

## Client Alert

6 February 2018

### Renewable Energy in Japan – Recent Developments No. 35

#### **New general waters rules to spur development of Japanese offshore wind projects**

As offshore wind power costs decrease in Europe, Asian countries, such as China and Taiwan, are making ambitious plans to achieve growth in their offshore wind power industries. This is creating heightened interest in the Asian offshore wind sector, with numerous global developers now actively seeking investment opportunities throughout the North East Asia region.

Surrounded by seawater, Japan has significant potential to expand its offshore wind power generating capacity<sup>1</sup>. The continued shutdown of its nuclear power plants since the Fukushima disaster — with only five out of approximately 50 plants having so far resumed operations — has also opened a window for development of large scale offshore wind generation projects. However, to date, growth in this area has been disappointingly limited. As of March 2017, only 60 MW of offshore wind power had been installed in Japan, and of this amount, only 13.4 MW was in "general waters" (ie, territorial waters off Japan's coast that are not designated areas under specific legislation for administration of public property, such as ports and harbors).

A key reason for Japan's slow progress has been a lack of national-level legislation for project development in its general waters. As reported in our August 2016 client alert, although Japan's Port and Harbor Act was recently amended to promote offshore wind projects, the amendments apply only to limited areas around Japan's coast. The majority of waters surrounding Japan remain outside the scope of any uniform national-level legislation allowing development in such areas.

The lack of clear rules for development in this area has been the subject of increasing industry frustration and calls for reform. Fortunately, the calls appear to have now been heeded, with Japanese Prime Minister Shinzo Abe announcing in his 22 January 2018 speech to the Japanese Diet that the government plans to introduce new laws for the use of Japan's general waters for offshore wind projects.

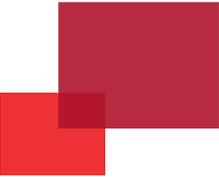
In this alert we describe the shortcomings of the current rules, industry pressure for change that the Japanese government has been facing, and the bill that will likely be proposed to the Japanese Diet in March 2018.

#### **Lack of national-level rules**

Various national-level laws in Japan set rules for administration of certain designated parts of Japan's territorial waters. These include the Port and Harbor Act, the Coast Act and the Act on Development of Fishing Ports and Grounds.

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<sup>1</sup> See New Energy and Industrial Technology Development Organization (NEDO), NeoWins (offshore wind map), [http://app10.infoc.nedo.go.jp/Nedo\\_Webgis/top.html](http://app10.infoc.nedo.go.jp/Nedo_Webgis/top.html).



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Separate laws govern shipping safety in general waters. These include the Maritime Collisions Prevention Act and the Maritime Traffic Safety Act. Other laws, such as the Fishery Act, govern fishery rights in general waters.

However, with only limited offshore wind project development in Japan up to now, there have been no specific national-level laws granting rights to use general waters for such wind projects. This has created significant uncertainty for developers wishing to establish large scale wind projects in offshore general waters areas and for lenders wishing to finance such projects.

Due to the lack of national-level legislation, various prefectural governments have implemented their own local-level rules for the use of general waters off their coastlines. While this has allowed a degree of development to occur, the procedures and requirements vary substantially from prefecture to prefecture. The prefectural-level rules also do not link well with the national feed-in tariff scheme for wind power projects in Japan.

Key issues with the current prefectural rules system include:

- various prefectures not having clear rules on the length of the occupancy period for offshore sites;
- where such rules exist, the occupancy period generally being set at between one and five years;
- the above occupancy periods being considerably shorter than the 20 year PPA period under the national FIT scheme;
- no guarantee that the occupancy period will be renewed;
- the process for allocating project sites to developers being unclear;
- a lack of detailed provisions for consultation with interested parties, such as local residents and fishery rights groups;
- the lack of such a consultation process leading to developers themselves having to negotiate with various interested parties;
- a lack of clear authority for prefectural governments to enact regulations on the administration of general waters; and
- uncertainty on how occupancy rights granted under prefectural rules will be treated when the national rules come into force.

The above issues have hampered offshore wind development in Japan, with many developers and lenders hesitating to make significant investments in this area under the prefectural rules system.

### Industry pressure

The Japanese business community has long raised concerns about the lack of clear rules on the administration of general waters in Japan.

In March 2017, the most powerful business lobbying group in Japan, the Japan Business Federation (or Keidanren), released the final version of their "regulatory reform requests" for FY2016 which was officially submitted to the Japanese government<sup>2</sup>. The requests covered 12 industry areas, including energy, with one key request specifically relating to offshore wind development. The Keidanren highlighted that an important obstacle to development in this area was the relatively short occupancy periods under prefectural government regulations. It therefore requested that the Japanese government issue national guidelines to harmonize the various rules set out by the prefectural governments for occupancy of general waters.

<sup>2</sup> Keidanren, FY2016 Regulatory Reform Requests (Final Results) (*2016 nendo Keidanren Kisei Kaikaku Youbou (Saishu Kekka)*) (2017), <http://www.keidanren.or.jp/policy/2017/025.html>.



In its request, the Keidanran also indicated that the occupancy period should be more than 20 years to tie in with the 20 year PPA period for wind power projects under the Japanese FIT rules.

In December 2017, the largest industry association for wind power in Japan, the Japan Wind Power Association (JWPA), submitted a written request to several key Japanese government bodies, including the Cabinet Office (CAO), the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) and the Ministry of Economy, Trade and Industry (METI), urging them to introduce new laws on the occupancy of general waters for offshore wind projects<sup>3</sup>. The submission included requests on items such as the period of occupancy rights, the selection process for project sites, and the required consultation process with local residents.

## New bill to be introduced in March 2018?

Following the above-mentioned 22 January speech by Japanese Prime Minister Shinzo Abe, it has now been reported that in March 2018, the CAO will submit a bill relating to the use of general waters to the Japanese Diet. The bill is tentatively called the "*Bill on promotion of use of territorial waters for offshore renewable energy generation facilities (Kaiyo saisei kanou enerugi hatsuden setsubi seibi no kaiiki riyu sokushin houan)*."

The bill is expected to set out nationwide universal rules on the use of general waters for offshore wind projects. Its key provisions are likely to include the introduction of:

- a formal system for the national government to issue approvals for the occupancy of general waters;
- an occupancy rights period of over 25 years;
- a formal bidding system to award project sites to developers; and
- a new council to coordinate wind power projects with local residents.

Detailed rules on the above items have not yet been disclosed. It is therefore not yet clear to what extent the new bill will address the concerns raised by the Keidanran and the Japanese wind power industry. However, as the new bill is expected to set out more detailed national-level rules for offshore wind development, it is likely to encourage (rather than discourage) further growth in this important and promising area.

## Future outlook

Enormous pressure is being put on the Japanese government to speed up necessary reforms in the offshore wind area. While the details of the new bill are not yet clear, it is likely the new bill will be submitted to the Japanese Diet in March 2018 and that it will pass without substantial amendments by the Diet. If so, it will have the potential to spur rapid growth in the offshore wind sector, allowing Japan to catch up with other countries in the region in this field.

We will continue to monitor developments in this area and provide further updates once the details of the bill are released by the government.

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<sup>3</sup> JWPA, Request regarding introduction of legislation on the use of general waters (*Ippan kaiiki no riyou ni kansuru konkyoho no seibi ni tsuite (onegai)*) (2017), [http://jwpa.jp/page\\_253\\_jwpa/detail.html](http://jwpa.jp/page_253_jwpa/detail.html).