Environment & Climate Regulation

Contributing editors
Carlos de Miguel Perales and Per Hemmer

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GETTING THE DEAL THROUGH

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Contributing editors

Carlos de Miguel Perales, Uría Menéndez

Per Hemmer, Bech-Bruun

Publisher
Gideon Roberton
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Business development managers
Alan Lee
alan.lee@lbresearch.com

Adam Sargent
adam.sargent@lbresearch.com

Dan White
dan.white@lbresearch.com

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Environment

Climate regulation

Japan

Kiyoshi Honda

Nagashima Ohno & Tsunematsu

Main climate regulations, policies and authorities

1 International agreements

Do any international agreements or regulations on climate matters apply in your country?

Japan is a party to the United Nations Framework Convention on Climate Change (UNFCCC), and a signatory to the Kyoto Protocol. Under article 98 of the Constitution of Japan, all treaties concluded by Japan (including those aforementioned) are to be faithfully observed. Thus, Japan is obliged to carry out its obligations under such international agreements through the enactment of regulatory policies and otherwise. In this regard, Japan has enacted various national, prefectural and local laws, regulations and policies, some of which are identified in question 17.

2 International regulations and national regulatory policies

How are the regulatory policies of your country affected by international regulations on climate matters?

In general, the regulatory policies of Japan are consistent with prevailing international regulations on climate matters. To the extent Japan is a party to international agreements on climate-related matters, it is obligated to enact regulatory policies or take other steps to carry out its obligations under such international agreements.

3 Main national regulatory policies

Outline recent government policy on climate matters.

In general, the Japanese government's current policy on climate-related matters is to take a soft approach rather than a hard approach, as shall be explained below.

4 Main national legislation

Identify the main national laws and regulations on climate matters.

Japan's regulatory policies in regard to climate change are primarily set out in the Act on Promotion of Global Warming Countermeasures. This Act sets forth, in general terms, the responsibilities of the national government, local governments, businesses and the general public for, among other things, the control and reduction of greenhouse gas emissions, and recognises the government's obligation to establish a plan for attaining the targets prescribed in the Kyoto Protocol. The Act also provides a registration system for trading units under the Kyoto Protocol. Other relevant laws, regulations and standards include:

- the Act Concerning the Rational Use of Energy (the Energy Conservation Act), which sets forth Japan's energy efficiency and conservation policy and regulations;
- the Basic Energy Plan;
- the Tax for Measures to Cope with Global Warming (the Carbon Tax); and
- the Act on Special Measures Concerning Procurement of Renewable Electric Energy by Operators of Electric Utilities (the FIT Act).

5 National regulatory authorities

Identify the national regulatory authorities responsible for climate regulation and its implementation and administration. Outline their areas of competence.

The Ministry of the Environment (MOE) is the national authority with primary responsibility for environmental conservation, pollution control and climate regulation. It is headed by the Minister of the Environment who is a member of the Cabinet of Japan and is appointed by the Prime Minister of Japan.

The Ministry of Economy, Trade and Industry (METI), the national authority responsible for Japan's industrial, economic and trade policies, also maintains responsibilities in relation to Japan's recycling policy, global warming countermeasures, development of eco-businesses, management of various chemical substances and the global environment. It is headed by the Minister of Economy, Trade and Industry who is also a member of the Cabinet of Japan and is appointed by the Prime Minister of Japan.

General national climate matters

6 National emissions and limits

What are the main sources of emissions of greenhouse gases (GHG) (or other regulated emissions) in your country and the quantities of emissions from those sources? Describe any limitation or reduction obligations. Do they apply to private parties in your country?

The largest producers of GHG emissions are from the industry sector, commercial sector, residential sector and transport sector. There is no GHG limitation or mandatory reduction obligation designated by the national government. However, the Energy Conservation Act provides for the setting of certain energy efficiency benchmarks for operators engaged in certain industries, and these operators are required to calculate their emissions and report such emission information which thereafter is compiled by the competent ministers, reported to the Minister of METI, and thereafter publicly disclosed.

7 National GHG emission projects

Describe any major GHG emission reduction projects implemented or to be implemented in your country. Describe any similar projects in other countries involving the participation of government authorities or private parties from your country.

In 2013, Japan announced the launch of the Joint Crediting Mechanism (JCM), in collaboration with partner countries. According to the government's website for the JCM, the function of the JCM is to 'facilitate diffusion of leading low-carbon technologies, products, systems, services and infrastructure as well as implement mitigation actions, and contribute to sustainable development of developing countries.' To appropriately evaluate, quantitatively, the contributions made by Japan through the JCM to GHG emissions reduction (which are applied to achieve Japan's emission reduction target), measurement, reporting and verification methodologies and

accounting rules are developed under the guidance of Joint Committees (JCs), consisting of representatives from both Japan and the host country, and applied. JCs also develop guidelines for implementation of the JCM including project registration and approval process, accreditation of verifiers and funding.

The JCM is similar to the Clean Development Mechanism (CDM) under article 12 of the Kyoto Protocol, in that Japan invests in GHG emission reduction projects in developing countries and gains emission reduction credits (which are used to meet Japan's emission reduction targets). However, unlike the CDM which is administered by the UNFCCC, the JCM is not overseen by an international organisation and the oversight provided by JCs is limited to the functions mentioned above. Also, the scope of the JCM can be said to be wider than the CDM.

In addition to the JCM, other steps taken to reduce GHG emissions include:

- implementation of efforts to promote environmentally friendly buildings in accordance with the Act on Promotion of Energy Efficient Buildings, which was enacted on 8 July 2015;
- promotion of renewable energy through the feed-in tariff scheme under the FIT Act as discussed in questions 8 and 19;
- implementation of the carbon tax;
- promotion of 'low carbon cities'; and
- implementation of national campaigns to address global warming including 'Cool BIZ', 'Warm BIZ', 'Smart Move – Eco transportation' and 'Morning Challenge'.

Domestic climate sector

8 Domestic climate sector

Describe the main commercial aspects of the climate sector in your country, including any related government policies.

The generation of power through clean energy resources (solar, wind, hydro, geothermal and biomass) has been promoted by the Japanese government through the feed-in tariff programme under the FIT Act. This has created new industries in Japan and in particular the number of solar and wind power generation projects has increased substantially. Additionally, the government has promoted the use of environmentally friendly cars (including electric, hybrid and other fuel efficient vehicles) through tax breaks and subsidies and as a result car manufacturers have introduced a number of eco-friendly cars which have increased in popularity and demand.

General GHG emissions regulation

9 Regulation of emissions

Do any obligations for GHG emission limitation, reduction or removal apply to your country and private parties in your country? If so, describe the main obligations.

Other than the implementing regulations for the Tokyo Scheme described in question 15, there is no regulation that imposes a mandatory GHG emissions reduction obligation. Thus, Japan basically implements a soft approach with regard to regulation of GHG emissions.

10 GHG emission permits or approvals

Are there any requirements for obtaining GHG emission permits or approvals? If so, describe the main requirements.

There is no such requirement in Japan.

11 Oversight of GHG emissions

How are GHG emissions monitored, reported and verified?

Under the Energy Conservation Act and the Act on Promotion of Global Warming Countermeasures, reports on GHG emissions must be submitted by companies, etc in Japan whose energy use in the preceding year exceeded a certain level.

GHG emission allowances (or similar emission instruments)

12 Regime

Is there an GHG emission allowance regime (or similar regime) in your country? How does it operate?

The only GHG emissions regulation and allowance regimes in Japan are the Tokyo Scheme implemented by the Tokyo Metropolitan Government and the Saitama Scheme, a regional emissions trading scheme introduced by Saitama Prefecture, both which are described in question 15.

13 Registration

Are there any GHG emission allowance registries in your country? How are they administered?

Other than the registries under the Tokyo Scheme and the Saitama Scheme, there are no such official registries in Japan. Such registries are administered by the Tokyo Metropolitan Government and the Saitama Prefectural Government, respectively, in accordance with the relevant rules.

14 Obtaining, possessing and using GHG emission allowances

What are the requirements for obtaining GHG emission allowances? How are allowances held, cancelled, surrendered and transferred? Can rights in favour of third parties (eg, a pledge) be created on allowances?

Currently, other than the Tokyo Scheme and the Saitama Scheme, there is no official GHG emission allowance regime in Japan.

Trading of GHG emission allowances (or similar emission instruments)

15 Emission allowances trading

What GHG emission trading systems or schemes are applied in your country?

The Tokyo Metropolitan Government currently implements an emission trading scheme known as the Tokyo Emissions Trading Scheme (the Tokyo Scheme), which imposes a legal obligation on relevant parties to reduce their GHG emissions. Under the Tokyo Scheme, the owners, etc, of buildings and factories with a certain level of GHG emissions in the Tokyo metropolitan area are required to reduce such GHG emissions to certain specified levels (6 per cent or 8 per cent below baseline levels in the first phase (FY2010–FY2014), and 15 per cent or 17 per cent below baseline levels in the second phase (FY2015–FY2019)), and submit reports on their emissions of certain GHG substances to the Governor of Tokyo. Those who will likely fail to meet their GHG emissions reduction targets by a certain deadline can purchase credits from third parties through the emissions trading scheme so that they will meet their targets. Those who eventually fail to meet their targets will be ordered to reduce their emissions by 1.3 times the reduction shortage, and violators will be required to pay a fine which is currently ¥500,000 and to reimburse the Tokyo Metropolitan Government for its costs in acquiring the necessary credits to offset the GHG emissions. The amount of the aforementioned fine is relatively small, but the amount of such reimbursement obligation may be substantial depending on the market price of credits.

Additionally, as a measure arising from its Global Warming Strategy Promotion Ordinance, the prefecture of Saitama implemented an emissions trading scheme (the Saitama Scheme). The Saitama Scheme requires covered facilities in the commercial and industrial sectors to reduce their GHG emissions to certain specified levels and submit reports on their emissions of certain GHG substances. Trading of emissions credits is allowed and the Saitama Scheme is linked with the Tokyo Scheme. However, the Saitama Scheme does not impose mandatory emission reduction obligations on the target GHG emitters, unlike the Tokyo Scheme.

16 Trading agreements

Are any standard agreements on GHG emissions trading used in your country? If so, describe their main features and provisions.

There are no such standard agreements in Japan.

Sectoral regulation

17 Energy production, use and efficiency

Give details of (non-renewable) energy production and consumption in your country. Describe any regulations on GHG emissions. Describe any obligations on the state and private persons for minimising energy use and improving efficiency. Describe the main features of any scheme for registration of energy savings and for trade of related accounting units or credits.

Energy production and consumption in Japan

Due to its limited natural energy resources, Japan's current energy self-sufficiency rate is approximately 20 per cent. Japan largely depends on imported energy resources (such as crude oil, gas and coal). According to the materials published by METI, energy sources and consumption percentages are as follows:

Energy sources (as of 2013)

- Oil: approximately 10 per cent.
- Coal: approximately 30 per cent.
- Gas: approximately 40 per cent.
- Renewables: approximately 10 per cent.
- Nuclear: less than 1 per cent.

Energy consumption (as of 2013)

- Fuel (oil and gas, etc): 38.6 per cent.
- Electricity: 51.9 per cent.
- Steam and heating: 9.4 per cent.

Main regulations on GHG emissions

In 1998 Japan enacted the Act on Promotion of Global Warming Countermeasures. As mentioned in question 4, this law sets forth, in general terms, the responsibilities of the national government, local governments, businesses and the general public for, among other things, the control and reduction of GHG emissions, and recognises the government's obligation to establish a plan for attaining the targets prescribed in the Kyoto Protocol. It also provides a registration system for trading units under the Kyoto Protocol.

Under the Energy Conservation Act, business operators responsible for energy consumption above a certain level through their operation of a factory, office building or other places of business; provision of transportation or logistics services; construction of certain sized buildings; or manufacture of high energy consumption equipment are required to report their energy production and consumption levels. This Act also sets out regulations addressing the control and management of their energy consumption.

Schemes for registration/credits regarding energy savings

Japan has attempted to establish an integrated domestic GHG emissions market through the implementation of the following:

- a Japanese Voluntary Emissions Trading System (an experimental CO_2 emissions reduction, voluntary cap and trade system, which was intended to establish a foundation for a national GHG emissions trading system);
- the Tokyo Scheme mentioned in question 15;
- the Saitama Scheme mentioned in question 15; and
- the J-Credit Scheme (certification by the Japanese government of the amount of GHG emissions 'credits' (ie, reduction or removal of GHG emissions through the implementation of improved forest management or introduction of energy-efficient mechanisms)).

18 Other sectors

Describe, in general terms, any regulation on GHG emissions in connection with other sectors.

With regard to agriculture and forestry, there are no regulations on GHG emissions; however, Japan has adopted a forest carbon sequestration target. Also, the Ministry of Agriculture, Forestry and Fisheries has set a GHG emissions reduction target for the agriculture segment.

Renewable energy and carbon capture

19 Renewable energy consumption, policy and general regulation

Give details of the production and consumption of renewable energy in your country. What is the policy on renewable energy? Describe any obligations on the state and private parties for renewable energy production or use. Describe the main provisions of any scheme for registration of renewable energy production and use and for trade of related accounting units or credits.

In 2012, Japan introduced its feed-in-tariff (FIT) system by enactment and enforcement of the FIT Act. To take advantage of the FIT system, a renewable energy supplier must apply to METI to receive a certification called 'facility certification' for its renewable energy (ie, solar, wind, hydro, geothermal or biomass) facility. Once a power supplier obtains this certification (ie, becomes a 'specified supplier'), electricity generated from such certified facility must be purchased by power utilities at a fixed price for a fixed period of time. METI is responsible for determining the purchase price and purchase period for each category of renewable energy source by the beginning of each fiscal year (ie, by 1 April). A power utility must enter into a power purchase agreement with a specified supplier upon request, purchase all renewable electricity generated by such specified supplier at the applicable purchase price for the duration of the applicable purchase period, and grant such specified supplier access to its power grid, subject to certain statutory exemptions.

Permits, approvals and notifications required for the development and implementation of renewable energy power generation projects are generally the same notwithstanding the type of renewable energy source, and will be determined based on the location of the project site and the size and structure of the power facility for such project. One major regulation which is not applicable to solar power projects but is generally applicable to wind power generation projects is the Environmental Impact Assessment Act (the EIA Act).

Attention must also be paid to ordinances enacted by prefectures (such as prefectural environmental impact assessment ordinances), which may apply to the relevant renewable energy power generation project.

20 Wind energy

Describe, in general terms, any regulation of wind energy.

See question 19. Certain wind energy projects can receive subsidies from public-private organisations.

21 Solar energy

Describe, in general terms, any regulation of solar energy.

See question 19. Certain solar energy projects can receive subsidies from public-private organisations.

22 Hydropower, geothermal, wave and tidal energy

Describe, in general terms, any regulation of hydropower, geothermal, wave or tidal energy.

See question 19. Please note that wave and tidal energy power projects are not covered by the FIT Act.

23 Waste-to-energy

Describe, in general terms, any regulation of production of energy based on waste.

The MOE provides subsidies for certain projects where energy production is based on waste.

24 Biofuels

Describe, in general terms, any regulation of biofuels.

See question 19.

25 Carbon capture and storage

Describe, in general terms, any policy on and regulation of carbon capture and storage.

Currently there is no specific regulation requiring newly constructed fossil fuel power plants to implement carbon capture and storage technology. The first large-scale domestic carbon capture and storage demonstration project was undertaken by the Japanese government in Tomakomai, Hokkaido, Japan, where CO_2 generated at an oil refinery will be stored in two saline acquifers under the seabed.

Climate matters in transactions

26 Climate matters in M&A transactions

What are the main climate matters and regulations to consider in M&A transactions and other transactions?

As no national laws or regulations requiring mandatory reduction of GHG emissions exist, there is no particular climate-related issue or concern to be considered in connection with M&A transactions in Japan. However, if the target company owns a building or a factory in Tokyo that is subject to the Tokyo Scheme, it would be prudent for the purchaser to investigate whether the seller has duly complied with the Tokyo Scheme regulations.

Update and trends

A significant development related to climate regulation is the Japanese government's increased efforts to control the recent increase in GHG emissions resulting from Japan's increased dependence on fossil fuel generated power. Following the Fukushima Daiichi nuclear disaster in March 2011 and subsequent shutdown of Japan's nuclear reactors, nuclear energy consumption in Japan fell to less than 1 per cent as Japan instead turned to increased power production through fossil fuel sources such as imported oil, natural gas and coal, as well as renewable energy sources. As a consequence, GHG emissions substantially increased. In an effort to reduce GHG emissions, the Japanese government has set a long-term target for Japan's energy production composition (under which the target percentages of renewables and nuclear energy are 22–24 per cent and 20–22 per cent, respectively: the 'Energy Mix'). It has identified the reduction of GHG emissions as one of three basic policies (in addition to greater self-sufficiency in energy production and reduction of electricity costs), and it aims to reduce energy consumption by 17 per cent by 2030.

NAGASHIMA OHNO & TSUNEMATSU

Kiyoshi Honda **kiyoshi_honda@noandt.com**

JP Tower, 2-7-2 Marunouchi
Chiyoda-ku
Tokyo 100-7036
Japan

Tel: +81 3 6889 7000
Fax: +81 3 6889 8000
www.noandt.com

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