

Standard Corporate Governance Code Addressing Sexual Assault on Minors

Preface

Risk Governance Committee

Japan Association of Corporate Directors (JACD)

Over the past few years, international interest in the need for companies to respect human rights has been increasing. The UN Human Rights Council has endorsed the Guiding Principles on Business and Human Rights, urging all States to create national action plans. The protection and promotion of human rights are integral to achieving the Sustainable Development Goals (SDGs).

The issue of sexual assault of minors by a former representative of an entertainment agency is currently being discussed in Japan. Several companies have terminated their sponsorship contracts with the agency, and the media has suspended the use of the agency's celebrities. We in the business community should recognize that this issue poses a universal and serious challenge to human rights, particularly regarding compliance and governance systems for protecting minors from sexual assault. The question now is what actions should be taken by companies directly or indirectly involved in the sexual assault of minors.

In this context, the "Standard Corporate Governance Code Addressing Sexual Assault on Minors" was drafted by the Risk Governance Committee (Chairperson: Hyo Kambayashi, Vice-Chairperson: Tamaki Kakizaki) of the JACD, in collaboration with Mr. Kozo Takaoka, former President and CEO of Nestlé Japan K.K., and Mr. Kazumasa Miyashita, a lawyer at IGPI Lawyers. This Code is based on the UN Guiding Principles on Business and Human Rights (2011) and the Road Map for the Next Decade of Business and Human Rights (2021).

The UN Guiding Principles on Business and Human Rights, also known as the Ruggie Framework, were adopted by the UN Human Rights Council in 2011 and apply to all States and companies. These principles consist of three pillars: (1) the obligation of States to protect human rights, (2) the responsibility of companies to respect human rights, and (3) access to effective remedies.

The Roadmap for the Next Decade of Business and Human Rights (2021) emphasizes that human rights due diligence be comprehensively integrated into corporate governance and culture and included in business models and strategies in order for companies to effectively fulfil their responsibility to respect human rights. It also highlights the need to strengthen the bond between sustainability management and human rights as stakeholders' interest in climate change and sustainability issues increases.

This Code primarily focuses on how companies can fulfill their responsibility to respect the human rights of minors. Beyond that, it also encourages companies to continue fulfilling their corporate responsibility to respect human rights over time.

(Individuals who were involved in drafting this Code, honorifics omitted)

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Standard Corporate Governance Code Addressing Sexual Assault on Minors

Basic Principles

1. Respect for the Human Rights of Minors

Companies must respect the human rights of minors and recognize that sexual assault on minors is a grave human rights violation, often referred to as "murder of the soul."

Companies should address all adverse impacts on the human rights of minors.

2. Corporate Responsibility to Respect the Human Rights of Minors

As part of a company's responsibility to respect the human rights of minors, it should take the following actions:

1. Avoiding causing or contributing to adverse impacts on the human rights of minors through its activities and addressing such impacts should they occur.
2. Preventing or mitigate adverse impacts on the human rights of minors directly connected to the operations, services, or products of the company through business relationships, even if it is not contributing to those impacts.

3. Policies and Processes to be Established by the Company

To fulfill their responsibility to respect the human rights of minors, companies should clarify and publicly disclose policies and commitments suited to their scope and circumstances.

They should also devise and implement processes, including human rights due diligence, to address adverse impacts and risks to the human rights of minors that may arise.

4. Remediating Adverse Impacts

When a company is found to have caused or contributed to adverse impacts on the human rights of minors, it should take corrective action or cooperate in remediating the adverse impact through appropriate processes.

5. Relief

Companies should establish effective operational-level grievance mechanisms (OLGM), such as a Reporting and Response System, when they are found to be causing or contributing to adverse impacts on the human rights of minors. Such mechanisms should be in place to provide remedies and cooperate in implementing remedies.

Chapter 1: Respect for the Human Rights of Minors

Basic Principle 1

Companies must respect the human rights of minors and recognize that sexual assault on minors is a grave human rights violation, often referred to as "murder of the soul."

Companies should address all adverse impacts on the human rights of minors.

Commentary:

The UN Guiding Principles on Business and Human Rights (the "Guiding Principles"), formulated by the United Nations Human Rights Council in 2011, state that "adverse human rights impacts" should be identified and assessed in order to gauge human rights risks (see Guiding Principle 18). Sexual assaults against minors, often referred to as "murder of the soul," must be recognized as the most "severe" of impacts or ones "where delayed response would make them irremediable" (see Guiding Principle 24). Such impacts must be recognized as a human rights violation of the highest priority.

Respecting the human rights of minors by companies means that every member of the board of directors, executive management, officers, and employees must uphold these rights. Moreover, this commitment should be communicated to society and business partners. "Respect" in this context goes beyond mere tacit awareness of the importance of human rights; it means avoiding violations of human rights and addressing the adverse impacts on human rights with which the company is involved (see Guiding Principle 11).

Addressing the adverse impact on the human rights of minors calls for taking appropriate measures to prevent, mitigate, and, where appropriate, remedy all violations of the human rights of minors, including sexual assault and human trafficking.

Supplementary Principle 1-1: Human Rights of Minors

The responsibility of companies to respect the human rights of minors is based on internationally recognized human rights standards, including, at a minimum, those outlined in the International Bill of Human Rights and the International Labor Organization Declaration on Fundamental Principles and Rights at Work. If the level of human rights guaranteed by law or industry practices in the country or region in which the company is located does not meet the standard of internationally recognized human rights, the company shall seek ways to maximize respect for the latter.

Chapter 2: Corporate Responsibility to Respect the Human Rights of Minors

Basic Principle 2

The responsibility to respect the human rights of minors requires companies to take the following actions:

1. Avoiding causing or contributing to adverse impacts on the human rights of minors through their activities, and addressing such impacts should they occur.
2. Preventing or mitigate adverse impacts on the human rights of minors directly connected to the operations, services, or products of the company through business relationships, even if it is not contributing to those impacts.

Commentary:

Companies may potentially be involved in adverse impacts on the rights of minors through their own activities or as a result of their business relationships with other parties. "Activities" of companies are understood to include both intentional and unintentional actions, and "business relationships" encompass relationships with trading partners, organizations in the value chain, and any other non-State or State entity directly linked to its operations, products, or services.

The relationship between corporate activities and adverse impacts on human rights can be categorized into (i) cases where corporate activities cause adverse impacts on human rights (causal), (ii) cases where corporate activities contribute to adverse impacts on human rights (contributory), and (iii) cases where corporate operations, products, or services are directly linked to adverse impacts on human rights (directly linked). The actions required of the company differ in each of these cases (see Guiding Principle 19).

An example of directly linked impacts in (iii) above would be when a minor who is a celebrity is directly affected by sexual assault by the talent agency to which he or she belongs. Major advertising agencies involved in the hiring of that celebrity, media companies broadcasting the celebrity's appearances or performances, and corporate sponsors supporting those activities are companies with a "business relationship." They must recognize the possibility that adverse impacts on the human rights of minors may be directly linked to their own operations, products, or services. These partnering companies may likely be involved in adverse impacts on the human rights of minors as a result of their business relationship, and they should also prevent or mitigate such adverse impacts on human rights. Moreover, (iii) directly linked impacts and (ii) contributory impacts are relative. Depending on the degree and foreseeability of adverse impacts on human rights violations, (ii) contributory

impacts may also be identified, and remediation may be required as described in Supplementary Principles 3-4.

Supplementary Principle 2-1: Scope of Companies Respecting the Human Rights of Minors

The responsibility to respect the human rights of minors applies to all companies, regardless of their size, industry, business circumstances, ownership, and organizational structure. However, the scale and complexity of measures taken by companies to fulfill their responsibility may vary depending on these factors and the severity of adverse impacts on human rights caused by companies.

Chapter 3: Policies and Processes to be Established by Companies

Basic Principle 3

To fulfill the responsibility of respecting the human rights of minors, companies should clearly establish and publicly disclose policies and commitments appropriate to their size and circumstances. In addition, they should devise and implement necessary processes, primarily focusing on human rights due diligence, to address the potential adverse impacts and risks to the human rights of minors that may arise in various situations.

Supplementary Principle 3-1: Commitment

Companies should establish a commitment based on a policy to respect the human rights of minors. In order to inculcate the responsibility of respecting the human rights of minors, companies should publicly disclose and clearly state their commitment to fulfilling this responsibility, with the commitment in question by meeting the following requirements:

- i. The commitment is approved by the board of directors or other top management bodies.
- ii. The commitment is informed by relevant expert advice from both internal and external sources.
- iii. The commitment clearly specifies a company's stance on respecting the human rights of minors to employees, business partners, and other stakeholders directly involved in its operations, services, or products (for example, a clear policy of zero tolerance, such as not conducting any business with companies involved in sexual assault against minors).
- iv. The commitment is publicly available and thoroughly communicated both internally

and externally to all employees, business partners, and other stakeholders. In addition, the company shall educate and train its employees and stakeholders to raise awareness about identifying and preventing sexual assault against minors.

- v. The commitment is reflected in a company's business policies and procedures to ensure it is inculcated throughout the company.
- vi. The commitment clearly specifies measures to respond to confirmed violations of minors' human rights, such as suspension of transactions or contract termination, as terms of contracts.

Supplementary Principle 3-2: Due Diligence regarding the Human Rights of Minors

Companies should continuously conduct due diligence and processes regarding the human rights of minors to identify, prevent, mitigate, and address adverse impacts on the human rights of minors.

Commentary:

- i. **Scope:**

Due diligence regarding the human rights of minors should focus on the adverse impacts on the human rights of minors directly related to a company's operations, services, or products that are caused by, contributed to, or linked to its activities or through its business relationships. The complexity of this process can vary depending on the size of the company, the risks associated with its impact on human rights, as well as the nature and circumstances of its operations. Recognizing that the risks to the human rights of minors can change over time in line with changes in a company's operations and circumstances, this process should be ongoing.
- ii. **Risks to the Human Rights of Minors and Enterprise Risk Management**

Human rights due diligence should not only identify and address significant risks to a company itself but should also encompass risks to rights holders, including minors, and should be integrated into enterprise risk management for a wide range of operations.
- iii. **Complicity in and Responsibility for Risks to the Human Rights of Minors**

When a company is contributing to, or seen as contributing to, or facilitating adverse impacts on the human rights of minors by others, issues of complicity may arise (see Guiding Principle 17). In terms of criminal liability, complicity, whether it involves incitement or aiding and abetting under criminal law, requires intent. In

terms of civil liability, however, negligence is grounds for liability, and one must recognize that failure to actively investigate could constitute negligence, particularly in cases of serious human rights violations against minors, such as sexual assault.

Principle 3-3: Assessment of Human Rights Risks for Minors

Companies should establish the following processes to remediate adverse impacts on human rights that they have caused or contributed to. That said, the process of assessing the impact on the human rights of minors can be integrated into other processes such as risk assessment and evaluation of impacts on the environment and society.

- i. Identification of Human Rights Risks for Minors
To assess human rights risks for minors, companies should identify and evaluate the actual or potential adverse impacts on the human rights of minors that may occur through their activities or as a result of their business relationships. In this process, the following steps should be taken:
 - a) Drawing on both internal and independent external sources for their expertise regarding the human rights of minors.
 - b) Incorporating meaningful consultations with potentially affected groups and other relevant stakeholders in accordance with the size of the company and the nature and circumstances of its operations.
- ii. Assessment of Human Rights Risks for Minors
The first step in conducting due diligence on the human rights of minors is to identify and assess the nature of actual or potential adverse impacts on the rights of minors in which a company is involved. During this process, companies should pay special attention to the unique impacts on the rights of minors who may be socially vulnerable or at risk of marginalization. A point worth noting is that there may be different risks for females and males, as well as for adults and minors.

Principle 3-4: Response to Human Rights Risks for Minors

To prevent and mitigate adverse impacts on the human rights of minors, companies should incorporate the conclusions of their impact assessments into all relevant internal organizational processes and take appropriate measures. The appropriate measures to be taken vary depending on the following factors:

- i. Whether the company has caused or contributed to adverse impacts or it has been involved in such impacts due solely to a direct connection to its operations, services, or products through its business relationships.

- ii. The extent of the company's influence in addressing adverse impacts.

Commentary:

- i. Contributing to Adverse Impacts

In cases where a company is contributing to adverse impacts as described in (ii) above, i.e., the company is contributing to or potentially contributing to adverse impacts on the human rights of minors, the company should take necessary measures to prevent or stop contributing to those impacts and use its influence to minimize any remaining impacts. A company has such influence only if it has the ability to change the wrongful practices of the entity causing harm.

- ii. Involvement through Business Relationships

In cases where a company is directly linked to adverse impacts as described in (iii) above, i.e., where a company has not contributed to adverse impacts on the human rights of minors but those impacts are directly related to the company's operations, services, or products through its business relationship with another entity, the company should consider its influence over the entity in question, the extent to which the business relationship is significant to the company, the severity of the violation, and whether termination of the business relationship with that entity would result in adverse impacts on human rights in order to determine the appropriate action.

- iii. Exercising Influence to Prevent or Mitigate Adverse Impacts

If a company has the influence to prevent or mitigate adverse impacts, it should exercise that influence. If a company lacks influence, it should explore ways to increase it. For example, this can be achieved through capacity building for the relevant entities or providing other incentives. Collaborating with other actors may also help increase influence.

- iv. Termination of Business Relationships

There may be situations where a company lacks influence to prevent or mitigate adverse impacts and it cannot increase its influence. In such cases, the company should consider terminating the business relationship after assessing the potential adverse consequences for human rights, taking into account reliable evaluations of the situation, corrective actions, and remedial measures for the entity causing harm. The company should also ensure that the conditions for such assessments

are met, and if the duration of the remediation exceeds what is normally expected, termination of the business relationship should be considered.

Principle 3-5: Tracking the Effectiveness of the Company's Response

A company should track the effectiveness of its response to ensure that adverse impacts on the human rights of minors are being addressed. Tracking should be based on appropriate qualitative and quantitative indicators and should include feedback from affected stakeholders, both internal and external, as well as the use of fact-finding surveys and audits.

Principle 3-6: External Reporting of the Company's Response and Maintaining Confidentiality

To fulfill their responsibility to address impacts on the human rights of minors and to provide transparency and accountability to stakeholders, companies should be prepared to publicly disclose this information when necessary. This includes formally reporting on their efforts to address the concerns raised by affected stakeholders or their representatives and the risks of serious harm to human rights arising from their operations or business conditions.

Companies should provide sufficient information to assess whether their responses to specific cases involving impacts on the human rights of minors were appropriate. However, they should not risk disclosing sensitive information related to affected stakeholders, employees, and commercial transactions while doing so.

Chapter 4: Remediating Adverse Impacts

Basic Principle 4

When a company is found to have caused or contributed to adverse impacts on the human rights of minors, it should take corrective action or cooperate in remediating the adverse impacts through appropriate processes.

Commentary:

Principle 4 is designed to address cases of corporate activities that are (i) causal or (ii) contributory to adverse impacts. In these cases, besides stopping or preventing adverse impacts, companies are required to remediate the actual adverse impacts that have occurred. In cases where corporate activities are (ii) contributory to adverse impacts, they

should leverage their "influence" as much as possible to mitigate the remaining impacts, and particularly to change unjust practices of (i) companies causing adverse impacts (see Guiding Principle 19).

In the case where corporate activities are (iii) directly linked to adverse impacts, i.e., where a company is neither causing nor contributing to adverse impacts but is directly linked to such impacts through its operations, services, or products in business relationships, the responsibility to respect human rights does not necessarily require the company itself to take corrective action. Instead, it may involve the company acting to remediate those adverse impacts. For guidance on how (iii) companies that are directly linked to adverse impacts should respond, see Supplementary Principle 3-4.

Chapter 5: Relief

Basic Principle 5

Companies should establish effective OLGMs, such as reporting and response systems, when they are found to be causing or contributing to adverse impacts on the human rights of minors. Such mechanisms should be in place to provide remedies and cooperate in implementing remedies.

Commentary:

An operational-level grievance mechanism (OLGM) is a mechanism for handling complaints established within a company or organization that differs from existing judicial grievance processes, such as courts. In this context, it functions as a reporting and response system. When a company's operations, services, or products are directly related to adverse impacts, the company is not necessarily required to lead the remediation efforts. Even in such cases, however, the company should strive to prevent or mitigate those adverse impacts by encouraging other companies that may have caused or contributed to those adverse impacts to remediate them.

Moreover, if a company is aware of a prolonged adverse impact but fails to encourage its remediation, it may be deemed to be complicit or exacerbating that adverse impact. In such cases, the company should pursue remediation and also, depending on the circumstances, cooperate in implementing relief measures, possibly involving the relevant industry as a whole.

Supplementary Principle 5-1: Reporting and Response System

The Reporting and Response System is an OLG, and it should be directly accessible to individuals and local communities who have been or may be adversely affected by a company's actions. This system is typically operated either by the company alone or in collaboration with relevant stakeholders. It may also involve external experts or organizations acceptable to both parties. Creating this system will allow companies to identify and assess issues related to adverse impacts and to work directly to alleviate harms.

Commentary:

The Reporting and Response System has two essential functions concerning a company's responsibility to respect the human rights of minors.

First, it helps to identify adverse impacts on the human rights of minors as part of a company's ongoing human rights due diligence. It does so by providing a means for those directly affected or potentially affected by the company to express their concerns. Analyzing trends and patterns in complaints and reports allows companies to identify organizational issues and adjust their practices accordingly.

Second, this system enables the timely and direct remediation of adverse impacts once they are identified through complaints or reports. This can prevent greater harm and worsening issues.

Supplementary Principle 5-2: Eight Requirements for the Reporting and Response System

In order to ensure the effectiveness of an OLG, the Reporting and Response System should meet the following requirements:

- i. **Legitimacy:** It should be trusted by stakeholder groups who are system users and it should be responsible for the fair conduct of the complaint process.
- ii. **Accessibility:** It should be acknowledged by all stakeholder groups who are system users and provide appropriate support to individuals facing special barriers when accessing the system.
- iii. **Predictability:** The Reporting and Response System should indicate a reference period for each stage, establish clear and well-known procedures, clearly explain available processes and types of results, and have the means to monitor their execution.
- iv. **Fairness:** It should ensure that harmed parties have legitimate access to sources of

information, advice, and expertise necessary to participate in the reporting and response process under fair conditions where they are informed and mutual respect is maintained.

- v. Transparency: It should continually inform reporting parties about the status of their reports, build trust in its effectiveness, and provide sufficient information about the system's performance to protect the public interest in times of crisis.
- vi. Compliance with Human Rights: It should ensure that outcomes and remedies comply with internationally recognized human rights.
- vii. A Source of Continuous Learning: It should make use of available means to improve the system and clearly identify lessons to prevent future complaints and harm.
- viii. Based on Engagement and Dialogue: It should focus on dialogue as a means to discuss and resolve complaints, involving stakeholder groups who are system users in the design and performance of that system.

Commentary:

Stakeholders are the intended users of the Reporting and Response System. When stakeholders choose to use it, the Reporting and Response System must live up to their trust. Regularly sharing information with the parties about the status of the response to each report is essential to maintaining the credibility of the process. Transparency regarding the performance of the Reporting and Response System to a wide range of stakeholders through statistics, case studies, or detailed information about the handling of specific cases is important to demonstrating its legitimacy and gaining widespread trust. At the same time, confidentiality regarding dialogues between parties and personal information should be strictly maintained as necessary.