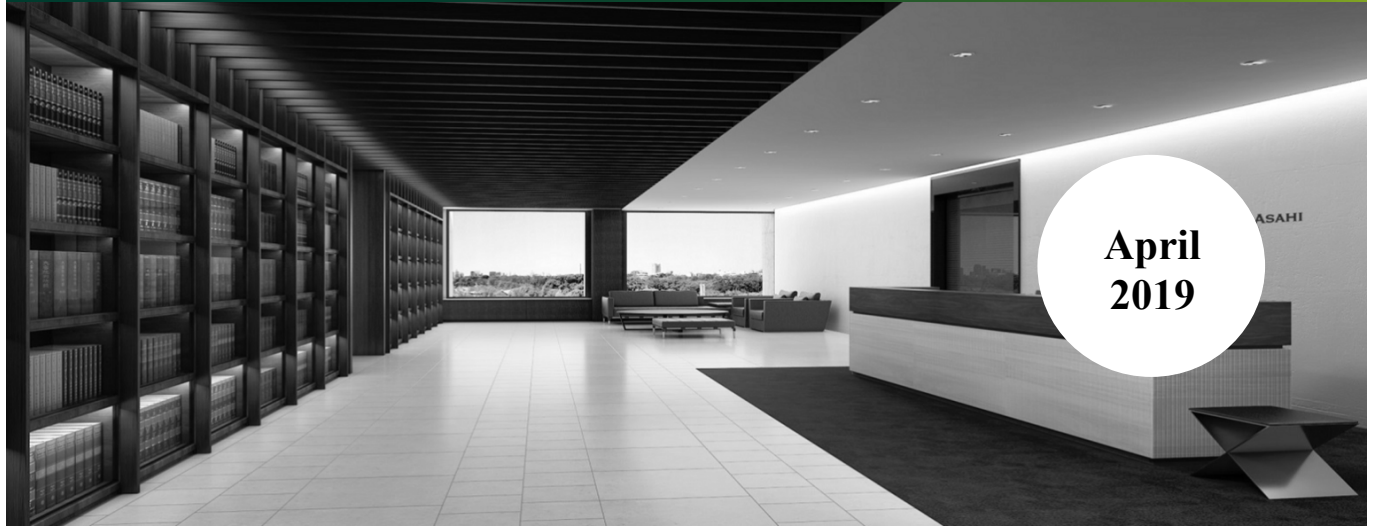


**Finance Law Newsletter**  
**Natural Resources and Energy Newsletter****April  
2019****Japan Offshore Renewable Project Update**

Maya Ito, Amane Kawamoto, Peter G. Armstrong

**1. Introduction**

On November 30, 2018, the Japanese Diet passed The Act on Promotion of Use of Marine Areas for Development of Marine Renewable Energy Generation Facilities (the “Act”). The Act is scheduled to come into force in April 2019.

Although Japan has significant potential offshore renewable energy output potential, a number of issues, both systemic and technological, have hindered efforts to develop the Japanese offshore renewable market to date. The Japanese Government is eager to develop such offshore renewable energy capacity and the hope is that the Act will encourage and facilitate the development of offshore renewable projects in Japan. The Japanese Government, in its 2015 Energy Plan, announced a target energy mix that includes 22-24% renewable energy sources, of which 1.7% will be comprised of wind power projects, by 2030<sup>1</sup>. It is estimated that 10GW of wind capacity will be required to meet this target.

The Act is significant because it addresses some of the key systemic issues affecting offshore renewable projects, such as:

- a. The occupation of general sea areas (“General Waters”);
- b. Obtaining consensus among the project stakeholders; and
- c. The selection of project operators under the Japanese feed-in tariff (“FIT”) system.

This paper discusses the key amendments to the offshore renewable project regime introduced by the Act, as well as those issues not specifically addressed by the Act that remain outstanding.

<sup>1</sup> [http://www.enecho.meti.go.jp/en/category/brochures/pdf/energy\\_plan\\_2015.pdf](http://www.enecho.meti.go.jp/en/category/brochures/pdf/energy_plan_2015.pdf)

## **2. Legislative Background of the Act**

Under Japanese law, the ocean floor of Japanese territorial waters is the property of the Japanese government. The Japanese coastal waters which are governed by the Ports and Harbors Act are, generally, classified as “Port Areas.” The Ports and Harbors Act was amended in May 2016 to establish a regulatory framework for the development of offshore renewable projects in these Port Areas.

Prior to the introduction of the Act, General Waters, which make up the vast majority of Japanese coastal waters, were not subject to any national property management related laws, such as the Ports and Harbors Act.

The Act addresses this issue by establishing a nationwide regime for the occupation of General Waters for the development of offshore renewable projects, which includes:

- a. The designation of specific zones for the promotion of offshore renewable projects (each, a “Promotion Zone”); and
- b. A public tender system to identify and nominate developers.

## **3. Identification and Designation of Promotion Zones**

The Act provides that the Ministry of Economy, Trade and Industry (“METI”) and the Ministry of Land, Infrastructure, Transport and Tourism (“MLIT”) will be responsible for the identification and designation of Promotion Zones. In assessing whether a particular area should be designated as a Promotion Zone, METI and MLIT will consider the following criteria<sup>2</sup>:

- (i) The environment and climate of the site and the power output potential of the site;
- (ii) Any potential negative impact to any sea routes or ports;
- (iii) The capacity to construct the project at the site, including transportation of supplies and personnel, and the ability to maintain the facility at the site;
- (iv) The ability to secure the facility to the electrical grid;
- (v) Any interference with, or impact to, fisheries; and
- (vi) Whether the site extends into any Port Area or other area outside of the General Waters.

Additionally, the Act provides that prior to designating any Promotion Zone METI and MLIT will engage in a formal consultation process with local stakeholders via the establishment of what the Act refers to as a “Council.” These Councils will be comprised of representatives from METI, MLIT, and the governors of the relevant prefectures, as well as representatives of the Ministry of Agriculture, Forestry and Fisheries, the mayors of the relevant municipalities, representatives of the local fishery operators, academic experts, and other key stakeholders deemed necessary or appropriate by METI, MLIT, or the prefectural governors. The purpose of the Council is for METI and MLIT to share opinions among these stakeholders in order to achieve a consensus regarding the treatment of the proposed site. The Act provides that all stakeholders represented must respect the determinations of the Council. It is important to note, however, that the Act does not prescribe the format for these discussions, nor does it define what a “consensus” is for these purposes.

Further, METI and MLIT are expected to integrate the determinations of the Council into the public tender offer guidelines

---

<sup>2</sup> Article 8 of the Act

to be issued for each contemplated offshore renewable project development within a Promotion Zone, which are referred to in the Act as “Occupancy Guidelines.”

#### **4. Selection and Appointment of Operators**

In Accordance with the Act, parties interested in developing offshore renewable projects within Project Zones (“Developers”) will be appointed via a public tender offer process. METI and MLIT will prepare and issue Occupancy Guidelines for each offshore renewable project development within a Promotion Zone. The Act provides that Occupancy Guidelines must stipulate, among other things<sup>3</sup>:

- (i) Submission deadline;
- (ii) Project timeline (such as occupancy commencement date, FIT program application timing);
- (iii) Area within the Promotion Zone to be occupied;
- (iv) Eligibility criteria;
- (v) Maximum amount of tariff (per kW);
- (vi) Purchase price calculation method and procurement term under the FIT program;
- (vii) Removal of the facilities at the conclusion of the term;
- (viii) Evaluation criteria to be used in assessing Developer proposals; and
- (ix) Other criteria relevant to the particular site (such as the use of any local port, and mitigating the impact on any local fisheries).

Developers desiring to develop and operate a renewable project in a Promotion Zone in response to any Occupancy Guidelines must submit an “Occupancy Plan”<sup>4</sup> to METI and MLIT. Occupancy Plans are to describe<sup>5</sup>:

- (i) Content and timing of the development of the proposed project;
- (ii) Structure of the proposed facilities;
- (iii) Proposed facility output capacity;
- (iv) Proposed maintenance and site management terms;
- (v) Proposed supply price; and
- (vi) The financial plan for the project.

METI and MLIT are responsible for the evaluation of Occupancy Plans and appointment of Developers. METI and

---

<sup>3</sup> Article 13, paragraph 2 of the Act.

<sup>4</sup> Article 14 of the Act.

<sup>5</sup> Article 14, paragraph 2 of the Act.

MLIT will first assess whether each Occupancy Plan satisfies the following requirements:

- (i) The proposed supply price does not exceed the maximum tariff set forth in the Occupancy Guidelines;
- (ii) The proposed facility will not violate any of the requirements set forth in the Occupancy Guidelines (such as materially impacting any local port or fishery);
- (iii) The proposed facility, and management thereof, conform with applicable METI and MLIT standards; and
- (iv) The Developer is reputable.

METI and MLIT will then assess each Occupancy Plan against the criteria set forth in the Occupancy Guidelines. The specific evaluation methodology has yet to be published; however, it is expected that the process will essentially resemble a FIT bidding process, in that the pricing proposed by prospective Developers will be a significant factor. Generally, METI and MLIT will look to appoint the Developer most capable of delivering a long-term, stable and efficient power generation business at the site.

It is also important to note that the appointed Developer will be required to comply with its Occupancy Plan and any failure to do so will result in the appointment being revoked<sup>6</sup>.

## **5. FIT Program Application and Occupation License**

Once appointed, the Developer will:

- (i) apply to METI for FIT certification; and
- (ii) apply to MLIT for an Occupation License for the Project Zone,

each in accordance with the procedures prescribed in the Occupation Guidelines and the Developer's Occupation Plan. The Act allows for MLIT to offer Developers Occupation Licenses for terms of up to 30 years<sup>7</sup>. The intention is that this 30 year period will be sufficient to cover the development stage, operations (being the 20 year FIT period), and ultimate decommissioning of the facility.

## **6. Outstanding Issues**

However, the Act does not address all issues applicable to the development of offshore renewable projects. In particular:

- (i) The Act does not set forth detailed rules with respect to how certain procedures outlined in the Act are to be implemented; for example, how consensus among the members of the Council will be determined. It is anticipated that these details will be addressed through various cabinet and ministerial guidelines and ordinances in the near future.
- (ii) The Act is silent with respect to the issue of connecting the facility to the grid. While this remains to be confirmed, it appears that each Developer will be responsible for directly negotiating the connection of any offshore renewable facility with the applicable utility outside the framework of the Act. Note that costs for the interconnection work will be shared by the developer and the applicable utility.

---

<sup>6</sup> Article 21, paragraph 1 of the Act.

<sup>7</sup> Article 10, paragraph 4 of the Act.

- iii. The Act does not establish a framework by which a Developer may conduct the various required environmental assessments. As such, Developers looking to prepare an Occupation Plan and develop an offshore renewable facility will be required to conduct the required environmental assessments in parallel to the procedures set forth under the Act.

## 7. Looking Forward

In December of 2018, METI and MLIT launched a joint committee to consider the implementation and operation of the Act, in particular the process by which Promotional Areas are to be identified and the specifics of the developer appointment process. It is anticipated that METI and MLIT will prepare and publish guidelines on the operation of the Act based on the conclusions of this joint committee.

In parallel with the foregoing discussions and the preparation of guidelines on the operation of the Act, the Promotional Area designation has commenced. On February 8, 2019, METI and MLIT began collecting information from prefectural governments regarding candidate General Water areas for designation as Promotional Areas. It is anticipated that the first Promotional Area will be determined during fiscal year 2019, and the first public offering for the development of such Promotional Area in accordance with the new Act will take place in 2020.

The offshore wind projects envisaged by the new Act are considerably larger in scope than those contemplated under existing renewable energy project programs. METI and MLIT are hopeful that the new Act will continue to encourage interest in participation in the Japanese offshore wind market, having acknowledged that participation will require large upfront capital costs as well as sophisticated technology and know-how on the part of candidate developers. It remains to be seen how the METI and MLIT guidelines on the Act will be received by the market and whether they will achieve their objective of continuing to encourage interest and participation in the growing Japanese offshore wind market.



**Mava Ito**

Partner

E-mail: [m\\_ito@jurists.co.jp](mailto:m_ito@jurists.co.jp)

Maya Ito is a partner at Nishimura & Asahi. She has extensive expertise in cross border project finance for various natural resources, power projects and other infrastructure projects. She also has an extensive practice in other areas concerning compliance, cross border finance transactions, cross border corporate transactions and other corporate matters.



**Amane Kawamoto**

Counsel

E-mail: [a\\_kawamoto@jurists.co.jp](mailto:a_kawamoto@jurists.co.jp)

Amane Kawamoto is a counsel at Nishimura & Asahi. He has extensive expertise in project finance for various renewable power projects. He has also experienced working for Marubeni Europower Limited in London, where he supported Marubeni's IPP projects in Europe, including offshore wind projects.



**Peter G. Armstrong**

Foreign Attorney

E-mail: [p\\_armstrong@jurists.co.jp](mailto:p_armstrong@jurists.co.jp)

Peter assists Japanese and global entities on a wide range of complex cross-border commercial transactional areas, including mergers and acquisitions, foreign investment and finance, dispute resolution and crisis management.