



Japan

1. Legal and Regulatory Landscape Regarding Climate Change

1.1. Government approach to climate change

1.1.1. Climate change legislation

The Japanese Government has recognised climate change as a material issue affecting the sustainability of almost all companies in Japan.¹

Japan's *Climate Change Adaptation Act 2018* (the **CCAA**)² and its *Act on Promotion of Global Warming Countermeasures 1998* (the **Countermeasures Act**),³ read together, create regulatory expectations that all sectors of Japanese society must make efforts to control climate change through mitigation and adaptation.⁴

1.1.2. Transition plans and targets

The CCAA requires the Government to set up a system to collect, organize, analyze, and provide information on climate change and take measures to promote policies for climate change adaptation, to promote policies by local governments for climate change adaptation, to adopt a 'Climate Change Adaptation Plan', and promote climate change adaptation in business activities.⁵ It requires businesses to endeavour to adapt to climate change in accordance with the content of their business activities, and to cooperate with national and local governmental programs for Climate Change Adaptation.⁶ The CCAA requires prefectures and municipalities, either independently or in coordination with each other, to formulate a local climate change adaptation plan and create a centre to implement it.⁷

The purpose of the Countermeasures Act is to promote global warming countermeasures by formulating a plan for achieve targets under the Kyoto Protocol and taking measures to promote the control of greenhouse gas (**GHG**) emissions due to social, economic, and other activities.⁸ It requires the national Government to implement comprehensive and systematic global warming countermeasures to reduce GHG emissions; to take measures to reduce GHG emissions; to maintain and intensify GHG absorption with regard to its own activities and support the measures of local government bodies; and to provide technical advice and take measures to promote activities by businesses and by citizens.⁹ The Government was required to establish a 'National Government Action Plan' to set targets for reduction of GHG emissions and to report annually on progress.¹⁰

The Countermeasures Act requires businesses to take measures for the control of GHG emissions regarding their business activities; to prepare and publicize plans concerning measures they are taking to control of GHG emissions by giving due consideration to the provisions of the Kyoto Protocol Target Achievement Plan; and to cooperate with the measures implemented by the national and local Governments to control GHG emissions.¹¹

In October 2021, the Cabinet approved the *Climate Change Adaptation Plan*, based on the CCAA, which describes measures to be taken for climate change adaptation, including science-based goals, target periods, strategy, and the management and evaluation of the progress, including specific sector-based guidance.¹²

¹ Japan Government, *Climate Change Adaptation Act*, Article 1, 気候変動適応法平成 30 年 6 月 13 日法律第 50 号 Act No. 50 of June 13, 2018. Bank of Japan, "Climate Change Initiatives: Disclosure Based on TCFD Recommendations" (29 May 2024), tcfd24.pdf (boj.or.jp).

² *Climate Change Adaptation Act*, Article 1.

³ *Act on Promotion of Global Warming Countermeasures*, Act No 117 of October 9, 1998, as amended, 地球温暖化対策の推進に関する法律平成 10 年法律第 117 号.

⁴ Article 2(1), *Act on Promotion of Global Warming Countermeasures*).

⁵ *Climate Change Adaptation Act*, Articles 3, 7.

⁶ *Climate Change Adaptation Act*, Article 5.

⁷ *Climate Change Adaptation Act*, Articles 12-14.

⁸ *Act on Promotion of Global Warming Countermeasures*, Article 1.

⁹ *Act on Promotion of Global Warming Countermeasures*, Article 3.

¹⁰ *Act on Promotion of Global Warming Countermeasures*, Articles 20-21.

¹¹ *Act on Promotion of Global Warming Countermeasures*, Article 5.

¹² Ministry of the Environment, The Cabinet's Approval of the Climate Change Adaptation Plan and the Results of the Call for Public Comments on the Plan (22 October 2021)

Japan is committed to reducing its GHG emissions by 46 % by 2030 relative to 2013, and will continue strenuous efforts to meet the goal of cutting its emissions by 50 % .¹³ Japan has already achieved a reduction of approximately 20%.¹⁴ The Government aims to achieve net zero emissions by 2050 under its NDC.¹⁵

In February 2023, Japan adopted the Green Transformation (**GX**) Basic Policy, which lays out Japan's decarbonisation strategy. In May 2024, the Prime Minister announced the development of a new national strategy that includes a path for decarbonisation and industrial policy toward 2040, the 'GX 2040 Vision'. The strategy will be finalised by the end of the 2024-2025 fiscal year.¹⁶

1.1.3. Wider government approach to climate change

Japan's Ministry of the Environment Climate Change Policy Division reported in May 2021 that climate-related risks can result from reassessment of the value of a large range of assets with a large volume of GHG emissions during the process of adjustment towards a lower-carbon economy, and has advised companies to engage in scenario analysis to assess the

resilience of their business in the face of global warming.¹⁷

The 'Japan Partnership for Circular Economy' (**J4CE**) was launched in 2021 as a public-private partnership between the Government and Keidanren (**Japan Business Federation**) aimed at fostering a circular economy.¹⁸

With respect to carbon pricing, in 2012, Japan introduced a carbon pricing mechanism - the Tax for Climate Change Mitigation on fossil fuels. The current rate is 289 yen per ton of CO₂.¹⁹ More recently, in April 2023, Japan launched a carbon pricing scheme consisting of emissions trading and a carbon levy. The emissions trading system operates currently on a voluntary basis, and will start full-scale operation from the 2026/2027 fiscal year. Participants in the scheme must pledge and disclose their GHG reduction targets. Where the target is not met, participants will trade emissions through the market. Auctions for emission allowances in the power generation sector will begin from around 2033/34. A carbon levy will be introduced from 2028/2029 on fossil fuel importance, among others based on the amount of emissions generated by each fossil fuel.²⁰ The Tokyo Stock Exchange started trading carbon credits in October 2023.²¹

<https://www.env.go.jp/en/headline/2560.html>. On 18th January 2024, the Climate Change Adaptation Act was amended in order to address the increase in heatstroke caused by rising temperatures (Act No.23 of May 12, 2023). May 30 2023, the plan has been changed to reflect changes in the Act. See, Ministry of the Environment, Cabinet Decision on Heat Stroke Prevention Action Plan and Climate Change Adaptation Plan (Partial Amendment), Text in Japanese, https://www.env.go.jp/press/press_01675.html. However, The plan remained unchanged; only measures to prevent heatstroke were added.

¹³ 'Statement by Prime Minister KISHIDA Fumio at COP28 World Climate Action Summit' (1 December 2023), Prime Minister's Office of Japan, https://japan.kantei.go.jp/101_kishida/statement/202312/01statement.html.

¹⁴ Prime Minister's Office of Japan, 'Statement by Prime Minister KISHIDA Fumio at cop28 World Climate Action Summit' (1 December 2023), https://japan.kantei.go.jp/101_kishida/statement/202312/01statement.html.

¹⁵ Prime Minister's Office of Japan, 'Statement by Prime Minister KISHIDA Fumio at cop28 World Climate Action Summit' (1 December 2023), https://japan.kantei.go.jp/101_kishida/statement/202312/01statement.html.

¹⁶ Reuters, 'Japan to craft 2040 strategy of decarbonisation and industrial policy', (14 May 2024), <https://www.reuters.com/sustainability/climate-energy/japan-craft-2040-strategy-decarbonisation-industrial-policy-2024-05-13/>.

¹⁷The Ministry of the Environment, Government of Japan Climate Change Policy Division, Practical Guide for Scenario Analysis in line with the TCFD recommendations, 2nd edition (March 2020), 1-5, http://www.env.go.jp/policy/policy/tcfd/TCFDguide_2nd_EN.pdf.

The Ministry of the Environment, "Government of Japan Climate Change Policy Division, Practical Guide for Scenario Analysis in line with the TCFD recommendations", 3rd edition, 1-6, (March, 2021), <https://www.env.go.jp/content/900498777.pdf>. The Ministry of Environment has released Implementation Reports for 2021 and 2022 in March 2022 and March 2023 respectively: these can be accessed here: <https://www.env.go.jp/policy/tcfd.html>. In the report for 2022, examples from a wide range of sectors (a total of 43 companies in Japan and overseas), reference parameters and tools, etc. are posted.

¹⁸ Ministry of Foreign Affairs of Japan, *Climate Change Japan's initiative toward net-zero GHG emissions by 2050*, (October 2021), [100256809.pdf \(mofa.go.jp\)](https://www.mofa.go.jp/100256809.pdf).

¹⁹ J Schmittmann, 'The Financial Impact of Carbon Taxation on Corporates - Japan' (International Monetary Fund, SIP/2023/034, May 2023).

²⁰ J Ishikawa, 'Equilibrium carbon price for future carbon pricing in Japan' (Nomura Research Institute, Iakyara vol.385, 15 May 2024); Y Obayashi, K Golubkova, 'Explainer: Japan's carbon pricing scheme being launched in April' (Reuters, 31 March 2023), <https://www.reuters.com/markets/carbon/japans-carbon-pricing-scheme-being-launched-april-2023-03-30/>.

²¹ Japan Exchange Group, 'Outline of Specifications for the Carbon Credit Market' (9 June 2023), https://www.jpx.co.jp/english/equities/carbon-credit/overview/uorri5000000103s-att/Specifications_Eng.pdf.

The Japanese government expects that the GX will require 150 trillion yen (1 trillion USD) of public-private investment. Japan has decided to issue 20 trillion yen (137.5 billion USD) of GX Economy Transition Bonds to finance these investments.²² The first 1.6 trillion yen (11 billion USD) of GX Economy Transition Bonds were issued in February 2024.²³ These bonds are world's first national transition bonds with international certification, aimed at the three goals of emission reduction, stable energy supply, and economic growth, thereby contributing to global decarbonization.²⁴ The budget related to GX, including the management of the funds raised through these bonds, are categorized Energy Supply and Demand Account in the Special Account for Energy Measures, separate from other accounts of Japan's National Budget.²⁵

In terms of whether Japan has a green taxonomy, the Ministry of Economy, Trade and Industry (**METI**) has issued basic guidelines on climate transition finance that is aimed at transitioning Japan to be carbon neutral by 2050.²⁶ METI also issued 'Transition Finance Guidance' in 2021 with definitions of what constitutes green versus transition finance and 'Transition Finance Follow-up Guidance' in 2023 setting out guidance for fundraisers to develop and disclose a credible transition strategy that will attract investors.²⁷ The Ministry has issued sector-specific roadmaps for

promoting transition finance to support companies in raising funds for activities that can be labelled as transition finance.²⁸ While they do not include the level of detail or specific performance criteria contained in the EU Sustainable Finance Taxonomy, METI's technological roadmaps have some taxonomy-like features.²⁹

The Government has committed to mobilizing approximately 70 billion USD climate finance from both public and private sources. It also announced it will contribute to the expansion of lending capacity of 9 billion USD through the provision of credit enhancements to the World Bank and the Asian Development Bank and will make contributions to the new fund of the African Development Bank. In 2023, Japan renewed its support to developing countries on climate change with additional 23.6 million USD.³⁰

Japan implements its growth-oriented carbon pricing concept based on the *GX Promotion Act*^{31, 32}

Japan is currently the world's third largest solar energy provider and has an active goal of tripling renewable energy capacity and doubling the global average annual rate of energy efficiency improvements, with the aim of creating a just and sustainable business environment to diversify the clean energy supply chain.

²² Ministry of Finance, 'Japan Climate Transition Bond Framework' (November 2023), <https://www.mof.go.jp/english/policy/jgbs/topics/JapanClimateTransitionBonds/climate_transition_bond_framework_eng.pdf>.

²⁴ Prime Minister's Office of Japan, 'Statement by Prime Minister KISHIDA Fumio at cop28 World Climate Action Summit' (1 December 2023) <https://japan.kantei.go.jp/101_kishida/statement/202312/01statement.html>.

²⁴ Prime Minister's Office of Japan, 'Statement by Prime Minister KISHIDA Fumio at cop28 World Climate Action Summit' (1 December 2023) <https://japan.kantei.go.jp/101_kishida/statement/202312/01statement.html>.

²⁵ Ministry of Finance, 'Japan Climate Transition Bond Framework' (November 2023), <https://www.mof.go.jp/english/policy/jgbs/topics/JapanClimateTransitionBonds/climate_transition_bond_framework_eng.pdf>.. See, Act on Special Accounts, Article 85 paragraph 3, 特別会計に関する法律 (平成 19 年法律第 23 号) Act No. 23 of 2007.

²⁶ Japan Financial Services Agency, Ministry of Economy, Trade and Industry, and Ministry of the Environment, *Basic Guidelines on Climate Transition Finance* (May 2021).

²⁷ Ministry of Economy, Trade, and Industry, "Transition Finance Guidance", *Transition Finance / METI Ministry of Economy, Trade and Industry* (2021, updated 2024)); *Transition Finance Follow-up*

Guidance ~ Guidance for an effective dialogue with fundraisers (June 2023)

²⁸ Ministry of Economy, Trade, and Industry, 'Toward a Transition to Decarbonization - Transition Finance', (8 February 2024), <https://www.meti.go.jp/english/policy/energy_environment/transition_finance/index.html>.

²⁹ PRI, 'Does Japan Need a Sustainable Finance Taxonomy?' (March 2023), <<https://www.unpri.org/download?ac=18224>>.

³⁰ Alexander Kirubi, "Japan renews support to developing countries on climate change with new \$23.6 million", (1 May 2023) UNDP Kenya, *Japan renews support to developing countries on climate change with new \$23.6 million package | United Nations Development Programme (undp.org)*.

³¹ *Japan GX Promotion Act* 脱炭素成長型経済構造への円滑な移行の推進に関する法律 Act No.32 May 19 2023 (令和 5 年 5 月 19 日法律第 32 号) . See, Kenji Miyagawa, Takashi Fujiki and Mai Kurano, Enactment of GX Promotion Act and its Impact on Corporate Decarbonization (July 2023) <https://www.amtlaw.com/asset/pdf/bulletins12_pdf/230703.pdf>.

³² Ministry of Economy, Trade, and Industry, Cabinet Decision on the Basic Policy for the Realization of GX (10 February 2023), <https://www.meti.go.jp/english/press/2023/0210_003.html>. Related Materials: Outline of the Basic Policy for the Realization of GX (Green Transformation), <https://www.meti.go.jp/english/press/2023/pdf/0210_003b.pdf>.

In line with its pathway to net-zero, Japan will end new construction of domestic unabated coal power plants, while securing a stable energy supply.³³

1.2. Regulatory approaches to climate change

1.2.1. Climate change as a systemic financial risk

Climate change risks are increasingly being acknowledged by Japanese regulators. For example, the Bank of Japan (BoJ), Japan's primary prudential regulator, has acknowledged that climate change poses a systemic risk to the Japanese financial system.³⁴ The Financial Services Agency (FSA) has also recognized that there are serious physical and transition risks to the financial system.³⁵

1.2.2. Financial regulation and guidance

Bank of Japan: In 2021, the BoJ launched its Strategy on Climate Change, which introduced a new fund-provisioning measure in its monetary policy to provide funds to financial institutions against investment or loans they make to address climate change.³⁶ The strategy includes the BoJ actively supporting financial institutions in identifying and managing their climate-related financial risks, with a view to maintaining the stability of the financial system and the smooth-functioning of financial intermediation.³⁷ It includes on-site examinations of measures institutions are taking and working with financial institutions to enhance their

disclosures, both qualitatively and quantitatively, based on the Task Force on Climate-Related Financial Disclosures (TCFD) framework, which has been incorporated in Japan's 2021 revised Corporate Governance Code (the **Corporate Governance Code**).³⁸

The BoJ set up the Climate Coordination Hub (CCH) and a collaborative framework led by the Head of the CCH to promote information sharing and coordination on various measures and address issues related to climate change, with members from the Secretariat of the Policy Board, the Monetary Affairs Department, the Financial System and Bank Examination Department, the Payment and Settlement Systems Department, the Financial Markets Department, the Research and Statistics Department, and the Institute for Monetary and Economic Studies.³⁹ The BoJ is actively promoting investment in climate-related financial products as part of international financial cooperation in Asia and has committed to purchasing green bonds issued by foreign governments.⁴⁰

In 2022, the BoJ announced active support for financial institutions in identifying and managing their climate-related financial risks, with a view to maintaining the stability of the financial system and the smooth functioning of financial intermediation.⁴¹ The BoJ, in cooperation with the FSA, has been carrying out pilot exercises of the scenario analysis based on common scenarios since financial year 2021, targeting major financial institutions.⁴² Based on these pilots, the BoJ issued reports on the findings in May 2024,⁴³ is

³³ Prime Minister's Office of Japan, 'Statement by Prime Minister KISHIDA Fumio at cop28 World Climate Action Summit' (1 December 2023), <https://japan.kantei.go.jp/101_kishida/statement/202312/01statement.html>.

³⁴ Bank of Japan, 'Bank of Japan joins the Network for Greening the Financial System (NGFS)', (28 November 2019), <https://www.boj.or.jp/en/announcements/release_2019/rel191128_a.html>.

³⁵ Financial Services Agency, *Analysis of climate-related financial risks*, (2023), 04.pdf (fsa.go.jp).

³⁶ Kuroda Haruhiko, Governor of the Bank of Japan, "The Bank of Japan's Strategy on Climate Change", (27 July 2021), [The Bank of Japan's Strategy on Climate Change](https://www.boj.or.jp/en/announcements/release_2021/rel210727_a.html) (boj.or.jp).

³⁷ Kuroda Haruhiko, Governor of the Bank of Japan, "The Bank of Japan's Strategy on Climate Change", (27 July 2021), [The Bank of Japan's Strategy on Climate Change](https://www.boj.or.jp/en/announcements/release_2021/rel210727_a.html) (boj.or.jp).

³⁸ Kuroda Haruhiko, Governor of the Bank of Japan, "The Bank of Japan's Strategy on Climate Change", (27 July 2021), [The Bank of Japan's Strategy on Climate Change](https://www.boj.or.jp/en/announcements/release_2021/rel210727_a.html) (boj.or.jp).

³⁹ Bank of Japan, Climate Change Initiatives: Disclosure Based on TCFD Recommendations" (29 May 2024), [tcfd24.pdf](https://www.boj.or.jp/en/announcements/release_2024/rel240529_a.html) (boj.or.jp).

⁴⁰ Bank of Japan, Climate Change Initiatives: Disclosure Based on TCFD Recommendations" (29 May 2024), [tcfd24.pdf](https://www.boj.or.jp/en/announcements/release_2024/rel240529_a.html) (boj.or.jp).

⁴¹ Bank of Japan, Climate Change Initiatives: Disclosure Based on TCFD Recommendations, (27 May 2022) <<https://www.boj.or.jp/en/about/climate/tcfd22.pdf>>.

⁴² The Bank has committed to measure and disclose direct (Scope 1) and indirect (Scope 2) carbon dioxide (CO₂) emissions arising from its own business operations every fiscal year (Chart 4). Efforts so far have yielded a decrease in CO₂ emissions in recent years compared to previous levels.

⁴³ *Financial System Report Annex Series: Regional and Shinkin Banks' Recent Efforts to Address Climate Change* (FY2023); *Scenario Design for Climate-Related Risk Analysis: Application and Challenges of Integrated Assessment Models; Top-Down Scenario*

continuing to encourage financial institutions to develop their climate scenario analyses in line with their size and characteristics; and is conducting Market Functioning Surveys concerning climate change, covering a broad set of market participants, in order to assess the functioning of Japanese financial markets in relation to climate change.⁴⁴ In May 2024, the FSA and BoJ published the framework for the second climate-related scenario analysis exercise, which will be conducted in FY 2024, and will focus on the impact of climate-related risks on loans over a shorter horizon.⁴⁵

Financial Services Agency: In 2018, the FSA published 'Supervisory Guidance on Climate-related Risk Management and Client Engagement' as non-binding guidance to form the basis of supervisory dialogues regarding financial institutions' climate-related risk management and engagement with their clients to support clients' responses to climate-related opportunities and risks.⁴⁶ The FSA is co-host of the Advisory Council on Scenario Data for Climate Change Risk and Opportunity Assessment; its mandate is to enhance and exchange climate-related data to support effectively addressing climate change.⁴⁷

In respect of risk of greenwashing, the FSA conducted a survey of 225 publicly offered investment trusts managed by 37 asset managers in Japan and then in May 2022 issued 'Seven Expectations for Asset Management Companies managing ESG Investment Trusts'.⁴⁸ In addition, in 2023,

the FSA revised its 'Comprehensive Guidelines for Supervision of Financial Instruments Business Operators' to define specific points for supervisors to check the disclosure on publicly offered investment trusts, and the organizational resources and due diligence of asset managers regarding potential greenwashing.⁴⁹

On 24 March 2020, the FSA issued Japan's Stewardship Code (second revised version) (the **Code**).⁵⁰ This Code refers to the responsibilities of institutional investors, including pension funds, to enhance the medium- to long-term investment return for their clients and beneficiaries (including ultimate beneficiaries) by improving and fostering the investee companies' corporate value and sustainable growth through constructive engagement, or purposeful dialogue, based on in-depth knowledge of the companies and their business environment and consideration of sustainability (medium- to long-term sustainability including ESG factors) consistent with their investment management strategies.⁵¹ The Code is not a law or a legally binding regulation. Institutional investors who support the Code and are ready to adopt it will voluntarily make their intentions public. The Code adopts the "comply or explain" (comply with the principles or explain why they are not complied with) approach.⁵² The FSA publishes the list of institutional investors who have notified the FSA of their intention to accept the Code. As of June 30, 2024, there are 334 institutional investors in the list who have accepted the Code.⁵³ Japan's Government aim to complete the

Analysis of Climate-Related Financial Risks: Perspective from Time Horizon and Inter-Industry Spillovers; and Visualization and Indexation of Climate Change Narratives Using BERT and Causal Knowledge Extraction, cited in Bank of Japan, Climate Change Initiatives: Disclosure Based on TCFD Recommendations" (29 May 2024), [tcfd24.pdf \(boj.or.jp\)](https://www.boj.or.jp/tcfd24.pdf).

⁴⁴ Bank of Japan, Climate Change Initiatives: Disclosure Based on TCFD Recommendations" (29 May 2024), [tcfd24.pdf \(boj.or.jp\)](https://www.boj.or.jp/tcfd24.pdf).

⁴⁵ Financial Services Agency, Bank of Japan, 'Climate-Related Scenario Analysis - Next Step in the Banking Sector' (10 May 2024), <https://www.fsa.go.jp/news/r5/ginkou/20240510/02.pdf>.

⁴⁶ Financial Services Agency, *Supervisory Guidance on Climate-related Risk Management and Client Engagement*, (29 June 2018), [02.pdf \(fsa.go.jp\)](https://www.fsa.go.jp/02.pdf).

⁴⁷ Financial Services Agency, (28 March 2024), *FSA Weekly Review* No.580 March 28, 2024.

⁴⁸ Financial Services Agency, "Seven Expectations for Asset Management Companies managing ESG Investment Trusts in Progress Report on Enhancing Asset Management Business 2022

(May 2022), 金融商品取引業者等向けの総合的な監督指針 新旧対照表, [02.pdf \(fsa.go.jp\)](https://www.fsa.go.jp/02.pdf).

⁴⁹ Financial Services Agency, *Revised Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc.*, (2023), [03.pdf \(fsa.go.jp\)](https://www.fsa.go.jp/03.pdf).

⁵⁰ Financial Services Agency, Finalization of Japan's Stewardship Code (Second revised version) (March 24 2020), <https://www.fsa.go.jp/en/refer/councils/stewardship/20200324.html>.

⁵¹ The Council of Experts on the Stewardship Code (FY2019), Principles for Responsible Institutional Investors: Japan's Stewardship Code (March 24, 2020) Principle 1 Guidance1-1, [1,01.pdf \(fsa.go.jp\)](https://www.fsa.go.jp/1,01.pdf).

⁵² The Council of Experts on the Stewardship Code (FY2019), Principles for Responsible Institutional Investors: Japan's Stewardship Code (March 24, 2020) Principle 1 Guidance1-1, [1,01.pdf \(fsa.go.jp\)](https://www.fsa.go.jp/1,01.pdf), Background at paras 13,14.

⁵³ Financial Services Agency, *Stewardship Code : 334 institutional investors have signed up to the Principles for Responsible Institutional Investors as of June 30, 2024* ([fsa.go.jp](https://www.fsa.go.jp/)).

signing of the Code by major public pension funds, the Government Pension Investment Fund and the Japan Mutual Aid Association, by the end of 2024, thus strengthening efforts in sustainable investment⁵⁴

In July 2022, the Expert Panel on Sustainable Finance of the FSA published its second report on the direction of policy measures for sustainable finance.⁵⁵ The report emphasises that institutional investors must deepen their knowledge of the sustainability practices of their investee companies in order to increase the growth and sustainability of assets under management and expand the benefits for the ultimate beneficiaries over the long term. This Panel published its third report in July, 2023.⁵⁶ This report made a similar point to that highlighted in its second report.⁵⁷

In October 2023, the Japan Public and Private Working Group on Financed Emissions to Promote Transition Finance compiled a paper titled "Addressing the Challenges of Financed Emissions".

On 9, July 2024, the Expert Panel on Sustainable Finance of the FSA published its fourth report.⁵⁸ It shows the situation surrounding sustainability finance from July 2023 to June of 2024. This report introduces efforts to incorporate "transition plans" as part of internal risk management and customer support for financial institutions, as well as efforts to position decarbonization transition strategies in financial institutions' future business strategies, capital policies, etc.

1.2.3. *Liability risk: enforcement action by regulators*

As mentioned above, Japan's Government promotes climate change adaptation in business activities, and leaves its implementation to the discretion of companies or institutional investors. They are not mandated by regulators.

2. Directors' Duties and Climate Change

2.1. Legal framework for directors' duties

Japan is a civil law jurisdiction, and the legal basis for the scope of directors' and officers' duties is set out in statute under the *Companies Act of Japan* and the *Civil Code*.

Directors in Japan have three primary duties:

- a duty of loyalty,⁵⁹ including a requirement to act in the company's best interests, which a growing number of lawyers and regulators believe includes its long-term sustainability;⁶⁰
- a duty to comply with all laws, regulations, ordinances, resolutions of shareholders' meeting and the company articles.⁶¹ Directors of large companies⁶² are additionally required to develop systems for managing the risk of loss to the company and its subsidiaries,⁶³ and to establish an internal control system to ensure that the execution of their duties complies with the relevant laws, regulations, and the

⁵⁴ Cabinet Secretariat, Grand Design and Action Plan for a New Form of Capitalism (2024 Revised Version) 55-56 (June 21 2024) [ap2024.pdf \(cas.go.jp\)](https://www.cas.go.jp/ap2024.pdf)

⁵⁵ FSA, *The Second Report by the Expert Panel on Sustainable Finance* (13 July 2022), <<https://www.fsa.go.jp/en/news/2022/20220713.html>>.

⁵⁶ The Expert Panel on Sustainable Finance, FSA, *The Third Report - Enhancing sustainable finance*, (June 2023) <https://www.fsa.go.jp/singi/sustainable_finance/siryou/20230630/03.pdf>

⁵⁷ *Ibid* at 10.

⁵⁸ The Expert Panel on Sustainable Finance, FSA, *The Fourth Report* (9 July 2024) <https://www.fsa.go.jp/singi/sustainable_finance/siryou/20240709/01.pdf> (Text in Japanese).

⁵⁹ Article 355 of the *Companies Act of Japan*.

⁶⁰ Koichi Kusano, 株主の利益に反する経営の適法性と持続可能性 [translated title is "The Justifiability and Sustainability of the

Corporate Management Inconsistent with the Interests of the Shareholders"] (Yuhikaku, 2018) 347-348. Koichi Kusano insists that a director has an obligation based on the principle of maximizing social welfare to continue management policies which contribute to sustainability that do not benefit shareholders directly, although a breach of such obligation will not result in liability to pay corporate damage in relation to Japanese Business Judgement Rule. He is a Justice of Japan's Supreme Court and one of the leading Japanese attorneys specialized in Company Law.

⁶¹ Koichi Kusano, 株主の利益に反する経営の適法性と持続可能性 *ibid*.

⁶² Large company is a defined term under Article 2(vi) of the *Companies Act of Japan*.

⁶³ *Regulation for Enforcement of the Companies Act*, article 100(ii), 会社法施行規則平成 18 年 2 月 7 日法務省令第 12 号 Ministry of Justice Order No 12 of February 7, 2006.

company's articles of association.⁶⁴ In such companies, a director's duty of care will not be effectively performed without a proper internal control system;⁶⁵ and

- a duty of care, to the standard of a prudent manager,⁶⁶ which informs the duty of loyalty and the duty to comply with all applicable laws and regulations. If a director has met this standard, it may be a defence to personal liability for an alleged breach of the duty of care.⁶⁷ Likewise, if there are no "significantly unreasonable aspects" involved in the decision (known as the 'business judgment rule'), directors will not have breached their duty of care.⁶⁸

2.2. Guidance on interpretation of directors' duties

2.2.1. Legal guidance

A report titled *Directors' Duties Regarding Climate Change in Japan* was published in 2021, setting out the duties of directors of Japanese companies in respect of climate-related risks.⁶⁹ It reports that directors in Japan have a duty of care, to act as a mandatary in the best interest of the company. Directors who neglect their duties are jointly and severally liable to the company for any resulting damages; and where they are grossly negligent or knowingly fail to perform their duties, they are also liable to shareholders or third parties for resulting damages. Since climate change is affecting almost all businesses, failure by corporate directors to recognize their obligation to address

climate-related risks and opportunities could result in personal liability for failure to act with due care and in the best interests of the company. This liability for breach of their duties is in addition to their potential personal liability for failure to meet the requirements of any statutes or ordinances.⁷⁰

In Japan, Courts have not ruled on whether directors are liable for business decisions regarding climate change. However, it is well established that directors' business decisions should be judged based on business judgment rule. In the case of *Apamanshop Holdings*,⁷¹ Apamanshop Holdings Co. Ltd (**Apamanshop**) purchased the shares of its partially owned company based on a voluntary agreement to make it a wholly owned subsidiary as part of a business restructuring plan. At the time, Apamanshop had obtained an appraisal stating that the valuation of its partially-owned company's shares calculated for the restructuring was between 6,561 yen and 19,090 yen per share, but decided to set the valuation at 50,000 yen per share based on the amount paid for the shares at the time of its establishment. In response, Apamanshop's shareholder filed a derivative lawsuit against the director who made the decision, claiming that the purchase price above the valuation price was a breach of the duty of care, and seeking damages from the company.

The Japanese Supreme Court held that the formulation of such a business restructuring plan is deemed to be left to professional management judgment covering future forecasts, including the

⁶⁴ *Companies Act of Japan*, art. 348, 362, 399-13 and 416.

⁶⁵ *Regulation for Enforcement of the Companies Act*, arts. 98, 100(ii), 110-4 and 112, 会社法施行規則平成 18 年 2 月 7 日法務省令第 12 号 Ministry of Justice Order No 12 of February 7, 2006.

⁶⁶ *Civil Code of Japan* (Act No 89 of 1896, as amended, 民法明治 29 年法律第 89 号) art. 644; *Companies Act of Japan* (Act No.2005, as amended, 会社法平成 17 年法律第 86 号) arts. 330, 355. For an English translation of Japanese Laws, see Japanese Law Translation run by the Ministry of Justice, Japan at <<http://www.japaneselawtranslation.go.jp/?re=02>>. As has been suggested by the Japanese Supreme Court, the duty of care is judged to be the objective standard of what a reasonably prudent person would do in comparable circumstances (see Dan W Puchniak and Masafumi Nakahigashi, 'Case No.21: Corporate Law – Business Judgment Rule – Derivative Action – Supreme Court, 15 July 2010' in Moritz Bälz et al. (eds.), *Business Law in Japan – Cases and Comments* Kluwer Law International 2012) at 223).

⁶⁷ *Companies Act of Japan*, examples of where having taken due care is a defence include article 52 (2)(ii), article 120 (4), and article 213 (2)(ii).

⁶⁸ Supreme Court 15 July 2010 – Case No 2009 ju 183, Apamanshop Case, 1332 Hanrei Taimuzu 501.

⁶⁹ Dr. Yoshihiro Yamada Dr. Janis Sarra, and Dr. Masafumi Nakahigashi, *Directors' Duties Regarding Climate Change in Japan* (February 2021, CCLI), [Directors-Duties-Regarding-Climate-Change-in-Japan.pdf \(ubc.ca\)](#).

⁷⁰ Dr. Yoshihiro Yamada Dr. Janis Sarra, and Dr. Masafumi Nakahigashi, *Directors' Duties Regarding Climate Change in Japan* (February 2021, CCLI), [Directors-Duties-Regarding-Climate-Change-in-Japan.pdf \(ubc.ca\)](#).

⁷¹ The case of the derivative action of Apamanshop Holdings, 2091 Hanrei Jiho 90 (Sup. Ct., July 15 2010).

evaluation of the benefits of making the company a wholly owned subsidiary. In addition, the method and price of the share acquisition in this case can be determined by the directors by comprehensively taking into consideration not only the valuation of the shares, but also the necessity of the acquisition, the financial burden of Apamanshop, and the degree of need to smoothly proceed with the acquisition of shares, etc.; and as long as there are no significant unreasonable points in the process or content of the decision, it should be deemed that there is no violation of the directors' duty of due care.⁷² This decision marks the first time that the business judgment rule has been explicitly applied by the Japanese Supreme Court. According to the framework, directors' managerial decisions should be protected from liability by the business judgment rule when: (1) the decision was based on reasonable research and analysis of the relevant facts; and (2) the decision was not irrational or inappropriate in comparison to what a reasonable manager in the specific business environment would have decided.

2.2.2. Regulatory guidance

The Tokyo Stock Exchange Inc's (**Tokyo Stock Exchange**) Corporate Governance Code reinforces and provides guidance on the duty of care for publicly-listed companies (**PLCs**), by recommending that PLCs address ESG and other sustainability issues proactively to create value for all stakeholders over the mid- to long-term.

The Corporate Governance Code was revised in June 2021 to recommend Japanese companies to further promote positive and proactive responses to sustainability issues in light of the increasing number of organisations supporting the TCFD recommendations,

and to require PLC boards to develop a basic policy for the company's sustainability initiatives to increase corporate value over the mid- to long-term.⁷³ The Corporate Governance Code, while non-binding, therefore, offers strong normative guidance for directors to effectively manage material climate-related financial risks and opportunities, in compliance with their legal duties.

The impact of soft law such as the Corporate Governance Code has the potential to be instrumental in shifting climate governance, as the principles adopted by companies form part of their fundamental rules of operation. However, the Corporate Governance Code represents a broad policy or directors' stance toward management, and does not prescribe specific actions to be taken, nor does it contain guidelines for interpretation.

2.3. Directors' liability and litigation risk

Directors who neglect their duties are jointly and severally liable to the company for any resulting damages; and where directors are grossly negligent or knowingly fail to perform their duties, they are also liable to third parties or shareholders for the resulting damages.⁷⁴

Directors could breach their duty to ensure the company is obeying laws and regulations by failing to consider the CCAA. This duty requires businesses to endeavour to adapt to climate change in accordance with the content of their business activities, and to cooperate with Governments at all levels.⁷⁵ It therefore follows that directors have a duty to endeavour to ensure their companies take robust action to identify and manage climate change risks. At the present, it is true that directors have a duty to endeavour

⁷² See, Dan W Puchniak and Masafumi Nakahigashi, 'Corporate Law – Business Judgment Rule – Derivative Action', in Moritz Bälz, Marc Dernauer, Christopher Heath & Anja Petersen-Padberg (eds), *Business Law in Japan – Cases and Comments: Intellectual Property, Civil, Commercial and International Private Law* (2012 Kluwer Law International BV, The Netherlands.) pp. 215–226.

⁷³ Tokyo Stock Exchange, 'Japan's Corporate Governance Code Seeking Sustainable Corporate Growth and Increased Corporate Value over the Mid- to Long-Term', (as revised 11 June 2021) at 9, 19, <<https://www.jpex.co.jp/english/news/1020/b5b4pj0000046kxj-att/b5b4pj0000046i07.pdf>>. For a discussion of early corporate law,

prior to the modernization of company law, see Janis Sarra and Masafumi Nakahigashi, 'Balancing Social and Corporate Culture in the Global Economy: The Evolution of Japanese Corporate Culture and Norms' (2002) 24 Law & Policy 4 at 299-354.

⁷⁴ Katsuyuki Yamaguchi, Kaoru Tatsumi, and Mamiko Komura, 'Corporate governance and directors' duties in Japan: overview' (1 November 2016), <https://www.nishimura.com/sites/default/files/tractate_pdf/ja/43281.pdf>.

⁷⁵ *Climate Change Adaptation Act*, Article 5.

to ensure their companies take robust action to adapt to climate change from standards of conduct, although the courts have no test to assess whether directors can be held liable if they fail to fulfil that duty.⁷⁶

A failure to monitor climate change risks and climate change-related regulations could give rise to a breach of the directors' duty of care in their oversight and management of the company if a board were to fail to set up an appropriate risk management system.⁷⁷ In order to comply with their duty of care in relation to the duty of oversight, directors need to ensure that such a risk management system is proper and sufficiently capable of fulfilling the responsibilities to monitor and manage the company's business, given the likelihood and magnitude of climate risks to the company. Since the financial risks of climate change are so broadly acknowledged by Governments, scientists, financial institutions, companies, investors, and civil society, it is no longer a defence for directors to say that they were unaware of the risks.

As well as potentially breaching their duty of care in respect of the duty of oversight of risks and compliance, directors could potentially breach their general duty to act with due care in the best interests of the company by failing to address climate-related risks and opportunities.⁷⁸ Examples of circumstances in which a director could their duty of care include:

- failing to make relevant enquiries to management regarding physical and transition risks to the business due to climate change;
- failing to seek outside expertise where the directors do not possess the requisite knowledge or expertise to devise a strategy to address climate risk;
- failing to robustly assess the assumptions underlying revenue/cost projections for climate-related disruption; or
- failing to ensure assets and supply chains are resilient to foreseeable physical climate risks.

There are no reported judgments in respect of litigation against directors relating to climate risk.⁷⁹

3. Directors' Duties and Sustainability Disclosure Obligations

3.1. Narrative sustainability disclosures

Japanese regulators are increasingly requiring companies to disclose climate-related risks.

3.1.1. Sustainability disclosure frameworks

The *Financial Instruments and Exchange Act (FIEA)*⁸⁰ contains the duty for companies to disclose on a continuous and periodic basis⁸¹ material business risks.

⁷⁶ Not all standards of directors' conduct will be adopted as the standard of review by the courts, and it is not uncommon for the two standards to diverge. See, Melvin Aron Eisenberg, *The Divergence of Standards of Conduct and Standards of Review in Corporate Law*, 62 *Fordham L Rev* 437 (1993).

⁷⁷ For example, under articles 423(1), 348(4), 362(5), 399-13(2), and 416(2) of the *Companies Act of Japan* and articles 98, 100, 110-2, and 114 of the *Regulation for Enforcement of the Companies Act*.

⁷⁸ See Yoshihiro Yamada, Janis Sarra and Masafumi Nakahigashi, Commonwealth Climate and Law Initiative, *Directors' Duties Regarding Climate Change in Japan* (February 2021) <<https://law-ccli-2019.sites.olt.ubc.ca/files/2021/02/Directors-Duties-Regarding-Climate-Change-in-Japan.pdf>>.

⁷⁹ There have been cases against the government in respect of corporate activities. In *Citizens' Committee on the Kobe Coal-Fired Power Plant (CCKCPP) v Japan* (2023), in which the plaintiffs asked the Osaka District Court to compel the government to cancel the notice of finalization of an environmental assessment of two new coal-fired units, which the plaintiffs allege would emit about 7 million tons of carbon dioxide per year. The Osaka District Court rejected a request for an injunction to prevent the construction and operation of two new units at a coal-fired plant in Japan with the CCKCPP arguing that the project was inconsistent with Japan's 2030 and

2050 climate targets. On 9 March 2023, the Supreme Court rejected the request for a final appeal and the Supreme Court upheld the judgment of the Osaka High Court; the Supreme Court stated that it did not find grounds for a final appeal under Article 312 of the Code of Civil Procedure but no specific reasons were given. Subsequently, On September 14, 2018, thirty-one families filed a lawsuit seeking an injunction to prevent the construction and operation of two units at a coal-fired plant in Kobe, Japan (*Citizens' Committee on the Kobe Coal-Fired Power Plant v Kobe Steel Ltd., et al.* 2023); the Court did not recognize the existence of a concrete danger to the plaintiffs' life, bodily integrity, and health while it stated that there could be an abstract danger by the emission of CO₂ that could aggravate global warming. This judgment is under appeal; Sabin Centre for Climate Change, *Global Climate Change Litigation, Citizens' Committee on the Kobe Coal-Fired Power Plant v. Kobe Steel Ltd., et al. - Climate Change Litigation* (climatecasechart.com).

⁸⁰ *Financial Instruments and Exchange Act* (Act No. 25 of 1948, 金融商品取引法昭和23年法律第25号), <<https://www.fsa.go.jp/en/policy/fiel/>>.

⁸¹ Articles 24 *Financial Instruments and Exchange Act* (Act No. 25 of 1948, 金融商品取引法昭和23年法律第25号), <<https://www.fsa.go.jp/en/policy/fiel/>>.

These risks are often reported as 'non-financial information' in annual reports.

The FSA's amended 2023 *Cabinet Office Ordinance on Disclosure of Corporate Affairs* (the **Cabinet Disclosure Ordinance**)⁸² expanded the FIEA requirement to include material 'forward-looking' risk. Insofar as climate change is now universally regarded as posing a material business risk, it follows that the FIEA requires disclosure of risks and forward-looking risks arising from climate change.

In 2019, a TCFD Consortium was launched as an initiative of five leaders of the industry and the academia to encourage effective TCFD disclosures, supported by the Ministry of the Environment and METI (the **TCFD Consortium**).⁸³

In March 2020, the Ministry of the Environment issued practical guidance on scenario analysis in line with TCFD recommendations.⁸⁴ On 5 October 2022, the TCFD Consortium released 'Guidance on Climate-related Financial Disclosures 3.0'.⁸⁵ In December 2022, the FSA finalised the Code of Conduct for ESG Evaluation and Data Providers (the **Code of Conduct**).⁸⁶ This voluntary code of conduct provides for ESG Evaluation and Data Providers to endorse it on a 'comply or explain' basis. The Code of Conduct sets principles on matters such as quality of the service of ESG evaluation, managing independence and conflicts of interest, and

ensuring transparency of methodologies and processes for the evaluation.

In 2023, amendments to the Cabinet Disclosure Ordinance⁸⁷ (**Amendment**) now require companies, with effect from 31 January 2023, to include a new section in their Securities Registration Statement and Annual Securities Report (collectively, **Disclosure Statements**) to report how the company perceives and intends to address sustainability issues.⁸⁸ The Amendment applies to Disclosure Statements for fiscal years ending on or after 31 March 2023. While the Amendment does not define the term sustainability, a new section for describing "Sustainability Policy and Initiatives" has been added to annual securities report. In this section, "governance" and "risk management" are required to be included, while "strategy" and "metrics and targets" are optional depending on their importance.

As a guideline for filling out this section, the 'Principles Regarding the Disclosure of Narrative Information', were established in 2023 as an appendix to the Principles for Corporate Disclosure (the **Disclosure Principles**).⁸⁹ Such disclosure is to be aligned with the four pillars of the TCFD framework, specifically:

- **Governance** – disclosure of governance processes, controls, and procedures to monitor and manage sustainability-related risks and opportunities.
- **Risk management** – disclosure of processes for identifying, assessing, and managing

⁸² Ministry of Finance Order No. 5 of January 30 1973, 企業内容等の開示に関する内閣府令 昭和 48 年 1 月 30 日大蔵省令第 5 号 latest amended by Cabinet Office Ordinance Partially Amending the Cabinet Office Ordinance on Financial Instruments and Exchange Business, etc. and the Cabinet Office Ordinance on Disclosure of Corporate Affairs, etc. Cabinet Office Order No 53 of 2023 金融商品取引業等に関する内閣府令及び企業内容等の開示に関する内閣府令の一部を改正する内閣府令 (令和 6 年内閣府令第 53 号) .

⁸³TCFD Consortium, [Top | TCFD Consortium \(tcfdbank.com\)](https://www.tcfdbank.com/en/news_detail/20081201).

⁸⁴TCFD Consortium, "The TCFD Consortium announces the release of "Guidance on Climate-related Financial Disclosures 2.0 (TCFD Guidance 2.0)" (June 2020) <https://tcfdbank.com/en/news_detail/20081201>.

⁸⁵TCFD Consortium, "The TCFD Consortium announces the release of "Guidance on Climate-related Financial Disclosures 3.0 (TCFD Guidance 3.0)" (October 2022) <https://tcfdbank.com/en/news_detail/22100501>.

⁸⁶FSA, The Code of Conduct for ESG Evaluation and Data Providers, (15 December 2022) <<https://www.fsa.go.jp/news/r4/singii/20221215/07.pdf>>.

⁸⁷ Cabinet Office Ordinance Partially Amending the Cabinet Office Ordinance on Financial Instruments and Exchange Business, etc. and the Cabinet Office Ordinance on Disclosure of Corporate Affairs, etc. Cabinet Office Order No 53 of 2023 金融商品取引業等に関する内閣府令及び企業内容等の開示に関する内閣府令の一部を改正する内閣府令 (令和 6 年内閣府令第 53 号) .

⁸⁸ FSA Weekly Review No.524 (9 February 2023) <<https://www.fsa.go.jp/en/newsletter/weekly2023/524.html>>.

See also S Matsuzoe, H Watanabe, and T Nomura, "Japan: Amendment to the Cabinet Office Order on Disclosure of Corporate Affairs in Japan" *Global Compliance News* (29 April 2023), <https://www.globalcompliancencews.com/2023/04/29/https-insightplus-bakermckenzie-com-bm-capital-markets-japan-amendment-to-the-cabinet-office-order-on-disclosure-of-corporate-affairs-in-japan_04262023/> (hereafter Matsuzoe *et al*).

⁸⁹Financial Services Agency, 記述情報の開示に関する原則 (別添) — サステナビリティ情報の開示について — (translated title is "Document of Principles Regarding the Disclosure of Narrative Information: Concerning Disclosure of Sustainability Information", <<https://www.fsa.go.jp/news/r4/sonota/20230131/07.pdf>>.

sustainability-related risks and opportunities.

- **Strategy** – where material, disclosure of initiatives to address sustainability-related risks and opportunities that may affect the management policies and strategies of the submitting company and its consolidated subsidiaries in the short, medium, and long term; and where a submitting company decides not to disclose after assessing them to be immaterial, the company should disclose the assessment process and reasons for determining immateriality.⁹⁰
- **Indicators and targets** – where material, disclosure of information to assess, manage, and monitor performance with respect to sustainability-related risks and opportunities of the submitting company and its consolidated subsidiaries on a long-term basis; and where a submitting company decides not to disclose indicators and targets, it should disclose the assessment process and reasons for the determination of immateriality.⁹¹

Sustainability information under the new section includes matters related to the environment, society, employees, respect for human rights, anticorruption, governance, cybersecurity, and data security.⁹²

Furthermore, the Disclosure Principles recommend submitting companies to actively disclose information on GHG emissions falling into 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), although imply that it is not mandatory.⁹³

In addition, if directors detect any fact likely to cause substantial detriment to the stock company, they must immediately report such fact to the shareholders or to the company auditors.⁹⁴

Finally, disclosing information beyond that which is required by law is encouraged by the Corporate Governance Code.⁹⁵

3.1.2. *Specific sustainability disclosure requirements for listed entities*

With the publication of a Practical Handbook for ESG Disclosure in March 2020, the Japan Exchange Group, Inc (JPX) and Tokyo Stock Exchange strongly endorsed ESG disclosure, including disclosure of climate-related risks.⁹⁶

The Corporate Governance Code requires companies listed on the Japanese Prime Market to disclose their initiatives on sustainability, to collect and analyse necessary data on climate-related risks, and to enhance the quality and quantity of their disclosures based on the TCFD recommendations.⁹⁷

In 2021, the FSA indicated a movement towards mandating climate-related financial disclosures for companies listed on the Prime Market in its Strategy on Sustainable Finance.⁹⁸ That same year, the FSA and METI announced that TCFD-aligned disclosures would become mandatory in the Prime Market of the Tokyo Stock Exchange (the **Prime**

⁹⁰Financial Services Agency, 'Principles Regarding the Disclosure of Narrative Information' (a provisional translation of the original Japanese report) <<https://www.fsa.go.jp/en/news/2019/20190606-3/01.pdf>>.

⁹¹ *Ibid.*

⁹² *Ibid.* See, Matsuzoe *et al.*, reporting that the regulator plans to further revise the Disclosure Principles, including by clarifying the concept of "materiality" relevant to the disclosure of sustainability information, taking into account domestic and international trends.

⁹³ *Ibid.*

⁹⁴ *Companies Act of Japan*, art. 357(1).

⁹⁵ Tokyo Stock Exchange, 'Japan's Corporate Governance Code Seeking Sustainable Corporate Growth and Increased Corporate Value over the Mid- to Long-Term' (as revised 11 June 2021), at 3, <<https://www.jpx.co.jp/english/news/1020/b5b4pj0000046kxj-att/b5b4pj0000046i07.pdf>>.

⁹⁶ Japan Exchange Group Inc., Practical Handbook for ESG Disclosure (31 March 2020), <<https://www.jpx.co.jp/english/corporate/sustainability/esg-investment/handbook/index.html>>.

⁹⁷ Tokyo Stock Exchange, 'Japan's Corporate Governance Code Seeking Sustainable Corporate Growth and Increased Corporate Value over the Mid- to Long-Term' (as revised 11 June 2021) at 14-15, <<https://www.jpx.co.jp/english/news/1020/b5b4pj0000046kxj-att/b5b4pj0000046i07.pdf>>.

⁹⁸ Japanese Financial Services Agency, The JFSA's Strategy on Sustainable Finance (July 2021-June 2022) (31 August 2021) <<https://www.fsa.go.jp/inter/etc/20211104/01.pdf>>. While the FSA has not yet mandated such disclosures, as its strategy states, it has issued a consultation on draft 'Supervisory Guidance on Climate-related Risk Management and Client Engagement' regarding financial institution's climate risk management.

Market)⁹⁹ effective April 2022, requiring companies listed on the Prime Market (banks, insurance companies, companies with market capitalization of at least 25 billion yen on initial listing) to enhance the quality and quantity of disclosure based on the TCFD or an equivalent framework.¹⁰⁰ The Prime Market includes 68 banks.¹⁰¹

The Sustainability Standards Board of Japan (**SSBJ**) was established to develop Sustainability Disclosure Standards to be applied in Japan and to contribute to the development of international sustainability disclosure standards in conjunction with the establishment of the ISSB. In July 2022, the SBBJ issued its Exposure Drafts of Sustainability Disclosure Standards to be applied in Japan on 29, March 2024.¹⁰² The Exposure Drafts were developed under the assumption that the Sustainability Disclosure Standards issued by the SSBJ would eventually be required, under the Japanese securities laws and regulations, to be applied by companies listed on the Prime Market of the Tokyo Stock Exchange.¹⁰³

In March 2024, the SSBJ launched a consultation on adopting mandatory sustainability disclosure standards modelled on the ISSB standards to create a more robust climate-related disclosure

regime.¹⁰⁴ Under the proposed disclosure framework, all companies listed on the Tokyo Stock Exchange will be subject to mandatory disclosure rules by sometime in the 2030s. The schedule for the phasing in of the mandatory disclosure requirements is based on the companies' market capitalization; companies with a market capitalization of at least 3 trillion yen will be required to issue their first sustainability report for the March 2027 financial year. The final draft of the SSBJ standards is expected to be published by March 2025.¹⁰⁵¹⁰⁶ Currently, discussions are underway regarding the scope of companies that are required to disclose sustainability information, who will guarantee the veracity of the disclosed information, the standards, scope and level of assurance, and the establishment of an assurance system.¹⁰⁷

Furthermore, companies listed on the Prime Market have been required, on a 'comply or explain' basis, to collect and analyze data on the impact of climate change-related risks and earning opportunities on their business activities and profits, and to enhance the quality and quantity of disclosure in accordance with the TCFD recommendations or an equivalent framework.¹⁰⁸ In 2023, JPX reported survey results of 400 surveyed

⁹⁹ The Tokyo Stock Exchange defines the Prime Market as the market oriented to companies which centre their business on constructive dialogue with global investors. Criteria include market capitalization of at least JPY 25 billion on initial listing. As of February 9, 2024, there were 1655 companies listed on the Prime Market; International Monetary Fund, *Japan: Financial Sector Assessment Program-Technical Note on Financial Supervision and Regulation of Climate Related Issues* (13 May 2024), *Japan: Financial Sector Assessment Program-Technical Note on Financial Supervision and Regulation of Climate Related Issues in: IMF Staff Country Reports Volume 2024 Issue 117* (2024).

¹⁰⁰ Regulation Asia, 'Japan's FSA to Mandate Climate Disclosures from April 2022', *ESG Investor* (11 October 2021), <<https://www.esginvestor.net/japans-fsa-to-mandate-climate-disclosures-from-april-2022/>>; *Nihon Keizai Shimbun* (Japanese News Paper), 'Haisyuturyo Sonshitu Eikyo, 4000-Sya ni Kaijigimu, Kinyu-Cho Kikohendomeguri' (morning edn., 6 October 2021) 2 (article in Japanese; the translated title is 'FSA will introduce mandatory disclosure on climate change issues, which influence 4000 companies').

¹⁰¹ See Japan Exchange Group, Tokyo Stock Exchange, 'Listed Company Search', <<https://www2.jpx.co.jp/tseHpFront/JJK020030Action.do>>.

¹⁰² Sustainability Standards Board of Japan, 'The SSBJ issues Exposure Drafts of Sustainability Disclosure Standards to be applied in Japan' (March 29, 2024), <https://www.ssbj-j.jp/en/exposure_drafts/y2024/2024-0329.html>.

¹⁰³ *Ibid.*

¹⁰⁴ Sustainability Standards Board of Japan, 'The SSBJ issues Exposure Drafts of Sustainability Disclosure Standards to be applied in Japan', (29 March 2024), <https://www.ssbj-j.jp/en/exposure_drafts/y2024/2024-0329.html>.

<<https://www.nortonrosefulbright.com/pt-br/knowledge/publications/9261bbcf/review-of-climate-related-financial-disclosure-regimes-around-the-world#section7>>. See also E de Wit et al, 'Review of climate-related financial disclosure regimes around the world', (Norton Rose Fulbright, June 2024), <<https://www.nortonrosefulbright.com/pt-br/knowledge/publications/9261bbcf/review-of-climate-related-financial-disclosure-regimes-around-the-world#section7>>.

¹⁰⁵ T Baines et al, 'Japan mulls ISSB-based sustainability disclosure, mandatory after 2027,' (Mayer Brown, 24 June 2024) <<https://www.mayerbrown.com/en/insights/publications/2024/06/japan-mulls-issb-based-sustainability-disclosure-mandatory-after-2027>>.

¹⁰⁶ Sustainability Standards Board of Japan, 現在開発中のサステナビリティ開示基準に関する今後の計画 [the translated title is "Future plans for sustainability disclosure standards currently under development"] (April 4, 2024) <https://www.ssbj-j.jp/wp-content/uploads/sites/6/2024_0404_ssbj.pdf>.

¹⁰⁷ The Financial System Council under the Financial Services Agency established the Working Group on Sustainability Disclosure (Reporting) and Assurance" on 26 March 2024. See, Financial Services Agency, Press Release (English Summary) on 25 March 2024, <<https://www.fsa.go.jp/en/newsletter/weekly2024/581.html#e10>> 金融審議会「サステナビリティ情報の開示と保証のあり方に関するワーキング・グループ」(第1回)議事次第 (26 March 2024), <https://www.fsa.go.jp/singi/singi_kinyu/sustainability_disclose_wg/shiryuu/20240326.html>.

¹⁰⁸ Joanna Treacy, K&L Gates, 'ESG Regulatory Developments in The UK, Japan, and Hong Kong' (14 January 2022) 12(14) *National Law Review*, <<https://www.natlawreview.com/article/esg-regulatory-developments-uk-japan-and-hong-kong>>. See, the Supplement

companies that make up 76% of the total market capitalization of all companies listed on Tokyo Stock Exchange.¹⁰⁹ It found that of TCFD's 11 recommended disclosures, more than 65% of companies were disclosing governance, and risks and opportunities, and Scope 1 and Scope 2 emissions. 48% were disclosing Scope 3 emissions, and only 47% were integrating climate into their overall risk management strategies or assessing the resilience of their strategies based on scenario analysis.

Effective fiscal year ended March 31, 2023, companies are to provide sustainability disclosure in an Annual Securities Reports, and while there are no disclosure standards with specific disclosure requirements, the FSA has announced that going forward, it is important that this disclosure is made in accordance with specific standards to enhance comparability and provide useful information to investors.¹¹⁰

3.1.3. *Specific sustainability disclosure requirements for financial institutions*

In its 2021 Strategy on Climate Change (the **BoJ Strategy on Climate Change**), the BoJ announced that it will require financial institutions to make disclosures on results and targets on green loans and investments alongside the steps they are taking to meet the TCFD disclosure requirements.¹¹¹ The BoJ Strategy on Climate Change included the launch of a fund-provisioning measure, which requires financial institutions to disclose information

on their efforts to address climate change to receive support from the BoJ; encouraging financial institutions to enhance their TCFD-aligned disclosures and to promote investments in climate-related financial products.¹¹²

On 25 June 2021, the Minister for Financial Services consulted the Financial System Council at the FSA with respect to making the disclosure system enhance constructive dialogue between investors and companies.¹¹³ The Financial System Council set up the FSA Disclosure Working Group, and the Amendment¹¹⁴ is based on its findings that companies that submit securities reports should appropriately disclose their sustainability-related initiatives to make Japanese capital markets more attractive in the global context.¹¹⁵

In October 2021, the Japan TCFD Consortium issued the 'Green Investment Guidance 2.0', with amendments that include transition finance, carbon neutrality, carbon pricing, and climate risk management for investors and other stakeholders.¹¹⁶

3.1.4. *Directors' duties regarding sustainability disclosures*

The Amendment¹¹⁷ introduces a new section describing "*concepts and initiatives regarding sustainability*" to the statutory annual securities report.¹¹⁸ Therefore, companies have statutory duties to disclose sustainability information.

Principle 3.1.3 of Japan's Corporate Governance Code (revised on June 11, 2021).

¹⁰⁹ JPX, Survey of TCFD Disclosure in Japan (FY2022) (January 2023), <<https://www.jpx.co.jp/english/corporate/news/news-releases/0090/tcgh510000005j2x-att/TCFDsurveyen.pdf>>.

¹¹⁰ Financial Services Agency, Secretariat Briefing Pack, Working Group on Disclosure and Assurance of Sustainability-related Financial Information (18 April 2024), 20240418-03.pdf (fsa.go.jp).

¹¹¹ Bank of Japan, The Bank of Japan's Strategy on Climate Change (16 July 2021), <https://www.boj.or.jp/en/announcements/release_2021/rel210716_b.pdf>.

¹¹² Bank of Japan, The Bank of Japan's Strategy on Climate Change (16 July 2021), <https://www.boj.or.jp/en/announcements/release_2021/rel210716_b.pdf>.

¹¹³ Minister for Financial Services, Taro Aso, Consultation paper to Financial System Council (25 June 2021), (document in Japanese) <https://www.fsa.go.jp/singi/singi_kinyu/soukai/siryu/20210625/5.pdf>.

¹¹⁴ Cabinet Office Ordinance Partially Amending the Cabinet Office Ordinance on Financial Instruments and Exchange Business, etc. and the Cabinet Office Ordinance on Disclosure of Corporate Affairs, etc. Cabinet Office Order No. 53 of 2023 金融商品取引業等に関する内閣府令及び企業内容等の開示に関する内閣府令の一部を改正する内閣府令（令和6年内閣府令第53号）.

¹¹⁵ Financial Services Agency, Summary of Report by the Working Group on Corporate Disclosure of the Financial System Council (13 June 2022), <https://www.fsa.go.jp/singi/singi_kinyu/tosin/20220613/03.pdf>. See, Satoshi Agari, Wakako Kasai and Kiyotaka Morioka, 企業内容等の開示に関する内閣府令等の改正 [translated title is] Revision of Cabinet Office Ordinances on Disclosure of Corporate Information, etc."], 2320 Shoji-Homu 4 (March 2023).

¹¹⁶ TCFD Consortium, "The TCFD Consortium announces the release of "Guidance for Utilizing Climate-related Information to Promote Green Investment 2.0 (Green Investment Guidance 2.0)" (5 October 2021), <https://tcfd-consortium.jp/en/news_detail/21100501>.

¹¹⁷ Supra note (86).

¹¹⁸ The Cabinet Disclosure Ordinance Article 15 (1)(a) Form No.3.

Corporate directors have the duty to comply with laws and regulations, the articles of incorporation, and resolutions of shareholders meetings based on Japanese *Companies Act* Article 355. The duty to obey laws and regulations is straightforward. Statutes set out the standards, and if a director violates specific provisions that require a corporation to act, it is a breach of the director's duties, as well as a breach of the statutory obligation by the company.¹¹⁹ Corporate directors therefore have a duty to ensure adequate sustainability disclosure.

Companies are required to disclose specific sustainability information that they have determined to be important, taking into account factors such as their business type and business environment, based on the four components of governance, strategy, risk management, and metrics and targets. When disclosing their approach and efforts regarding sustainability, all companies are required to disclose "governance" and "risk management." As for "strategy" and "metrics and targets," even if a company decides not to include them after determining their importance, it is expected to disclose that decision and the reasons for it.¹²⁰

Sustainability issues are diverse and affect all aspects of a company's business activities. Legal obligations for companies to disclose sustainability information will affect the decision-making process for corporate activities. It puts directors in the position of having to stand by the quality of

the practices that these disclosures reveal, in effect creating a clear obligation to address climate-related risks and opportunities to an adequate standard. Heightened disclosure creates a *de facto* expectation of a higher standard of care.¹²¹ The names of the "Company representative" and "Chief Executive Officer" are required to be listed in the statutory annual securities report.

3.1.5. *Liability risk arising from narrative sustainability disclosures*

The FSA's Guideline for the Disclosure of Corporate Affairs (the **Disclosure Guidelines**)¹²² published in 2018 also clarify that the management of a submitting company may be held liable if it fails to disclose material forward-looking information that could affect investors' investment decisions where said management was aware of said information as of the filing date and withheld said information, and also where the management was not aware of the materiality of the information without reasonable grounds.¹²³

The Disclosure Guidelines was amended in 2023 (the **Amended Guidelines**) and clearly confirms that a submitting company will not be held immediately liable for false statements on account of forward-looking information to the extent that specific, generally reasonable explanations are provided; for example, it was appropriately reviewed internally on a reasonable basis, and where a summary of the review is disclosed with the forward-looking information stating the facts, assumptions

¹¹⁹ The case of the Derivative Action of Nomura Securities, 54-6 Supreme Court Civil Cases Reports Compilation [最高裁判所民事判例集] 1767 (Sup. Ct., July 7, 2000). See, Yoshihiro Yamada, Janis Sarra and Masafumi Nakahigashi, Commonwealth Climate and Law Initiative, *Directors' Duties Regarding Climate Change in Japan* (February 2021) at 18, <<https://law-ccli-2019.sites.olt.ubc.ca/files/2021/02/Directors-Duties-Regarding-Climate-Change-in-Japan.pdf>>.

¹²⁰ Financial Services Agency, 'Principles Regarding the Disclosure of Narrative Information' (a provisional translation of the original Japanese report) <<https://www.fsa.go.jp/en/news/2019/20190606-3/01.pdf>>.

¹²¹ Tomoyo Matsui, サステナビリティ開示の現況 [translated title: Current Status of Sustainability Disclosure] 1598 Jurist 16 (June 2024). See, , Yoshihiro Yamada, Janis Sarra and Masafumi Nakahigashi, Commonwealth Climate and Law Initiative, *Directors' Duties Regarding Climate Change in Japan* (February 2021) at 39, <<https://law-ccli-2019.sites.olt.ubc.ca/files/2021/02/Directors-Duties-Regarding-Climate-Change-in-Japan.pdf>>.

¹²² Financial Services Agency, Points to Note Regarding Disclosure of Corporate Affairs (Guideline for the Disclosure of Corporate Affairs) 企業内容等の開示に関する留意事項について (企業内容等開示ガイドライン)

amended by Cabinet Office Ordinance Partially Amending the Cabinet Office Ordinance on Financial Instruments and Exchange Business, etc. and the Cabinet Office Ordinance on Disclosure of Corporate Affairs, etc. Cabinet Office Order No. 53 of 2023 金融商品取引業等に関する内閣府令及び企業内容等の開示に関する内閣府令の一部を改正する内閣府令 (令和 6 年内閣府令第 53 号) .

¹²³ Financial Services Agency, 「企業内容等の開示に関する内閣府令の一部を改正する内閣府令 (案)」に対するパブリックコメントの概要及びコメントに対する金融庁の考え方 [translated title: Summary of public comments on the "Cabinet Office Ordinance Partially Amending the Cabinet Office Ordinance on Disclosure of Corporate Affairs, etc. (Draft)" and the FSA's View on the Comments] No. 16 <https://www.fsa.go.jp/news/30/sonota/20190131/01_pd_>.

and reasoning process on which it was based.¹²⁴ The background to this amendment is that issuer companies and directors are only held liable to investors if there are false statements about material matters.¹²⁵ Since there may be differences of opinion between stakeholders and management regarding the selection and implementation of sustainability issues, not specifying the issues does not constitute misrepresentation.

3.2. Climate-related disclosures in financial statements

3.2.1. *Climate-related disclosures in financial statements*

Japanese regulators are increasingly requiring companies to disclose climate-related risks. These risks are often reported as 'non-financial information' in annual reports. The Amendment orders companies to report climate-related risk in statutory annual reports as one of sustainable information after determining their importance. See, 3.1.1 3.1.2 of this paper. There are not any frameworks that require companies to disclose climate-related risks and impacts in financial statements. Regulators have not issued guidance or statements regarding climate-related disclosures in financial statements.

3.2.2. *Directors' duties regarding climate-related disclosures in financial statements*

Directors have overall responsibility for ensuring that a company's financial disclosures are accurate, and so may be primarily liable for misleading disclosures made to the market.¹²⁶ Both companies and directors may be subject to sanctions under financial services legislation for failure to comply with disclosure requirements. Unlike general directors' duties, disclosure pursuant to financial

services law is not subject to the business judgment rule; therefore, a court will not consider whether a decision to make or omit a disclosure was "*significantly unreasonable*" but will focus on whether the disclosure was required by law.

There are no reported judgments in respect of litigation against directors relating to climate-related disclosures in financial statements.

3.2.3. *Liability risk arising from financial statements*

The Amended Guidelines clearly confirm that a submitting company will not be held immediately liable for false statements on account of forward-looking information to the extent that specific, generally reasonable explanations are provided, for example, it was appropriately reviewed internally on a reasonable basis, and where a summary of the review is disclosed with the forward-looking information stating the facts, assumptions and reasoning process on which it was based. See 3.1.5.

Reflecting the impact of sustainability issues in financial information may distort information used to evaluate a company's business condition and financial soundness due to the subjective judgment and judgment of management, and there is no current consensus on disclosure standards. For this reason, we have not yet reached a stage where we can discuss the legal issues of not reflecting the impact of sustainability issues in financial information disclosure.

¹²⁴ Financial Services Agency, Points to Note Regarding Disclosure of Corporate Affairs (Guideline for the Disclosure of Corporate Affairs) 企業内容等の開示に関する留意事項について (企業内容等開示ガイドライン) at para 5-16-2 <https://www.fsa.go.jp/common/law/kaiji/230131_kaiji.pdf>. (currently only Japanese version is available). See also, Matsuzoe et al.

¹²⁵ *Financial Instruments and Exchange Act*, Act No 25 of 13 April 1948, 金融商品取引法 (昭和 23 年 4 月 13 日法律第 25 号) Article 21-2, 22.

¹²⁶ Janis Sarra, *Audit Committees and Effective Climate Governance, A Guide for Boards of Directors* (CCLI, December 2020) <<https://law-ccli-2019.sites.olt.ubc.ca/files/2020/12/CCLI-Guide-for-Audit-Committees-on-Effective-Climate-Governance.pdf>>.

4. Biodiversity Risk

Despite having a small land area of about 38 million hectares, Japan has rich biodiversity with a high rate of endemic species.¹²⁷ Japan's capital market and companies face moderate to high dependency on nature, especially in the energy, food, beverages and tobacco sectors. It is estimated that public equities in Japan are particularly exposed to nature-related risks, with 18% (USD 938 billion) of the local stock market's capitalisation compromising companies in sectors with a higher direct dependency on nature.¹²⁸ The CCLI has published a report on how companies in Japan and other jurisdictions may depend on biodiversity for the functioning of their business models.¹²⁹ In particular biodiversity risks may constitute material financial risks which boards are required to consider within the purview of directors' duties.

In Japan, work on nature has been underway for some time in the corporate and financial sectors. The Japanese Business Initiative for Biodiversity (**JBIB**)¹³⁰ was set up as early as 2008 with 15 organisations and now has 39 regular members. The aims of the JBIB include exploring links between business and biodiversity and using that knowledge in business practices, as well as promoting dialogues and collaborations with stakeholders.

The Japanese government, corporates and investors in Japan have also started to address nature degradation and mitigate nature related risks.¹³¹ Nature has risen up the agenda for Japanese policy makers since the COP 15 biodiversity conference in December 2022. Since then, policymakers have pledged to support the private sector in incorporating nature considerations, examine the impact of biodiversity on business activities and encourage dialogue on the issue between financial institutions and corporates.

Whilst still voluntary in Japan, there is significant appetite amongst businesses to adopt the Taskforce on Nature-related Financial Disclosures (**TNFD**). Japanese companies make up the largest cohort of early adopters of the TNFD¹³², accounting for 25% of early adopters globally and Japan has also established a TNFD consultation group, co-convened by Keidanren Committee on Nature Conservation (**KCNC**), Norinchukin Bank, and MS&AD Insurance Group, to bring together private sector organisations to discuss nature-related business and finance issues and the future adoption of the TNFD framework.

The Financial Service Authority (**FSA**) in Japan is also considering the application of the proposed disclosure standards based on the ISSB.¹³³ In April 2024, ISSB announced that two of its research priorities for the next two years will be biodiversity, ecosystems and ecosystem services.¹³⁴ It is foreseeable that the FSA will, in a few years' time apply nature-related financial disclosures to some companies, based on the ISSB standards. Prudent directors would be well advised to consider the relationship between business and nature in their context in advance of the FSA's adoption nature-related financial disclosures.

5. Practical Implications for Directors

Given that Japan's government and regulators have become increasingly emphatic regarding the need for companies and their directors to adopt climate resilience measures in business practices and disclosure, well-counselled boards will:

- a) delegate climate risk identification and evaluation to a clearly-identified team in management that reports directly to the CEO and board;
- b) ensure that the board has effective oversight of management in terms of identifying,

¹²⁷ Convention on Biological Diversity, *Japan – Country Profile* (last accessed on 22 September 2024)

¹²⁸ Asia Investor Group on Climate Change, *Japan's capital market is exposed to nature-related risks: new research by AIGCC*, June 2024

¹²⁹ CCLI, *Biodiversity Risk: Legal Implications for Companies and their Directors*, December 2022.

¹³⁰ Japan Business Initiative for Biodiversity, 2016

¹³¹ Asia Investor Group on Climate Change, *Japan's capital market is exposed to nature-related risks: new research by AIGCC*, June 2024

¹³² Responsible Investor, *Big read: Japan's financial institutions take the lead on nature reporting*, May 2024

¹³³ Responsible Investor, *Big read: Japan's financial institutions take the lead on nature reporting*, May 2024

¹³⁴ Responsible Investor, *ESG round-up: ISSB to start research on biodiversity and human capital*, April 2024

- managing, and disclosing climate-related risks and opportunities;
- c) put on the agenda for the board, within 3 or 6 months, a process to start developing a climate transition roadmap to 2050 with transparent carbon neutrality or reduction targets, with clear interim targets to 2040, 2030, and within the current rolling multi-year strategic plan, and periodically thereafter report back to the board;
 - d) delegate to the appropriate committee(s) of the board, such as risk, audit, legal and governance, scenarios/strategy, nominations/ remuneration, or sustainability/corporate responsibility, the task of translating the long-term strategy into a clear decision-making process for each aspect that is relevant to each committee; and
 - e) discuss with disclosure counsel the most effective means of developing an external engagement and communications plan and how best to engage in effective oversight of rigorous disclosure and accounting.

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