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Passage of the Hydrogen Society Promotion Act and the CCS Business Act

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OIL, GAS AND OTHER RESOURCES / ELECTRICITY AND GAS SUPPLY

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I. Introduction

May 24, 2024 saw the promulgation of the “Act on Promotion of Supply and Use of Low-Carbon Hydrogen, etc., for Smooth Transition to a Decarbonized Growth-Oriented Economic Structure” (the “**Hydrogen Society Promotion Act**”) and “Act on Carbon Dioxide Storage Business” (the “**CCS Business Act**”), which were passed by the current Diet session. The Hydrogen Society Promotion Act and the CCS Business Act are the first laws in Japan focusing on, respectively, hydrogen- and ammonia-related businesses and carbon dioxide capture and storage businesses.

There has been increasing activity recently at the national level toward the realization of a decarbonized society. In light of these developments, the Hydrogen Society Promotion Act and the CCS Business Act, which serve as foundation for the widespread adoption of hydrogen and ammonia and the societal implementation of carbon dioxide capture and storage business, which are crucial for realizing a decarbonized society, are of great significance. This newsletter provides an overview of these two new laws.

II. Hydrogen Society Promotion Act

(i) Outline of the Hydrogen Society Promotion Act

The Hydrogen Society Promotion Act, which is scheduled to come into effect on the date specified by a Cabinet Order within a period not exceeding six months from the date of promulgation, sets out the following key provisions:

- (a) Establishment of a basic policy by the competent minister to promote the supply and use of low-carbon hydrogen;
- (b) Establishment of a planning and certification system for both supply and demand aspects of low-carbon hydrogen;
- (c) Support measures through the Japan Organization for Metals and Energy Security (the “JOGMEC”), including price differential support and infrastructure development support for certified businesses, as well as special measures for various regulations; and

(d) Establishment of criteria to which hydrogen suppliers should adhere.

(ii) Purpose of and Basic Policy under the Hydrogen Society Promotion Act

(a) Purpose

The Hydrogen Society Promotion Act aims to promote the early supply (domestic production or import and supply) and use of low-carbon hydrogen by providing various support measures to businesses which have obtained the necessary planning certification. This promotion will facilitate the smooth transition to a decarbonized growth-oriented economic structure, which is the purpose of the GX Promotion Act (the Act on Promotion of Smooth Transition to a Decarbonized Growth-Oriented Economic Structure; cf. Article 1 thereof).

“Low-Carbon Hydrogen” is defined as (i) Hydrogen, (ii) the amount of CO₂ emitted from the production of which is less than a certain value, (iii) the use of which contributes to the reduction of CO₂ emissions in Japan in light of international decisions on the calculation of CO₂ emissions and which (iv) meets certain other requirements specified in the Ordinance (the “**Ordinance**”) of the Ministry of Economy, Trade and Industry (the “**METI**”) (Article 2, Paragraph 1.).

“**Hydrogen**” as used just above is defined as “hydrogen and its compounds, as specified by the Ordinance”. The interim report (the “**Interim Report**”)¹ released by the METI joint conference prior to its submission to the ordinary Diet session envisioned that “hydrogen” would include ammonia, synthetic methane, and synthetic fuels, but the details have been delegated to the Ordinance to be established in the future.

With reference to the notion of “carbon intensity” (the amount of CO₂ emissions per unit of hydrogen production) proposed by Japan at the G7 Sapporo Climate, Energy, and Environment Ministerial Meeting in April 2023, the Interim Report indicates a benchmark value of 3.4 kg CO₂/kg-H₂ as one standard for the amount of CO₂, which is one of the requirements for “Low-Carbon Hydrogen”; the specific benchmark value will, however, be determined in the future.

(b) Basic Policy

The competent minister² shall formulate a basic policy on the promotion of supply and use of Low-Carbon Hydrogen (Article 3). This policy will describe (i) the significance and goals of the supply and use of Low-Carbon Hydrogen, (ii) the priority contents to be implemented toward the realization of green transformation, and (iii) efforts toward the self-sustained supply of Low-Carbon Hydrogen.

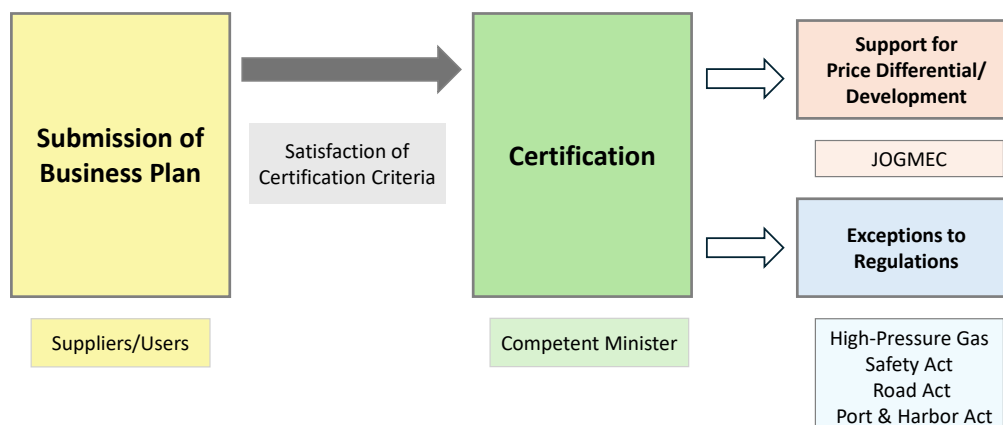
On the basis of this policy, the national government, local governments, and business operators will be responsible for promoting the supply and use of Low-Carbon Hydrogen from their respective standpoints (Articles 4 through 6).

(iii) Certification of Business Plans for Low-Carbon Hydrogen Supply and Special Measures for Support and Regulations

The core of the Hydrogen Society Promotion Act is the introduction of a plan certification system, support measures for certified businesses (price differential support and infrastructure development support), and special regulatory measures.

¹ “Interim Report” (January 29, 2024), Advisory Committee for Natural Resources and Energy, Subcommittee on Energy Efficiency and New Energy, Subcommittee on Hydrogen and Ammonia Policies, Subcommittee on Resources and Fuels, Subcommittee on Decarbonized Fuel Policies, Industrial Structure Council, Subcommittee on Safety and Consumer Product Safety, Subcommittee on Hydrogen Safety.

² Depending on the item, it will be both the Minister of Economy, Trade and Industry and the Minister of Land, Infrastructure, Transport and Tourism or the Minister of Economy, Trade and Industry (Article 42, paragraph 1).



(a) Certification of Business Plan for Low-Carbon Hydrogen Supply

Business operators importing or supplying Low-Carbon Hydrogen domestically (the “**Supplier(s)**”), as well as those utilizing Low-Carbon Hydrogen (the “**Users**”) may independently or jointly prepare and submit a “Business Plan for Low-Carbon Hydrogen Supply, etc.” (the “**Business Plan**”) to the competent ministry. Upon receiving certification from the minister, these operators become eligible for subsidies for price differential support and infrastructure development support. Additionally, they may receive special exemptions concerning the High-Pressure Gas Safety Act, the Port and Harbor Act, and road occupancy regulations.

When certifying a Business Plan, the relevant minister must ensure that the submitted plan meets all of the following certification criteria (Article 7, Paragraph 5). The certification criteria are summarized as follows:

- ✓ The contents of the Business Plan are appropriate in light of the basic policy.
- ✓ The contents of the Business Plan are expected to be implemented smoothly and reliably.
- ✓ The contents of the Business Plan should be economical and reasonable, and should contribute to strengthening the international competitiveness of Japanese industries related to the supply or use of Low-Carbon Hydrogen to a considerable extent.
- ✓ If the applicant wishes to receive subsidies for price differential support and infrastructure development support, the applicant must conform to all of the following conditions:
 - a) the Business Plan must be jointly developed by the Supplier and Users;
 - b) The supply of Low-Carbon Hydrogen is expected to start by a certain fiscal year and to continue for a certain period of time³; and
 - c) It is expected that new capital investment and other business activities for the use of Low-Carbon Hydrogen supplied in accordance with the Business Plan will be conducted

³ The “certain fiscal year” is to be determined by the Minister of Economy, Trade and Industry, and the “certain period of time” is to be determined by the Ordinance, but the details have not been determined at this time.

by the Users.

- ✓ The port, road, etc. where the pipelines and storage tanks, etc. are to be developed must be appropriate in light of the port plan, road conditions, and other land use conditions.

(b) JOGMEC Support Measures (price differential support, infrastructure development support)

The Hydrogen Society Promotion Act specifies that JOGMEC shall carry out the following activities as part of its duties: providing subsidies (price differential support) to allocate funds necessary for certified Suppliers to continuously supply Low-Carbon Hydrogen in accordance with the relevant certified Business Plan (the “**Certified Business Plan**”); and to provide subsidies (infrastructure development support) to allocate funds necessary for such certified Supplier to establish facilities for the storage or transportation of Low-Carbon Hydrogen, or other facilities required for the implementation of the applicable Certified Business Plan, in accordance therewith (Article 10, Item 1).

The Hydrogen Society Promotion Act does not provide detailed provisions regarding the conditions for the provision of subsidies, such as price differential support and infrastructure development support. It is anticipated that JOGMEC will establish such detailed subsidy-related provisions in the future.

(c) Special Measures for Regulations (High Pressure Gas Safety Act, Road Act and Port and Harbor Act)

The Hydrogen Society Promotion Act introduced a mechanism that allows certified Suppliers to receive certain regulatory exemptions under the premise of a plan certification system.

a) Special Provisions of the High-Pressure Gas Safety Act

For certain hydrogen gases meeting the criteria of high-pressure gases as defined in the High-Pressure Gas Safety Act, manufacturing permits and various inspections (such as completion inspections and safety inspections) are conducted by prefectures and other relevant authorities. However, to expedite the process of large-scale supply and utilization of Low-Carbon Hydrogen, it is deemed effective for the national government (rather than prefectures or other local authorities) to comprehensively conduct manufacturing permits, completion inspections, and safety inspections for a certain period after the start of manufacturing. Therefore, the Hydrogen Society Promotion Act establishes a system, as a special provision under the High-Pressure Gas Safety Act, whereby certified Suppliers are exempted from the need for permits under the High-Pressure Gas Safety Act for manufacturing and storage for a period of three years from the commencement of same, upon approval or certification by the Minister of Economy, Trade, and Industry (Articles 12, 17, and 22).

b) Special Provisions for Road Occupancy Permits

If pipelines installed by certified Suppliers in accordance with Certified Business Plan meet certain criteria, road occupancy permits must be granted (Article 31, Paragraph 2).

c) Special Provisions of the Port and Harbor Law

A Certified Business Plan is deemed to have obtained permission for the implementation of construction within port areas under Article 37, Paragraph 1 of the Port and Harbor Act (Article 11, Paragraph 1). Additionally, certain activities within waterfront district are exempt from notification requirements (Article 11, Paragraph 2).

(iv) Establishment of Criteria that to which Hydrogen Supplier Should Adhere

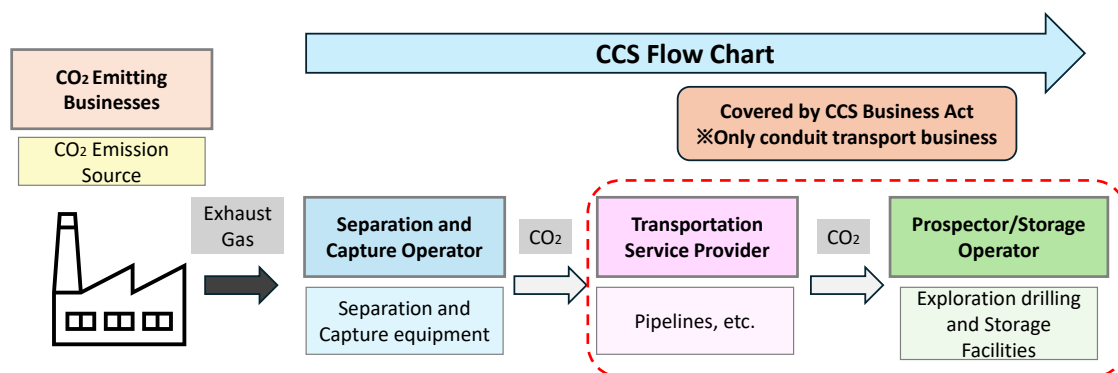
The Minister of Economy, Trade, and Industry is tasked with establishing criteria that should guide

Suppliers in their efforts to promote the supply of Low-Carbon Hydrogen, taking into account (i) the supply status of Low-Carbon Hydrogen by Suppliers, (ii) the technological standards related to the supply, storage, transportation, and (iii) utilization of Low-Carbon Hydrogen, as well as (iv) the economic viability and other factors related to the use of Low-Carbon Hydrogen (Article 32). The details will be specified concretely after the enforcement of the law.

III. CCS Business Act

(i) Outline of the CCS Business Act

The new CCS Business Act does not serve as a comprehensive business law for the entire CCS value chain but primarily focuses on (i) the establishment of a permit system for exploration drilling and storage activities, together with regulation and safety measures concerning storage activities (Chapter 2) and (ii) regulation and safety measures for pipeline transportation activities (Chapter 3)⁴. The full enforcement of the CCS Business Act will occur within two years from the date of its promulgation, as stipulated by Cabinet Order. However, regulations related to prospecting will be enforced within six months from the date of its promulgation, and other provisions will be gradually enforced (Article 1 of the Supplementary Provisions). As of now, no details of any ordinance related to the CCS Business Act have been disclosed.



(ii) Establishment of Permit System for Exploration Drilling and Storage Activities, and Development of Business and Security Regulations for Storage Activities

(a) Designation of Specified Areas and Establishment of Prospecting Rights and Storage Rights

The CCS Business Act does not determine storage and prospecting operators through a first-to-file system. Instead, the Minister of Economy, Trade, and Industry designates areas with existing or potential storage layers as "Specified Areas" and selects the most suitable operators for storage activities or exploration drilling (the "**Storage Activities**") through a public solicitation process (Article 3 and subsequent articles). Those intending to conduct Storage Activities in Specified Areas must apply to the Minister of Economy, Trade, and Industry in accordance with the implementation guidelines for the Specific Area and obtain a permit for such activities for each storage area, as well as for exploration drilling for each prospecting area (Article 4, Paragraph 1). However, operators who have already obtained mining rights under Article 21, Paragraph 1 of the Mining Act for petroleum, combustible natural gas, or other substances

⁴ It also regulates certain other matters, such as the introduction of a permit system for Prospecting of storage layers (Article 107).

specified by Cabinet Order may only obtain a permit for Storage Activities or exploration drilling when intending to conduct such activities in their mining area (limited to areas outside the Specified Areas) (Article 12).

Furthermore, persons other than operators who have obtained permits for Storage Activities (the “**Storage Operator(s)**”) cannot store carbon dioxide in storage layers, except for carbon dioxide storage as stipulated by the Ordinance related to mineral extraction activities or other activities (Article 13, Paragraph 1). Similarly, individuals other than those who have obtained permits for exploration drilling (the “**Prospector(s)**”) cannot conduct prospecting activities (Article 13, Paragraph 2).

(b) Legal Nature of Prospecting Rights and Storage Rights

Storage Rights or Prospecting Rights (the “**Storage Rights**”), similarly to mining rights, are deemed to be *in rem* rights (Article 12 of the Mining Act), and the provisions on real estate apply *mutatis mutandis* unless otherwise stipulated in the CCS Business Act (Article 33). As a result, if Storage Rights are infringed upon by a third party, the holder can exercise proprietary rights such as the right to seek removal of the obstruction. However, unlike real estate under the Civil Code, Storage Rights may not be the subject of rights other than general succession, including inheritance, assignment, disposition of delinquency, execution, provisional seizure and provisional disposition (Article 34; provided, however, that they may be subject to a mortgage). Additionally, they cannot be transferred without the approval of the Minister of Economy, Trade, and Industry under Article 17, Paragraph 1 or Paragraph 2 (except by inheritance) (Article 35, Paragraph 1). Furthermore, instead of registration, the establishment, transfer, modification, extinction, and disposal of Storage Rights as well as mortgages over Storage Rights, are carried out by registration in the Storage Rights registration ledger (Article 36).

(c) Establishment and Effect of Storage Rights

When permit for Storage Activities is granted, the Minister of Economy, Trade, and Industry publicly announces the fact that such permit has been granted, along with certain particulars such as the name and address of the Storage Operator and the permitted storage area (Article 24). Such announcement establishes the Storage Rights concerning the permitted storage area. Moreover, the exercise of other rights pertaining to the land in the permitted storage area is restricted to the extent necessary to prevent obstruction or interference with carbon dioxide storage or prospecting conducted by the Storage Operator within the permitted storage area (Article 25, Paragraph 1). The period during which other rights pertaining to the land are restricted due to the establishment of Prospecting Rights shall be limited to the period from the date of the announcement until the expiration of the validity period of the Prospecting permit related to the Prospecting Right (Article 25, Paragraph 2).

(d) Major Business and Security Regulations for Storage Operators

a) Time of Commencement of Storage

As a general rule, the Storage Operator, shall commence the Storage Activities within the period specified by an METI Ordinance as the period normally considered necessary for commencing Storage Activities (Article 37, Paragraph 1 and Article 58, Paragraph 1).

b) Approval of Storage and Exploration Drilling Implementation Plans

The Storage Operator must establish a storage implementation plan for each permitted storage area and obtain approval from the competent minister before commencing Storage Activities (Article 38, Paragraph 1). The Storage Operator must not conduct Storage Activities until such approval of the storage implementation plan is obtained (upon approval, an “**Approved Storage Implementation Plan**”) (Article 40). Similarly, the Prospector must establish a drilling implementation plan for each permitted drilling area

and obtain approval from the Minister of Economy, Trade and Industry before commencing exploration drilling (Article 59, Paragraph 1). The Prospector must not conduct exploration drilling unless based on an approved drilling implementation plan (Article 61).

c) Monitoring and Reporting by the Storage Commencement Operator

Operators conducting Storage Activities within permitted storage areas, injecting carbon dioxide into storage layers, and commencing Storage Activities (the “**Storage Commencement Operator(s)**”) (Article 22, Paragraph 1) must monitor those matters specified by the Ordinance as necessary for confirming the conditions of carbon dioxide storage in the storage layers within the permitted storage area, including temperature and pressure for the Storage Commencement Activities in accordance with the Approved Storage Implementation Plan. Storage Commencement Operators must report the results to the competent minister (Article 43, Paragraph 1 and 2).

d) Provision of Reserves by Storage Commencement Operators

The Storage Commencement Operator must take measures as stipulated by the METI Ordinance. These include setting aside reserves and other funds in accordance therewith to cover monitoring expenses for the period commencing on the cessation of injection of carbon dioxide into the storage layers within the permitted storage area, until such time as the Storage Commencement Operator receives the permit for termination of Storage Commencement Activities (Article 53, Section 5), together with other necessary costs for implementing the Commencement.

e) Transfer to JOGMEC and Payment of Contributions

When the Storage Commencement Operator takes closure measures with the approval of the competent minister, and obtains the relevant permit from the Minister of Economy, Trade and Industry to terminate the Storage Commencement Activities, JOGMEC will be notified accordingly, and a specific announcement will be made (Article 53). The Storage Rights related to the Notified Storage Area (referred to as the permitted storage area for notification to JOGMEC) shall be transferred to JOGMEC by virtue of such announcement (Articles 53 and 55). JOGMEC shall implement the management tasks of the Notified Storage Area, including monitoring and other activities as prescribed by the competent Ordinance, to confirm the stable storage of carbon dioxide in the storage layers within the Notified Storage Area (Article 54). In order to cover the necessary expenses for such management operations, the Storage Commencement Operator must pay a certain amount of contribution to JOGMEC for each fiscal year and for each permitted storage area (Article 45).

f) Safety Regulations

The Storage Operators are obliged to maintain the structures for storage in conformity with technical standards specified by the METI Ordinance (Article 67, Paragraph 1), to make reports in case of disaster (Article 68), to formulate and notify safety regulations (Article 69), to notify construction plans (Article 75), to conduct pre-use voluntary inspection of the structures for storage, etc. (Article 76), and to conduct periodic voluntary inspections (Article 77), etc.

(e) Liability of Prospectors and Storage Operators

The CCS Business Act imposes a no-fault liability on operators with respect to liability arising from exploration drilling and Storage Activities (Article 124). In other words, if the storage of carbon dioxide in a storage layer, excavation of land for exploration drilling, discharge of well water, or leakage of carbon dioxide stored in a storage layer causes damage to others, the

Storage Operator in the permitted storage area at the time the damage occurred shall be liable for compensation for such damage. As a general rule, compensation for damages shall be in monetary terms; however, if recovery to the original state without incurring significantly more expenses than the amount of compensation is possible, the victim may seek restoration damages to such original state. Further, if the court finds it appropriate upon petition by the person liable for compensation, the court may order restoration of the original state instead of compensation in monetary terms (Article 126, Paragraph 2, Item 3). The above is similar to the compensation mechanism in the Mining Act (Article 109, Paragraph 1 and Article 111, Paragraphs 2 and 3 of the Mining Act).

(iii) Development of Business and Security Regulations for CO₂ Pipeline Transportation Business

(a) Notification System and Regulation of Terms and Conditions

Pipeline transportation assumes a physical connection between the storage site and the emission source via pipeline, which may lead to a natural monopoly in the region and a dominant position of the transportation operator over the CO₂ emitters. Therefore, the CCS Business Act adopts a notification system (Article 78) and imposes certain regulations on businesses engaged in the transportation of carbon dioxide through pipelines for the purposes of storage in storage layers (including those equivalent to storage layers in foreign countries).

In particular, “Specified Pipeline Transportation Service Providers” (i.e., pipeline transportation service providers engaged in the business of transporting carbon dioxide emitted from the activities of other parties on behalf of other parties) are required to establish general terms and conditions for specified pipeline transportation services and notify the Minister of Economy, Trade and Industry (Article 82, Paragraph 1; the same shall apply to amendments of such general terms and conditions). In principle, it is prohibited to conduct pipeline transportation business under conditions other than those stipulated in such general terms and conditions (Article 82, Paragraph 2). In addition, in certain cases, the Minister of Economy, Trade and Industry may order that such general terms and conditions be changed within a reasonable period (Article 82, Paragraph 3). The Specified Pipeline Transportation Service Provider shall not give unjust preferential treatment or benefits, or unjust disadvantageous treatment or disadvantage to any specific person with respect to its business (Article 83).

(b) Safety Regulations

Pipeline transportation service providers are subject to the same safety regulations as are Storage Operators, including the obligation to maintain pipeline transportation facilities in conformity with technical standards specified by the METI Ordinance (Article 86, Paragraph 1), to make a report in case of disaster (Article 87, Article 68), to formulate and notify safety regulations (Article 88), to notify construction plans (Article 90), to conduct pre-use voluntary inspection of pipeline transportation facilities (Article 91), and to conduct periodic voluntary inspections (Article 92, Article 77).

(iv) Relationship with the Permitting System for Sub-seabed Disposal of CO₂ under the Marine Pollution Prevention Act

The current Act on Prevention of Marine Pollution and Maritime Disasters (the “**Marine Pollution Prevention Act**”) stipulated that no person shall, as a general rule, dispose of oil, hazardous liquid substances, or waste beneath the seabed (including storage beneath the seabed) (Article 18-7). However, the disposal of “Specified Carbon Dioxide Gas” beneath the seabed is allowed only if the Minister of the Environment grants a permit (Article 18-7, Item 2). With the enactment of the CCS Business Act, the sub-seabed disposal permit system for Specified Carbon Dioxide Gas under the Marine Pollution Prevention Act (Article 18-8 of the said Act) will be abolished (Article 14 of the Supplementary Provisions of the CCS Business Act) and integrated into the CCS Business Act.

IV. Conclusion

In this newsletter, we have reviewed the newly Hydrogen Society Promotion Act and the CCS Business Act. In addition to the enactment of future government ordinances and regulations, it is necessary to continue to pay attention to business trends with respect to both the further development of the hydrogen business, which is still in its early stages, the early social implementation of the carbon dioxide capture and storage business.

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