

Japan's CCS Bill in Brief

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The cabinet decision on the legislative bill concerning the Carbon Dioxide Capture and Storage Business Act (“**CCS Bill**”) has been made and will be submitted to the 213th Ordinary Diet Session, announced by the Ministry of Economy, Trade and Industry (“**METI**”) and the Ministry of Environment on February 13, 2024.

If the CCS Bill passes the Diet, which will be held until May 2024, the new law will be enforced sequentially with the provisions on:

- (i) exploration (i.e. exploratory activities without excavation) of reservoirs within three months of promulgation (around August 2024);
- (ii) prospecting (i.e. exploratory excavation of) reservoirs within six months of promulgation (around November 2024); and
- (iii) storing carbon dioxide (“**CO₂**”) in reservoirs and other provisions such as pipeline transportation of CO₂ within two years of promulgation (around May 2026).

The following is an overview of the CCS Bill. Please note that the terms used below are our own translations (i.e., not official translations).

1. Permission and Rights for Prospecting or Storage

(1) Prospecting and Storage

The CCS Bill defines the act of excavation of an underground formation to investigate whether it is a reservoir as “prospecting (*shikutsu*)” (Article 2(4)), and the business operations of storing CO₂ in a reservoir as “storage business operations (*choryu jigyo*)” (Article 2(2)). Only persons who have obtained permission for prospecting or storage business operations from METI may conduct prospecting or CO₂ reservoir storage,¹ respectively (Article 13(1) and (2)).

When the Minister of METI grants a permission for prospecting or storage business operations with respect to a certain area (“**Prospecting Site**” or “**Storage Site**”, respectively) and issues the prescribed public notice, the person who obtained the permission acquires a prospecting right or a storage right with respect to the Prospecting Site or Storage Site, respectively. Prospecting rights and storage rights are deemed to be property rights (Article 33), and are exclusive as to such Prospecting Site and Storage Site. Once a prospecting right or a storage right is established, exercise of other rights to the Prospecting Site or Storage Site, respectively, will be restricted to the extent that they interfere with prospecting or storage of CO₂ (Article 25(1)).

The duration of a prospecting permission is four years and may be renewed for two years (Article 9(1), (2) and

¹ except for storing CO₂ associating with mining of minerals and other items specified by the ordinance.

(6)), but there is no specified duration for storage business operations permissions. When the permission for prospecting or storage business operations expires or is rescinded, the relevant property right extinguishes (Article 28, Article 32(2)).

(2) Exploration

With respect to reservoir exploration which does not accompany an excavation and is conducted by investigations into geological structures via seismic surveying methods, permission from the Minister of METI for reservoir exploration is required (Article 107(1)). A person who intends to obtain a permission for exploration must specify, among others, duration of the permission in the application (Article 107(2)(iii)). In contrast with permissions for prospecting and storage business operations, the permission for exploration does not grant any right to the applicant.

2. Process for Granting Permission for Prospecting and Storage Business Operations

In general, permissions for prospecting or storage business operations will be granted by public tenders. The Minister of METI designates an area in which a reservoir is found or is likely to be found (“**Specified Zone**”),² and establishes the particulars necessary for inviting applicants (*jisshi yoko* or implementation guideline) for permissions for prospecting or storage business operations (Article 3(1) and (4)). A person who intends to apply for a permission for prospecting or storage business operations in the Specified Zone must file an application in accordance with the implementation guideline, and must submit, among others, a business plan to the Minister of METI (Article 4). The Minister of METI examines and evaluates the applications,³ selects the applicant that is most capable of prospecting or storing CO₂ in the area in accordance with the evaluation, and grants a permission to such applicant (Article 5(1), (2) and (4)).

In the case that a person intends to conduct prospecting or storage business operations in an area other than the Specified Zone, such person may propose that the Minister of METI designate such area as a Specified Zone (Article 11(1)). If permitted exploration without excavation has discovered the presence or possible presence of a reservoir, it is practically necessary to make such proposal in order to conduct prospecting or storage business operations in that location.

There are a couple of exceptions for the process of public tenders: (i) the case that the person who is permitted for prospecting applies for the permission for storage business operations with respect to the same area (Article 10(1)), and (ii) the holder of relevant mining rights for petroleum or combustible natural gas under the Mining Act applies for the permission for prospecting or storage business operations in the mining site pertaining to the mining right, unless the mining site falls within the Specified Zone (Article 12(1)). As to these cases, the applicant may apply for the permission outside public tender process, and will obtain permission if they meet the prescribed requirements.

² If the Minister of METI intends to designate the area in the sea as the Specified Zone, the Minister of METI must consult with the Minister of Environment and obtain its consent (Article 3(3)).

³ As to a permission for storage business operations in reservoir in the sea, the Minister of METI must consult with the Minister of Environment and obtain its consent with respect to the examination that applications have met certain financial and technical requirement and CO₂ is expected to be stored stably in the reservoir in the applied area (Article 5(3)).

3. Operations

Once a permission for prospecting or storage business operations is granted, the person who is granted the permission (the “**Prospector**” or the “**Storage Business Operator**”, respectively) must commence the operation within the period designated by an ordinance of METI (Article 37(1), Article 58(1)). Prior to commencing the operation, the Prospector or Storage Business Operator must submit an operational plan and obtain authorization from the Minister of METI (Article 38(1), Article 59(1)). In the case that the permission is for storage business operations in a reservoir in the sea, the operational plan must be authorized by the Minister of the Environment as well (Article 38(1), Article 136).

4. Site Closure and Reserve Funds

When a Storage Business Operator begins injecting CO₂ into a reservoir, the Storage Business Operator becomes a “storage commencing storage business operator (*choryu kaishi choryu jigyo*sha)” (“**Storage Commencing Operator**”).

(1) Process for Storage Site Closure and Abolition of Storage Business Operations

In order for a Storage Commencing Operator to abolish storage business operations at the Storage Site, it must first obtain authorization from the Minister of METI⁴ for a closure plan, including closing of a well (Article 53(2)). At the completion of closing, the Storage Commencing Operator must obtain confirmation from the Minister of METI⁵ that result of closing measures have met the prescribed standards (Article 53(4)). After the completion of the site closure, and certain period of time that is sufficient to stabilize CO₂ in the reservoir, which will be designated by an ordinance, has passed, the Storage Commencing Operator may apply for the permission of the Minister of METI⁶ for abolition of storage business operations (Article 53(5)). Until the permission to abolish the storage business operations is granted, the Storage Commencing Operator must continue monitoring CO₂ in the Storage Site reservoir (See Article 43).

When the Minister of METI gives public notice of permission for the abolition of storage business operations at the Storage Site (the Storage Site pertaining to such permission for the abolition of storage business is defined as a “Notified Storage Site”) and issues prescribed public notice, the storage right pertaining to such storage business operations is transferred to the Japan Organization for Metals and Energy Security (“**JOGMEC**”)⁷ (Article 55(1)), and JOGMEC will monitor the prescribed items specified by the ordinance as necessary to confirm that CO₂ in the reservoir in the Notified Storage site is stored in a stable manner and manage the

⁴ If the storage operation was conducted in a reservoir in the sea, the closure plan must be authorized by the Minister of Environment as well.

⁵ If the storage operation was conducted in a reservoir in the sea, the confirmation from the Minister of Environment must be obtained as well.

⁶ If the storage operation was conducted in a reservoir in the sea, the Minister of METI must consult with and obtain consent from the Minister of the Environment that the application has met the prescribed requirement (Article 53(9)).

⁷ JOGMEC is an incorporated administrative agency, a corporation established pursuant to the Act on General Rules for Incorporated Administrative Agencies (Act No. 103 of 1999) and Act on the Japan Organization for Metals and Energy Security (Act No. 94 of 2002).

Notified Storage Site thereafter (Article 54(1)). The Minister of METI⁸ will not permit the Storage Commencing Operator to abolish operations at such site unless (i) it is found that conditions of CO₂ in the reservoir are stabilized and are expected to remain so in the future; (ii) the Storage Commencing Operator contributed the funds as prescribed in Article 45 (please see (2) below) to JOGMEC; and (iii) it is found that the handing over of administrative work and other measures necessary for JOGMEC to operate smooth and steady management of the Notified Storage Site are implemented (Article 53(8)).

(2) Reserve Funds

The Storage Commencing Operator must reserve funds to cover the cost of monitoring and other expenses necessary for the monitoring during the period from the end of CO₂ injection to the time that the Minister of METI grants permission to abolish the storage business operations at the Storage Site (Article 44(1)). Further, the Storage Commencing Operator must annually contribute funds to JOGMEC to cover the cost of JOGMEC to conduct maintenance of the Notified Storage Site (Article 45(1)).

5. Liabilities

If excavation of land for CO₂ storage or prospecting, discharge of well water, or leakage of CO₂ stored in a reservoir⁹ causes damage to another person, the Storage Business Operator or the Prospector of the Storage Sites or the Prospecting Sites concerned at the time of occurrence of the damage must compensate such damage. If the storage right concerning the Storage Site is transferred to JOGMEC, the Storage Business Operator who held the storage right at the time of transfer of the storage right must compensate such damage (Article 124(1)).


6. Pipeline Transportation

The CCS Bill defines operations of transporting CO₂ through a pipeline for the purpose of storing it in a reservoir (including reservoirs in a foreign country) as “pipeline transportation operations” (Article 2(9)), and requires that a person who intends to conduct pipeline transportation operations must notify the Minister of METI of the prescribed matters (Article 78(1)).

Therefore, when CO₂ is exported by ship for storage in a foreign country reservoir, operations of transporting the CO₂ by pipeline to the loading point qualifies as a pipeline transportation operation, and prior notification to the Minister of METI is required.

⁸ If the storage operation was conducted in a reservoir in the sea, the Minister of METI must consult with and obtain consent from the Minister of the Environment that the application has met the prescribed requirement (Article 53(9)).

⁹ Article 124(2) suggests that these items (excavation, discharge and leakage) mean certain acts of a Storage Business Operator or Prospector. Article 124(2) stipulates that, in the case referred to in the preceding paragraph (Article 124(1)), if damage is caused by the acts of storage business operators, etc., in two or more storage sites, etc., each of the storage business operators shall have the obligation to jointly and severally compensate for said damage. The same shall apply to cases where it cannot be established that the damage was caused by the act of one of the storage business operators, etc. in two or more storage sites, etc.



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