

FEATURES

A NEW ERA FOR JAPANESE OFFSHORE WIND

THE ACT ENABLING THE DEVELOPMENT OF THE JAPANESE OFFSHORE WIND SECTOR HAS BEEN PASSED. BY **JOSEPH KIM**, PARTNER, **MICHAEL LYNCH**, SENIOR ASSOCIATE, AND **CHIYOKAZU SHINDO**, SENIOR ASSOCIATE, **HOGAN LOVELLS**, TOKYO.

At a joint session held on March 20 2019, METI and MLIT promulgated a series of recommendations on the interpretation, implementation and basis of the act regarding promotion of the use of sea areas to develop offshore renewable energy facilities – Kaiyou Saiseikanou Energy Hatsudensetsubi no Seibi nikakaru Kaiiki no Riyou no Sokushin nikansuru Houritsu (the Act). The Act came into effect as of April 1 2019. These recommendations are important in that they will form the basis of the final guidelines to be promulgated by METI and MLIT in connection implementation of the Act.

We expect the guidelines to be almost identical to the recommendations. In this article, we (i) briefly outline the process under the Act and (ii) focus on (a) the designation of the promotion zones and (b) the public auction process in selecting the business operator, in each case, as set out in the recommendations.

Operation under the Act

Diagram 1 outlines the process set forth in the Act¹ that will be implemented in connection with the selection of promotion zones and business operators.

The implementation of this process is based on the application of the following four principles:

- a) Long-term, stable and efficient implementation of the energy business;
- b) Harmonisation of diversified use of ocean areas and resources – eg. coordination with incumbent stakeholders such as those in the fishing and shipping industry, among others;
- c) Implementation of a fair, impartial and transparent system; and
- d) Promotion of a well-planned and sustainable offshore wind power industry – ie, creation of a supply chain network to realise a rapid reduction in project costs and recovery from malfunction or disaster.²

The selection of five zones as promotion zones by 2030 in order to launch Japan's offshore wind power market has been identified as a key performance indicator of the policy goal of the Act.

The desired policy goal may ultimately be to increase the number of promotion zones beyond the five zones in order to accelerate the expansion of offshore wind power facilities by granting long-term occupancy permits.

In order to reach this desired policy goal, key issues such as the financial burden created by subsidy programmes on the national government and restrictions on regional grid systems must

be dealt with appropriately.³ Nevertheless, it is likely that an announcement by the national government of a greater number of promotion zones would accelerate the expansion of the offshore wind power industry in Japan.

Designating promotion zones

• *Standards for designating the promotion zones* – The following six conditions must be satisfied:

- i) Predictable climate, hydrographic and other natural conditions and a minimum energy output. The promotion zone must be feasible from a business and safety perspective. The long-term usage rate of the facility must be maintained while minimising the O&M costs of the facility, ie, indicative wind speed of 7m/s while maintaining a 30% capacity factor; for bottom-mounted types, water area depth of less than 30m.

References are made in the recommendations to the European market with the project sizes scaling between 30MW and 350MW. The lessons learned from these projects may be used to determine the size of projects to be announced in promotion zones, while taking into consideration the unique features of the relevant Japanese prefectures.

The policy goal is to avoid overwhelming the market by announcing projects that are too big or uneconomical. We expect that the scale of the promotion zones will be determined by reference to the aforementioned figures.

- ii) No adverse impact on the use, preservation and management of sailing routes and surrounding ports. In designating promotion zones, frequent sailing routes of large ships should be avoided and appropriate distances from such sailing routes should be secured. However, no specific distances have been announced under the recommendations.

iii) Suitability of base ports for offshore wind power facilities. Upgrading the base port in a promotion zone will be necessary to store, deliver and assemble construction materials such as the nacelle, turbine blades and equipment, as required for the installation, operation and maintenance of offshore wind power facilities.

Each base port requires a quay for the transportation of imported goods and/or domestic cargo. The quay must have an appropriate load-withstanding capability and a pier site of appropriate size.⁴

- iv) The grid connection between offshore renewable energy facilities and the grid system of

the electricity utility company must be secured. Upon designation of promotion zones, a business operator that already has access to grid connection in that zone can continue to use it for its bid in an auction⁵; provided, however, that if another business operator is declared the selected business operator, such business operator will be required to assign its grid connection right, including the grid capacity right, to the selected business operator.

Failure to do so will result in such business operator being disqualified from participating in future auctions. Suggestions have been made for the government to secure the grid connection, including the grid capacity right, in advance of auctions.

v) No adverse impact on fishery activities due to implementation of offshore renewable energy facilities. The business operator should implement a consultation process with fishery trade associations that are members of councils (kyogikai) to determine whether an offshore wind facility could cause any adverse impact on the fishery activities in potential sites and the government will avoid designating such sites as promotion zones.⁶ If any study of potential sites shows adverse conditions to the fishery trade, METI, MLIT and the local stakeholders will avoid forming the council for such sites.⁷

vi) No conflict with the sea area/areas of water designated by other laws. Confirmation with the relevant administrative bodies is necessary to determine that no conflict exists with (a) the fishing ports designated by mayors, municipal or prefectural governors, or the Minister of Agriculture, Forestry & Fisheries (MAFF) under the Act on the development of fishing ports and grounds, (b) port areas designated by the Port and Harbour Act, (c) coastal preservation areas designated by the Coast Act and (d) low water line preservation areas stipulated by the Act on the preservation of low water line and maintenance of base facilities to promote the preservation and use of the exclusive economic zone and the continental shelf.⁸

• *Procedures for designating the promotion zones* – The Act provides that in order to designate the promotion zones, METI and MLIT shall, in consultation with the heads of the relevant administrative bodies and by collecting the opinions of the mayors of the relevant prefectures, investigate and confirm the conformity of the relevant zones to the standards for designation and issue and circulate a public announcement on the designation of the promotion zones.⁹

More specifically, the recommendations suggest that in order to designate a promotion zone, the following steps should be completed:

- i) Collect various known information;
- ii) Select prospective zones with a view to achieving a speedy designation;

- iii) Form a council for the prospective zone;
- iv) Conduct a detailed investigation on prospective zones conforming to the standards for designation; and

v) Make an assessment for designating the zone.¹⁰

• *Overall schedule* – It is estimated that 10 months will be necessary to collect all the known information and complete the procedures set out above before a prospective zone can be designated as a promotion zone.¹¹

Selection of operators by auction

• *Summary* – In order to select a business operator by public auction, a set of auction guidelines shall be established for each promotion zone, which shall include (a) the assessment standards, (b) the maximum supply price and (c) other criteria, eg, among other things, the qualifications of participants.¹²

In addition, a business operator’s plan shall be selected if (i) it conforms to the standards provided in Article 13.2 of the Act, and (ii) “... it is most appropriate in order to enable a long-term, stable and efficient power business”.¹³

• *Matters to be included in the auction guidelines for a public auction* – The auction guidelines for a public auction and occupancy will address matters relating to (a) the assessment standards, (b) standards of output of power facilities, (c) participant qualifications, (d) matters relating to base ports, (e) matters regarding decommissioning and (vi) the term of the occupancy permit, ie, up to 30 years.¹⁴

i) *Assessment standards*. The single most important factor in selecting a business operator is the supply price, ie, tariff. In addition, the overall selection process will, among other things, assess each business operator’s ability to develop a project that is accretive to local economies, coordinate with local stakeholders and finance, own, operate and maintain the project.¹⁵

In assessing each business operator’s operational capabilities, the government will consider such business operator’s business operational record, feasibility of business plans, risk identification and analysis, appropriateness of the financial plans, capex plan and operating budget, plan for speedy recovery from disaster for the stable supply of electricity and other similar criteria.

In assessing each business operator’s ability to coordinate with local stakeholders and the project’s impact on local economy, the government will consider, among other things, the records of such business operator’s key personnel who will be coordinating with the heads of the relevant administrative bodies, harmony and co-existence with the fishery

FIGURE 1 - IMPLEMENTING THE ACT



business operators and shipping companies and impact on national and local economy.¹⁶

ii) *Standard for the output of the power facilities.* The business operator may propose a total output of the project with a range of $\pm 20\%$ of the total output set out for that project when the promotion zone is designated by METI and MLIT. In order to implement an efficient offshore wind energy industry, it is expected that the guidelines will stipulate acceptance of such range of output for a project while taking into account the opinions of the calculation committee for procurement price.¹⁷

iii) *Qualification of participants in a public auction.* A business operator must be a legal entity established in Japan in order to participate in public auctions.¹⁸ A foreign investor may also qualify for auctions as long as it has a legal entity incorporated in Japan or invests through an affiliated Japanese entity, kabushiki kaisha or godo kaisha.

A business operator will be suspended from participating in public auctions if such business operator (a) fails to assign its existing secured grid connection rights to a “selected business operator” without any valid reason, (b) provides forged or false information to the government in connection with the designation of promotion zones, and (c) participates in or leads a bid-rigging (dango) scheme in connection with any public auction.¹⁹

iv) *Matters relating to base ports.* The designation of promotion zones requires confirmation of the size of the power facilities to be installed in promotion zones and the existence of base ports within the zones that will enable efficient installation of power facilities and carry out maintenance of the same.

The base ports should be fitted to accommodate the use of SEP ships, have a load bearing quay and pier zones with appropriate space, among other requirements.²⁰ A base port may need to be fitted to accommodate uses of multiple power facilities within a single designated promotion zone.

v) *Matters regarding decommissioning.* In its proposal, the operator must demonstrate a technical and financial plan to decommission the power facilities upon expiry of the occupancy period. The financial plan may include use of third-party guarantees or a reserve account mechanism in financing.²¹ The scope of decommissioning works is still under consideration as no consensus has been formed on feasible methods to decommission the base ports and the related costs. Therefore, it remains to be seen to what extent the obligations will be imposed.²²

• *Information to be provided by the government at a public auction* – For public auctions, the government is obligated to provide information relating to (a) wind condition data based on actual surveys, with compilation of data for every 10 minutes, on average, for at least 12 consecutive months, and (b) submarine geologic data based on actual surveys.²³

There is an acknowledgement by the government that any delay resulting from not having initiated the surveys should be obviated by using the results of wind condition simulations or NEDO’s offshore wind condition maps to swiftly designate the promotions zones and roll out public auctions.²⁴

• *Examination and assessment process for the selection of business operators* – The government will select a business operator that submits an occupancy plan that (a) conforms to the standards set out above and (b) “is the most appropriate in enabling a long-term, stable and efficient power business”.²⁵ The government will seek the opinions of prefectural governors to determine how well the business operator can coordinate with local stakeholders and the impact of the project on the local economy. Business operators need to undertake not to contact, and will be prohibited from contacting, any local stakeholders during the auction process. Any breach will result in certain penalties being imposed on the business operator, including cancellation of the public auction or suspension from participating in public auctions for a certain period of time.²⁶

• *Schedule for public auctions* – In principle, the government is targeting a six-month period from the commencement of a public announcement of the auction guidelines to the submission of plans of occupancy by business operators.²⁷

Conclusion

As stated above, the recommendations significantly expand upon and clarify procedures and requirements in designating the promotion zones and selecting business operators. It is highly likely that METI and MLIT will announce guidelines largely based on the recommendations.

Since the Act has already come into force, investors, developers, sponsors and other funding parties that are interested in the Japanese offshore wind market should begin to understand the implications of what has been provided in the recommendations. ■

Footnotes

- 1 - P6 of the Report
- 2 - P7 of the Report
- 3 - P8 of the Report
- 4 - P12 of the Report
- 5 - P12 of the Report
- 6 - P14 of the Report
- 7 - Id.
- 8 - Id.
- 9 - Articles 8.2, 8.3 and 8.5 of the Act
- 10 - P15 of the Report
- 11 - P20 of the Report
- 12 - P20 of the Report
- 13 - Id.
- 14 - P22 of the Report
- 15 - P23 of the Report
- 16 - Id.
- 17 - P28 of the Report
- 18 - Id.
- 19 - P29 of the Report
- 20 - Id.
- 21 - P30 of the Report
- 22 - Id.
- 23 - P32 of the Report
- 24 - P33 of the Report
- 25 - P34 of the Report
- 26 - P35 of the Report
- 27 - P36 of the Report