

Client Alert

March 2018

Renewable Energy in Japan - Recent Developments No. 36

New offshore wind general waters bill approved by the Japanese Cabinet

On 9 March 2018, the new bill for the use of Japan's general waters for offshore wind projects was officially approved by the Japanese Cabinet. It was then submitted to the Japanese Diet on the same day. This long-awaited new bill to facilitate offshore wind development in Japan could pass the Diet as early as May 2018, with the new legislation potentially taking effect four months after its promulgation.

The new bill is called the "*Bill on promotion of use of territorial waters for offshore renewable energy generation facilities (Kaiyo saisei kanou enerugi hatsuden setsubi no seibi nikansuru kaiiki no riyo no sokushin nikansuru houritsuan)*" (the "**New Bill**"). Whilst the New Bill has been foreshadowed since January, its details were not available to the public until the Japanese Ministry of Land, Infrastructure, Transport and Tourism ("**MLIT**") and Ministry of Economy, Trade and Industry ("**METI**") released the draft provisions of the New Bill on 9 March 2018¹. The New Bill appears to be generally in line with previously reported details and the predictions in our previous client alert².

In this alert we outline the general scheme for offshore wind development proposed under the New Bill, the specific provisions of the New Bill, the number of zones to be released and key issues we see with the New Bill.

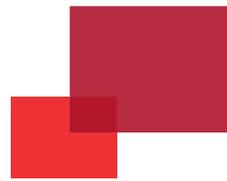
General scheme for offshore wind development

The general scheme for offshore wind development provides for the Japanese national government to firstly identify appropriate areas in Japan for offshore wind development. It will do this by working with relevant local prefectural governments and newly established bodies in each prospective development area that will be known as "councils" (*Kyougikai*). Each council will include relevant stakeholders for such development including national ministries, local government bodies, fisheries groups and academic experts. The key role of each council is to work to identify issues of local and national concern for offshore wind development in the development area for which it is responsible.

Following the above process, developers must then lodge competitive bids for use of the relevant offshore zone (with the bids setting out the proposed

¹ http://www.mlit.go.jp/report/press/port06_hh_000152.html,
<http://www.meti.go.jp/press/2017/03/20180309002/20180309002.html>.

² [Client Alert 35. New general waters rules to spur development of Japanese offshore wind projects \(February 2018\)](#).



project details, including the bid price for electricity supply from the project). The government will then closely review the bids and select bid winners based on both the proposed price and the project development plan (i.e. the bid winner is not assessed on price alone, but on both price and how well the overall development plan meets the development criteria).

The bid winner (or winners) will then have the right to occupy and use the specified general waters area for an offshore wind project for a period of up to a maximum of 30 years (including construction and decommissioning periods).

Therefore, whilst the New Bill will grant a longer occupancy period than the current prefectural rules (which are usually limited to 3-5 years), developers are required to compete on both price and the suitability of their development plans to secure the rights to specific offshore areas.

Key provisions of the New Bill

As outlined above, the main purpose of the New Bill is to establish procedures for Japanese general waters to be used on a long-term basis for offshore wind power generation. The key steps in such procedures are as follows:

- the Cabinet draws up a "basic policy" (*Kihon hoshin*) to promote the use of Japan's territorial waters for offshore renewable energy generation facilities (i.e., the Japanese Prime Minister prepares a draft of such policy and Cabinet approves the policy)³;
- METI and MLIT designate certain areas as "promotion zones" (*Sokushin kuiki*) after discussing with MAFF⁴ and MOE⁵ and considering the views of the governor of the prefecture (*Chiji*) and the relevant council⁶, and draw up "tender guidelines" (*Kobo senyo shishin*)⁷;
- each developer conducts local investigations to identify relevant development issues (based on the tender guidelines) and submits an "occupancy plan" (*Kobo Senyo Keikaku*) (a plan which outlines operation and construction details, measures to address environmental and other concerns and the bid price to supply electricity from the project to the utility) to METI and MLIT⁸;
- METI and MLIT choose a developer with the most suitable occupancy plan in terms of supply price and other factors, and

³ Article 7 of the New Bill.

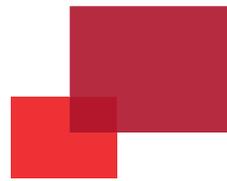
⁴ Ministry of Agriculture, Fisheries and Food.

⁵ Ministry of the Environment.

⁶ Article 8 of the New Bill.

⁷ Article 13.1 of the New Bill.

⁸ Article 14 of the New Bill.



grant an approval for the project to the successful developer (*Sentei jigyosha*)⁹;

- the chosen developer applies to receive a Feed-in Tariff ("FIT") approval in accordance with the approved occupancy plan (and METI grants approval under FIT law)¹⁰; and
- the chosen developer applies for a right to occupy the promotion zones in accordance with the approved occupancy plan (and MLIT grants such a right to occupy, up to a maximum of 30 years including the construction and decommissioning periods¹¹).

Once the chosen developer receives the FIT approval, the developer will be considered to be in the same position as a bid winner under the FIT law. This means that the FIT price (set based on the developers bid price) and FIT period will be governed in accordance with the FIT Law. Therefore, assuming that the FIT period for offshore wind power is the same as under the current rules, the PPA¹² period for offshore projects will be set at 20 years (so there may be a period after the PPA has expired in which the developer will continue to sell electricity into the market under a new PPA or on a merchant basis).

Designation of promotion zones (and use of councils)

The New Bill sets out the procedure for how promotion zones are designated. One of the key features of the procedure is the strong preference by the national government for the use of councils to set the framework for tenders for offshore areas.

Each council will be a body consisting of the members from METI, MLIT, MAFF, the relevant prefectural governor, relevant local town mayors, and other groups or individuals such as local fishery groups and academic experts¹³. It is not yet clear however whether wind power developers can be members of the councils. The existing Port and Harbor Act (which allows occupancy of port areas for wind power development and which formed the basis for this New Bill) allows wind power developers to be members of councils provided certain measures are followed to deal with conflicts of interest (e.g. developers are not allowed to attend meetings of the council subcommittee that decides the evaluation criteria etc). It is therefore possible that this approach may also be adopted for the councils proposed under the New Bill.

The New Bill sets out various additional requirements in relation to such councils including for example, that:

⁹ Articles 15 and 17 of the New Bill.

¹⁰ Articles 13.8 and 16 of the New Bill.

¹¹ Articles 10 and 19 of the New Bill.

¹² Power purchase agreement.

¹³ Article 9.2 of the New Bill.



- prefectural governors are entitled to request METI and MLIT to establish a council, and if such request is made, METI and MLIT must follow the request¹⁴;
- prior to designating promotion zones, METI and MLIT must first consult with the council¹⁵; and
- if "discussion is settled" (i.e. a general consensus is reached)¹⁶ for certain items at the council, then the members of the council are required to "respect the outcome of such discussion"¹⁷.

Each council is therefore likely to have strong influence over the designation of promotion zones and the requirements for offshore wind development in their specific zone.

Number of zones and target MW capacity

METI's documents that were released together with the New Bill indicate that the Japanese government intends to designate five promotion zones by FY2030. However the Japanese Liberal Democratic Party's Renewable Energy Promotion Member of Houses Meeting confirmed on 22 February 2018 that this is not maximum number of zones.

Currently there is no limitation on how many MW of capacity will be included in these zones. The Japan Wind Power Association has requested a commitment from the Japanese government to develop 10GW of offshore wind power by 2030 but the Japanese government has been silent so far on such commitments. The actual Japanese target capacity for offshore wind is therefore not clear.

Key issues with the New Bill

Whilst the New Bill has set out the key concepts for the procedures to designate promotion zones and select developers, it does not answer a number of important questions in relation to the operation of offshore projects. Some of the key issues we see with the New Bill are as follows:

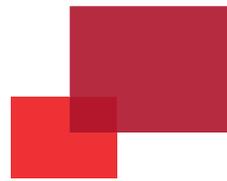
- the New Bill does not state whether the cost of transmission lines will be borne by the national government or the utility. In the Netherlands, transmission line costs to connect offshore projects are borne by TenneT (the transmission service operator). This is the basis of the central method for development adopted in Europe. Unfortunately, the New Bill does not touch on this point. If the current grid connection cost rules are applied, offshore wind power project developers will bear all costs of under sea

¹⁴ Articles 9.3 and 9.4 of the New Bill.

¹⁵ Article 8.5 of the New Bill.

¹⁶ Though it is not clear what the phrase "discussion is settled" means, we assume that it will not require an unanimous vote amongst the members.

¹⁷ Article 9.6 of the New Bill.



transmission cable line from the offshore facilities to the onshore substation. Further if, for example, the current rules from the Tohoku Electric grid auction system are applied to new onshore transmission line construction and improvements in Tohoku area for offshore projects, then Tohoku Electric would bear a cost of 23,000 yen/kW (USD 209/kW) for offshore wind power related onshore transmission line construction and improvements and the rest will be borne by the offshore wind power project developers. Tohoku Electric estimates the total major onshore transmission line new construction and improvement cost to be 30,000 yen to 40,000 yen/kW (USD 272 to 363/kW) for the new grid connection of 3.5 to 4.5 GW in Tohoku area. If the same figures apply to offshore related onshore transmission line new construction and improvements, the balance of 7,000 yen to 17,000 yen/kW (USD 63 to 154/kW) would be required to be borne by the offshore wind power project developers (which may be a substantial sum.);

- there is possibility that the MLIT rules or the tender guidelines will set an occupancy period of less than 30 years¹⁸;
- there is possibility that the complete removal of the turbine and its foundations by the developer (i.e. the entire extraction of the foundation pile rather than cutting it off at seabed level) will be included as one of the conditions when granting approval¹⁹.
- there is possibility that fishery vessels will not be restricted from operating in areas between the turbines²⁰;
- the criteria for assignment of project approvals to be approved by METI and MLIT²¹ is unclear;
- existing offshore wind power projects which have prefectural occupancy licenses will be deemed to have been granted occupancy licenses under the New Bill but on the same terms (so if the existing prefectural occupancy period is only for 3 years then the occupancy period under the New Bill will also be 3 years). However it is not clear whether just establishing a meteorological measurement mast (rather than a full project) may be enough to secure rights under this grandfathering provision²²; and
- METI has stated that project developers who have secured grid rights through a grid auction but who do not win occupancy rights under the New Bill, should assign their grid rights to the winning

¹⁸ Articles 10.4, 13.2.13 and 13.3 of the New Bill.

¹⁹ Articles 10.5 and 13.2.12 of the New Bill.

²⁰ Article 12 of the New Bill.

²¹ Article 20 of the New Bill.

²² Article 11 of the New Bill.

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project developer under the New Bill²³. The terms and conditions for such assignment (including the price payable for the rights) have not however been clearly specified by METI.

The manner in which METI and MLIT handle the issues above (particularly relating to occupancy periods, removal of foundations at the sea bed level and fishery vessels) will be important in terms of facilitating project development and operation and ensuring that offshore projects obtain adequate project finance. Therefore, participants in the offshore wind power industry may wish to consider lobbying METI and MLIT to establish rules or tender guidelines or to adopt actual practices similar to European countries that would avoid or mitigate the above risks.

Future outlook

The New Bill has revealed the key concepts of how Japan will develop offshore wind project in general waters. We believe the New Bill is a substantial first step to pave the way for offshore wind projects in Japan. However, further details will need to be drawn up in the METI and MLIT rules and regulations or be adopted in actual practice in order for the industry to get a clearer vision.

We will continue to monitor developments in this area and provide further updates.

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²³ See page 15 of material number 4 of METI Renewable Energy Large Introduction and Next Generation Electric Network Committee on 22 February 2018, http://www.meti.go.jp/committee/sougouenergy/denryoku_gas/saiseikanou_jisedai/pdf/003_04_00.pdf.