

Initiatives for BCP by Government Agencies and Companies in Japan

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I. Introduction

Japan is a country highly prone to natural disasters, including typhoons, floods, and earthquakes, which can occur at any time. It is essential to prepare for disasters in advance, and business continuity planning (BCP) exist for this very purpose. BCP refers to a plan that stipulates how to respond to ordinary times and emergencies so that an organization like a company can continue its business in the event of an emergency such as a disaster.

Organizations that should establish BCP include not only national and local administrative agencies, but also companies. From the perspective of the author specializing in commercial law and company law, this paper presents the efforts of government agencies (including the Financial Services Agency (FSA)) and companies (including corporations) regarding BCP in Japan¹⁾.

II. BCP as determined by the FSA

1. Basis for establishing BCP by government offices

It is necessary to plan how to respond so that national and local government agencies and companies can function appropriately even in the event of a disaster. The Basic Act on Disaster Management requires designated administrative agencies such as the Cabinet Office and the FSA to formulate disaster management operation plans (Article 36, Paragraph 1 of the Basic Act on Disaster Management). The purpose of this Act is to protect

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1) For the consideration of Japanese Law, see Chise Onodera(ed.), 'A Study of Basic Guidelines for Reconstruction' Nihon Hogaku Vol. 90 No. 4 (2025) pp. 51-86.

the national land and the lives, bodies, and property of citizens from disasters by formulating basic principles, establishing the necessary system through input by the national government, local governments, and other public institutions and, in addition to clarifying where responsibilities lie concerning disaster management, drawing up a basic policy on the necessary disaster control measures. This includes the formulation of disaster management plans, disaster management, emergency disaster control measures, disaster recovery efforts, and financial measures concerning disaster management. These develop and promote a comprehensive and systematic disaster management administration and contribute to the preservation of social order and securing public welfare (Article 1 of the Basic Act on Disaster Management).

Based on this disaster management operation plan, the FSA has established guidelines for disaster management (the FSA Disaster Management Operation Plan²⁾). Finance is a device that plays a circulatory role in the economy and people's lives by properly supplying funds, and it is necessary to ensure that the circulation of funds can be carried out smoothly even in emergencies such as disasters. In addition, the FSA has established guidelines for BCP³⁾.

This paper analyzes the outline of the BCP guidelines established by the FSA and the responses of the FSA and financial institutions to them. Specifically, it deals with the FSA Disaster Management Operation Plan and the outline of the FSA's version of the BCP.

2. FSA's goals and BCP

Even in the midst of rapid changes in the financial environment, the FSA aims to increase the welfare of the people through sustainable growth of companies and the economy and stable asset formation by balancing (1) the stability of the financial system and the demonstration of financial intermediary functions, (2) user protection and user convenience, and (3) market fairness and transparency and market vitality. The remit of the FSA is to work on financial administration⁴⁾.

2) Financial Services Agency Disaster Management Operation Plan (https://www.fsa.go.jp/news/r2/sonota/20210531-2/disaster_management_operation_plan_202105.pdf) [Last viewed December 25, 2025].

3) For the BCP (Business Continuity Plan) refer to, <https://www.fsa.go.jp/policy/bcp/> [Last accessed November 1, 2025]. These guidelines include the Financial Services Agency's BCP (Responses to an Earthquake Directly Under the Tokyo Metropolitan Area) and the Financial Services Agency's BCP (Novel Influenza Response).

4) For an overview of the Financial Services Agency, refer to <https://www.fsa.go.jp/common/about/fsainfo.html> [Last accessed November 1, 2025].

The FSA’s BCP has set a general outline in the disaster management operation plan mentioned in 1, and has individually established plans for responses to an earthquake directly under the Tokyo metropolitan area and responses to new strains of influenza. Here we will look at the FSA Disaster Management Operation Plan and responses to an earthquake directly under the Tokyo metropolitan area.

3. FSA Disaster Management Operation Plan

(1) Outline of the FSA Disaster Management Operation Plan

The outline of the FSA Disaster Management Operation Plan (FSA Instruction No. 25, January 6, 13) is as follows.

Chapter 1 General Provisions
Chapter 2 Establishment of a Disaster Management System
Chapter 3 Disaster Emergency Measures and Disaster Recovery
Chapter 4 Disaster Management Enhancement Plan for the Nankai Trough Earthquake
Chapter 5 Earthquake Disaster Management Measures Promotion Plan for Trench-type Earthquakes Around the Japan Trench and Kuril Trench
Chapter 6 Criteria for Preparation of Regional Disaster Management Plans
Chapter 7 Supplementary Provisions

The purpose of the FSA Disaster Management Operation Plan is to establish the basics of “measures to be taken regarding disaster management” for the affairs under the jurisdiction of the FSA, and to set out the standards for the preparation of regional disaster prevention plans (Article 1 of the FSA Disaster Management Operation Plan)⁵⁾. Measures to be taken regarding disaster management include measures necessary for the FSA and financial institutions to recover from damage as soon as possible and to continue the minimum level of business necessary to maintain the functioning of the financial system in the event of a disaster, etc., and the addressee of the measures shall be the FSA and other administrative agencies and financial

5) The Financial Services Agency’s Disaster Prevention Business Plan based on the provisions of Article 36, Paragraph 1 of the Framework Act on Disaster Countermeasures and Article 6, Paragraph 1 of the Act on Special Measures for Large-scale Earthquake Countermeasures.

institutions. The reason for these measures is to maintain a mechanism for the FSA, which serves as a command tower for recovering from damage and continuing operations after a disaster, and for financial institutions and others to provide funds through finance for recovery from disasters, so as to run the economy smoothly.

Financial institutions, etc. are financial institutions that handle deposits, etc., banking associations, etc. (associations whose members are financial institutions that handle deposits, etc.), insurance companies, small short-term insurance companies, electronic receivables record institutions, financial instruments business operators, financial instruments exchanges, financial instruments exchange associations, custodian and transfer institutions, transfer institutions, and clearing institutions (FSA Disaster Management Operation Plan Article 2, Paragraph 2, Item 2). Banks, financial instruments institutions, and settlement institutions will be heavily involved in the movement of funds, and insurance companies will be involved in reconstruction by paying insurance claims for damages.

(2) System development in the FSA Disaster Management Operation Plan

The FSA Disaster Management Operation Plan stipulates the development of systems in peacetime (Chapter 2) and the development of systems in an emergency (Chapters 3-5).

Regarding system development in peacetime, this mainly stipulates the response within the FSA, but its feature is that it stipulates that it will cooperate with financial institutions, etc. For example, it stipulates that the Bank of Japan and other related institutions should cooperate (Article 4, Paragraph 3 of the FSA Disaster Management Operation Plan), confirm contact methods with financial institutions in the event of a disaster (Article 6, Paragraph 3 of the FSA Disaster Management Operation Plan), and establish a system to enable the continuation of operations to the minimum level necessary for early recovery of damage and maintenance of the financial system in the event of a disaster (Article 8-2 of the FSA Disaster Management Operation Plan).

Regarding system development in an emergency, the FSA is required to provide information collection measures by implementing emergency measures and requesting reports from financial institutions. Measures related to the financial instruments trading business (Article 13 of the FSA Disaster Management Operation Plan) and earthquake countermeasures will also be established. The main issues for financial instrument transactions are the handling of financial products and the operation of the exchange's network system. Here, we will take up measures related to finance (Article 12 of the FSA Disaster Management Operation Plan) (earthquake counter-

measures will be described later in 4).

The priority items of the financial measures (Article 12 of the FSA Disaster Management Operation Plan) are as follows.

(i) Measures related to disaster-related loans (taking timely and accurate measures in consideration of the expediency of disaster victims, such as the establishment of a loan counseling center, simplification of examination procedures, speeding up loans, and deferring loan repayments, taking into account the situation of the disaster and the demand for emergency funds, etc.)

(ii) Measures for refund of deposits and premature cancellation (for depositors who have lost their deposit passbooks, notification seals, etc., to facilitate the refund of the savings of the victims by presenting a disaster certificate or other simple confirmation methods in accordance with the actual situation, and time deposits for disaster victims for whom it is deemed there is no alternative. The item describes taking appropriate measures such as mid-term termination of fixed savings funds, etc., or responding to loans using the deposits as collateral)

(iii) Measures related to bill exchange, businesses closed for holidays, etc. (referring to taking measures that take into account the expediency of disaster victims, such as exchanging bills or disposing of non-delivery in the event of a disaster, giving appropriate consideration to the business of financial institutions closed for holidays or outside of normal hours, and measures that take into account the expediency of disaster victims, such as refunding deposits at automatic teller machines, etc., with due consideration for the safety of customers and employees, even if business cannot be conducted over the counter).

Of these, (i) and (ii) are necessary measures to rebuild people's lives, and specific measures will be taken by the FSA to encourage financial institutions to respond to loans and deposits. (iii) is a measure required for business payments and online payments. Bill exchanges are settled at an electronic clearing house, and whether the online system is in operation or not, the technical problem of making an exchange based on paper bills arises. Automated teller machines will also depend on the operation status of online payments.

Since the FSA Disaster Management Operation Plan is stipulated only in general terms, it is not clear what will happen to the online system. However, since financial transactions and financial instruments transactions are online and data is connected through networks, it is necessary to establish a system to ensure that the network can be quickly restored for business continuity.

4. FSA's BCP Responses to an Earthquake Directly under the Tokyo Metropolitan Area

The FSA's BCP (Tokyo Metropolitan Earthquake Response, June 23, 2023) was formulated to maintain the function of the financial system, which is the basic infrastructure of the Japan economy, in the event of frequent earthquakes in Japan⁶⁾.

The basic policy of the FSA's BCP is to promote business continuity based on the following policies (i) and (ii) in order to maintain the functions of the financial system in the event of a possible disaster, etc.

(i) The FSA will strive to preserve the financial assets of the people, avoid as much as possible the interruption of people's lives and private financial and economic activities, and strive for their early recovery.

(ii) In order to ensure the business continuity system of the FSA, it will ensure the safety of employees, establish the necessary enforcement system, and appropriately allocate administrative resources.

The outline of the FSA's BCP Responses to an Earthquake Directly under the Tokyo Metropolitan Area is as follows.

Chapter 1 Scope of Application, Expected Disasters and Damages, etc.
Chapter 2 Response in the Event of a Disaster
Chapter 3 Preparation for Business Continuity
Chapter 4 Review of Education, Training, and Plans

Looking at the countermeasures, immediately after the earthquake, the government specifies the time schedule for confirming and reporting safety, establishing a disaster response headquarters, gathering personnel, establishing an information management system, establishing an information dissemination system, disseminating information to overseas officials, and disseminating information related to the disaster situation of financial institutions to the persons and the agency in charge.

First, as a plan for employees within the FSA, it clarifies what should be done as an initial response for employees. Since it is impossible to tell when an earthquake will occur, the FSA stipulates measures not only during working hours but also outside working hours, including information for those who have difficulty attending the disaster response headquarters.

6) Financial Services Agency BCP 'Earthquake Response Directly Under the Tokyo Metropolitan Area' (<https://www.fsa.go.jp/policy/bcp/07.23.pdf> [Last viewed November 1, 2025]).

The FSA will establish a disaster response headquarters to build a system to respond to disasters, and establish a system for collecting and disseminating information sequentially.

In terms of the FSA's external relations, the following items stipulated in the implementation of emergency priority operations, etc. (Chapter 2, 3(2)) are important.

· How to check information at financial institutions
· Dissemination of information to the public, financial institutions, overseas authorities, etc.
· Operations related to requests for disaster victim support from financial institutions
· Plans related to the management and operation of EDINET

With regard to external countermeasures, the FSA will collect accurate information and provide it in conjunction with the Government Disaster Response Headquarters, the Ministry of Finance, the Bank of Japan, overseas authorities, etc. It will also collect information on the damage situation from financial institutions, exchanges, payment institutions, transfer institutions, etc., and provide support for maintaining and restoring their functions.

This guideline is based on the premise that the FSA building itself is earthquake-resistant. Information will be collected, opinions exchanged, and information disseminated within the FSA. However, the level of damage assumed by this guideline is an earthquake directly under the southern part of the city center with a magnitude of 7.3. It is also important to take measures in case the FSA itself is physically damaged or if employees are unable to attend the office due to damage to the transport infrastructure. In addition, now that financial transactions and financial instruments transactions have become online, it is necessary to further consider the extent to which measures to avoid damage to financial transactions and online trading centers for financial transactions and financial instruments transactions (construction of backup centers) can be further examined in response to earthquakes directly under the city center. If it is difficult to respond within the FSA, it will be necessary to establish a backup system and improve external relations in the event of recovery.

III. BCP specified by the enterprise

1. The necessity of formulating a BCP and the company's legal response

To what extent should companies formulate BCP?⁷⁾ If the formulation of a BCP is mainly in response to natural disasters, the occurrence of damage is considered to be caused by force majeure, and therefore may not be exempt from liability (proviso to Article 415, paragraph 1 of the Civil Code, etc.). In the first place, if a BCP is not formulated to prepare for damages incurred based on natural disasters, would directors and other managers be held legally liable based on this deficiency in planning?

In this regard, directors have a duty of care (Article 330 of the Companies Act, Article 644 of the Civil Code), and if there is negligence in performing their duties, such as violating that obligation, they may thus be liable (Articles 423 and 429 of the Companies Act, etc.)⁸⁾. One example of negligence would be when a director does not take any measures as the manager of a company while recognizing the need to formulate countermeasures in anticipation of the occurrence of a natural disaster, or fails to take measures to protect the safety of employees (the duty of safety consideration⁹⁾). As mentioned in I, a BCP is a plan to arrange how to respond both in normal times and emergencies so that the organization can continue its business in the event of an emergency such as a disaster. Therefore, if such a plan is made, it will be possible to avoid or reduce the occurrence of damage.

The development of a BCP is related to the creation of an internal control system. Internal control system¹⁰⁾ is a risk management system established according to the size and characteristics of the company's business in order to ensure that the company's business execution is carried out appropriately and efficiently. Companies that are required to establish an internal control system within a corporation are large companies and companies that establish committees (Companies Act Article 348, Paragraph 3, Items 4 and 4 (Companies without a board of directors as a large company), Article 362, Paragraph 4, Items 6 and 5 (a company with a board of directors that is a large company), Article 399-13, Paragraph 1, Item 1 (c) (Company with an Audit and Supervisory Committee), and Article 416, Paragraph 1, Item

7) See Yoshihiro Moriwaki, 'Business Continuity Plan and Corporate Law : Introductory Study Primarily about Relation with Duty or Liability of the Management' The Bulletin of Takaoka University of Law Bulletin No. 36 (2025) p. 97

8) See Takahiro Matsushima & Takuya Ohkubo (eds.), Lectures on Commercial Law 1: Company Law (2nd ed.), (Chuokeizaisha, 2023) pp. 193-214.

9) The duty of safety consideration is the obligation of the employer to take care to protect the life, health, etc. of workers from danger (the Supreme Court Judgment Dated February 25, 1975, Supreme Court Civil Case Reports, Vol. 29, No. 2, p. 143).

10) See Wataru Tanaka, Corporate Law (5th ed.), (University of Tokyo Press, 2025), p. 292.

1 (Companies with a Nominating Committee, etc.)). In a company that is required to do so, failure to establish a system will amount to a violation of laws and regulations (violation of the duty of care (Article 330 of the Companies Act, Article 644 of the Civil Code)).

The matters to be developed as an internal control system are stipulated in the Ordinance of the Ministry of Justice, which requires the establishment of the following (i) and (ii). (i) Systems regarding retention and management of information in relation to the execution of the duties of a director of the stock company and (ii) rules and other systems related to management of the risk of loss of the stock company (Article 100, Paragraph 1, Items 1 and 2 of the Regulations for Enforcement of the Companies Act, etc.). The development of systems such as information preservation and management and loss crisis management is a serious problem when companies and other organizations encounter disasters and other emergencies. For this reason, it can be said that the establishment of a BCP so that the business of the organization can continue is a matter that should be developed as an internal control system.

For example, if a company has not established an internal control system to respond to misconduct in the past, it is highly likely that it will violate the internal control system and violate the duty of care in good management. The same can be said about the formulation of BCP.

Is it thus unnecessary for small and medium-sized companies to establish an internal control system to create a BCP under the Companies Act? The formulation of a BCP is to create a plan that allows the organization to continue its business in the event of an emergency. While a large company can respond to emergencies in terms of funds and human resources, emergencies can have a significant impact on small and medium-sized companies and it can therefore be said that there is a considerable need for them to formulate BCP.

Companies that should establish an internal control system are required to formulate BCP, but there are disparities in size even among large companies, such as the location of the head office (whether or not it is in a disaster-prone location) and the number of branches and sales offices. Therefore, the level of BCP determined by the directors is part of the management

decision of the directors¹¹⁾. In formulating a BCP, each company should consider it individually as a matter of management decision and formulate a plan that it deems appropriate.

2. Corporate awareness of BCP

The government offices mentioned in the second section are highly public and are regulated by law, so BCP are being developed. In contrast, companies range from large companies to small and medium-sized enterprises.

Therefore, companies have different responses to the formulation of BCP. According to recent statistics (Teikoku Databank's "Business Continuity Plan (BCP) Survey"), the rate of corporate BCP formulation now exceeds 20.4%, exceeding 20% for the first time, and the number of companies that are placing importance on protecting human resources and corporate assets as a preparatory measure is increasing.¹²⁾ According to this data, the formulation rate of "large companies" is 38.7%, while for "small and medium-sized enterprises" it is only 17.1%, indicating that the gap is widening depending on the size of the company.

Large companies are active in developing BCP because they have enough funds and human resources, but small and medium-sized enterprises are not doing enough. Therefore, support measures are required for small and medium-sized enterprises.

The Small and Medium Enterprise Agency has established the "Small and Medium Enterprise BCP Formulation and Operational Guidelines" to support the formulation of BCP in small and medium-sized enterprises¹³⁾.

The BCP cycle described in this guideline consists of the following five "processes".

11) The principle of management judgment is the idea that if the business executive is not careless in the recognition of facts and the decision-making process in light of the situation at the time of the act, the business executioner will not be held liable for violating the duty of care (Article 330 of the Companies Act, Article 644 of the Civil Code) and the duty of fidelity (Article 355 of the Companies Act) (the Tokyo District Court Judgment Dated September 28, 2004, Hanrei Jiho No. 1886, p. 111; Kenjiro Egashira, *Laws of Stock Corporations* (9th ed.), (Yuhikaku, 2024), pp. 499-501).

12) Teikoku Databank 'Survey on Corporate Attitudes Towards Business Continuity Planning (BCP)' (June 20, 2025) (<https://www.tdb.co.jp/report/economic/20250620-bcp2025/> [Last viewed November 1, 2025]). From this survey, the many reasons for not formulating BCP identified included "lack of skills" and "difficulty in securing human resources and time", and small and medium-sized enterprises also pointed out issues such as "not feeling the need" and "not being able to secure costs".

13) 'Small and Medium Enterprise BCP Formulation and Operational Guidelines' (<https://www.chusho.meti.go.jp/bcp/index.html> [Last viewed November 1, 2025]).

(1) Understand the Business
(2) Prepare for BCP and Consider Preliminary Measures
(3) Formulate a BCP
(4) Establish a BCP Culture
(5) Diagnose, Maintain, and Update BCP

Referring to these guidelines, each company should decide what kind of BCP it is best to formulate.

IV. Conclusion

This paper introduces the initiatives of government agencies and companies in Japan to address BCP. It can be said that government agencies are developing BCP and plans are being made to respond to large-scale disasters such as earthquakes. On the other hand, it is necessary to support the response of small and medium-sized enterprises in particular, and it can be said that there is room for improvement.

Although this paper explains the current situation in Japan, I believe that publishing it in English is highly significant. This is because there are many countries and regions that have all sorts of disasters like Japan, and material written in English rather than Japanese is required¹⁴). We hope that the contents of this paper will be useful for understanding Japan law and improving BCP.

*After submitting this paper, I came across Takayoshi Sugawara, ‘A Study on Natural Disasters and Law: From the Perspective of Corporate Legal Affairs’ Keio Law Journal No. 55 (2025) p. 13.

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14) As part of the research of the Japan University Disaster Research Society (NUDS) (<https://www.runit.cst.nihon-u.ac.jp/nuds/> [last viewed November 1, 2025]), the author, along with NUDS member, had the experience of being interviewed by Professor A. Ersin Bayra about ‘Japan’s Disaster Recovery Legislation’. According to the professor, Turkey is also a disaster-stricken country, and Japan’s legal situation is being used as a reference for disaster recovery legislation. According to Professor Bayra, since it is impossible to grasp the content of the Japanese material available on internet sites and Japanese papers, he was asked to provide English materials.