now mandated by the law (and not limited to stock exchange disclosure rules or other non-legally binding guidelines).

The government further plans to draft rules for disclosure requirements in accordance with International Financial Reporting Standards (IFRS) S1 and S2 rules during the Japanese fiscal year of 2023 (which is from 1 April 2023 to 31 March 2024). The rules are set to be finalised during the Japanese fiscal year of 2024 (which is from 1 April 2024 to 31 March 2025).

As can be seen, ESG disclosure requirements apply only to carbon emissions and not to sustainability in general. Any further disclosures concerning sustainability would be discretionary. Also, unlike in other jurisdictions, there are no mandatory requirements for green investment – meaning that financial companies are not subject to sustainability disclosure requirements that are specific to their industry.

Tokyo Metropolitan Government's New Sustainability Rules for New Construction Projects

Another notable development in Japan is the adoption by the Tokyo Metropolitan Government of the requirement for newly constructed buildings and housing in Tokyo to install solar power panels inside their premises or rooftops, among other requirements. In December 2022, the Tokyo Metropolitan Government amended its Ordinance regarding the Environment to Secure the Health and Safety of Tokyo Residents (the "Environmental Security Ordinance") so as to require real estate developers to meet specific sustainability standards when constructing new buildings. The amendment of the ordinance took effect on 1 April 2023.

The amendment can be summarised as follows.

- Large-scale construction projects – for new construction projects involving large-scale buildings with a total floor area of 2,000 square metres or more:
  - (a) the current standards for heat insulation and energy-saving performance (other than residential) were raised higher than national standards;
  - (b) there is a new obligation to set up solar panels on the premises (5% of the construction area);
  - (c) there is a new obligation to install EV (electronic vehicles) portals.

- Medium-to-small construction projects – for new construction projects involving medium to small-scale buildings with a total floor areas of less than 2,000 square metres:
  - (a) new standards for heat insulation and energy-saving performance must meet new national standards for sustainable housing;
  - (b) there is a new obligation to install EV portals; andc
  - (c) there is a new obligation to set up solar panels on the premises per the formula (a) x (b) x (c), whereby:
    - (i) "a" means the number of houses that solar panels can be placed (will exclude houses with a roof area of less than 20 square metres);
    - (ii) "b" means a rate of 85%, 70% or 30% based on zoning (percentage is highest for suburban zones and lowest for mountainous zones); and
    - (iii) "c" means 2 kilowatts.

According to the Tokyo Metropolitan Government, large-scale construction projects make up about 50% of all new construction projects in Tokyo in terms of floor area each year, whereas medium-to-small construction projects comprise about 90% of all new housing each year. The Tokyo Metropolitan Government will provide development companies with subsidies in order to ease the impact of cost increases due to the new sustainability requirement.

Other Notable Environmental Issues

Discharge of treated water at Fukushima

On 24 August 2023, Tokyo Electric Power Company ("Tokyo Electric") initialised the discharge of "treated water" into the ocean from the Fukushima Dai-ichi (meaning "number one") Nuclear Power Plant (the "Fukushima Plant"), which is the site of the nuclear accident in March 2011. At the Fukushima Plant, the melted-down nuclear core – ie, basically high-level nuclear waste – is being constantly exposed to groundwater and rainwater, which causes water contaminated by radionucleotides to be formed. Tokyo Electric has been collecting the contaminated water and storing it in water tanks, which are placed inside the Fukushima Plant premises to prevent its discharge into the ocean. However, the Fukushima Plant has run out of space to place more tanks, so Tokyo Electric has sought government approval to discharge the stored water.

The contaminated water has been treated by using a device called "ALPS" (short for "Advanced Liquid Processing System") to remove major radionucleotides such as Cesium 137/134, Strontium 90, Cobalt 90, and Iodine 129; however, it still contains a considerable amount of tritium (radioactive hydrogen), which cannot be removed by ALPS or other means. Thus, Tokyo Electric has decided to dilute the treated water so that the amount of tritium will be less than 1,500 becquerels per litre, which is significantly less than the governmental standard for discharge water from nuclear power plants (60,000 becquerels per litre) and the World Health Organization's standard for drinking water (10,000 becquerels per litre).

This led to the de facto green light issued by the International Atomic Agency (IAEA). The discharge is planned to be made several times a year and last for 30 years or more. This discharge of treated water was and is still met by opposition from local Fukushima fishermen, who claim that it will scare consumers from buying seafood caught off the coast of Fukushima prefecture.

As regards Japan's neighbouring countries, South Korea had initially raised concerns regarding the discharge of treated water, which it no longer opposes. However, China (including Hong Kong) maintained its opposition to the treated water discharge and banned all imports of Japanese seafood immediately after Tokyo Electric's initial discharge. The discharge issue remains a contentious diplomatic matter between China and Japan. Before the ban, exports to China and Hong Kong made up about 40% of the total value of Japanese seafood exports, so – to say the least – the effect of the ban is serious. In addition to China/Hong Kong, Russia has also recently joined the ban on importing Japanese seafood.

Tokyo Electric has announced that it will compensate anyone adversely affected by the discharge. This presumably includes businesses affected by China and Russia's import of Japanese seafood.

Opposition to Renewable Projects

While the demand for renewable energy runs high in Japan, some large-scale renewable projects (typically solar panel plants and wind turbines) have faced local opposition due to environmental concerns. Japan is a heavily forested country and many "unused" lands that are the target of solar panel plants are actually forests – understandably, clearing forests for the plants may face opposition from local residents and environmental groups. The opposition makes certain sense, given that the goal of adopting renewable energy is to reduce carbon emissions – and clearing forests for this purpose contradicts this goal. It may be advisable to carefully select the area for solar panel plants and use "truly" open fields, such as unused factory lands and abandoned farm/pastureland.

Wind turbines may face more local opposition on account of:

- their noise (which makes them unsuitable to be built near residential areas);
- bird strikes (the Japanese archipelago happens to be a major travelling route for migratory birds);
- clearing of forests to make maintenance roads; and
- the disruption of scenery caused by numerous and often towering wind turbines occupying the landscape.

One such case of local opposition that caused the developer to announce its abandonment of a wind turbine project occurred in September 2023. The original plan was to construct 150 large-scale (ie, 150 metres high) wind turbines adjacent to a national park area in the Hakkoda mountains, which are located in the northernmost prefecture on the main island of Honshu – namely, the Aomori prefecture. One distinct feature of the opposition was that not only local residents opposed; rather, several municipalities had joined the opposition, which led to the project being opposed by the current governor of the Aomori prefecture.

Other wind turbine projects planned in the mountainous areas of Japan currently face similar oppositions. Offshore wind turbines may be a more viable option than building wind turbines inland in the mountainous (and thus forested) areas.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com