

The Influence of New Types of Projects on Japanese Construction Contracts

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Traditionally, most infrastructure projects in Japan have been funded by corporate or public sources, and domestic standard form construction contracts generally were considered sufficient to manage construction risks. This trend changed significantly with the introduction of the Feed in Tariff (FIT) scheme for renewable energy in 2011, which led to the development of Independent Power Producer (IPP) projects that utilize non-recourse or limited-recourse financing. This increased reliance on project finance, in turn, has driven a rise in the use of turnkey EPC contracts. Given the historically limited number of turnkey EPC projects in Japan, an increasing number of these contracts are drafted with reference to international models, such as the FIDIC Silver Book and Yellow Book.

Since the late 2010s, Japan has seen a rapid expansion of new types of construction projects, including offshore wind farms, data centers, semiconductor facilities, and EV plants, largely driven by government efforts to attract investment. Several key characteristics of these new projects are significantly influencing the globalization of Japanese construction contracts.

First, there is a heightened need to establish extensive, complex risk-sharing arrangements in a clear manner in the contract documents, which differs from traditional domestic projects in Japan. For instance, the risks inherent in offshore wind projects include hazards associated with offshore construction work, delays, or cost increases due to Marine Warranty Surveyors, weather and sea conditions, and the limited availability of specialized vessels.

Second, there has been a substantial increase in the participation of foreign companies, both as owners and as contractors, which affects the style of construction contracts. This has led to a growing demand for contract frameworks that reflect international standards, such as those based on FIDIC, which are more familiar to overseas stakeholders.

Third, and particularly in the wind power sector, the increasing involvement of foreign contractors at both the design and construction phases triggers regulatory concerns. When these overseas contractors are engaged, it is vital to ensure compliance with local regulations, such as Japan's Construction Business Act (CBA). For example, foreign contractors involved in assembling wind turbines may fall within the scope of the CBA and therefore require domestic construction licenses. However, where foreign contractors' roles are limited to technical guidance, it may be possible to rely on an exemption from this requirement. Therefore, it is necessary to perform a careful assessment of the activities foreign contractors may undertake without a license, and when



licenses are required under Japanese law. If a foreign contractor does pursue a domestic license, it must employ experienced, qualified engineers to satisfy the requirements of the CBA, and must assign them to local projects – an obligation that presents significant challenges.

The globalization of construction contracts also has attracted attention as a means of adapting to the sharp rise in prices since the early 2020s. For example, cases have begun to emerge in which cost-plus open-book contracts are adopted, even for domestic Japanese projects. In this sense, the internationalization of Japanese construction contracts has entered a new phase. While Japan's traditional construction and construction contract practices are expected to continue, international influences also are being incorporated, advancing practical implementation.

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