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A part of the provisions under the CCS Business Act of Japan have become effective as of November 18, 2024

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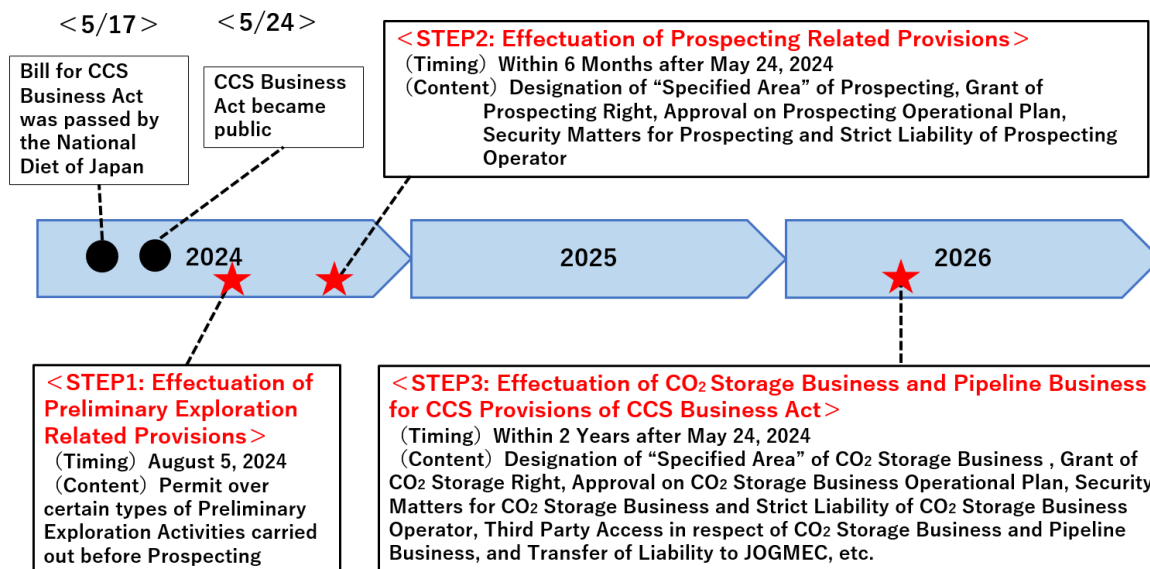
1. Introduction

As you may be aware, a new law in Japan entitled the “Act on Carbon Dioxide Storage Business”, or more casually, the “CCS Business Act”, was approved and formulated by the regular session of the National Diet of Japan of 2024, and it was published as of May 24, 2024.

With respect to the effectiveness of the CCS Business Act, the supplemental provision of the same act provides that the provisions of such act related to prospecting and prospecting rights (shi-kutsu-ken) thereunder shall become effective within six (6) months after the publication of the act. Subject to such supplemental provision of the CCS Business Act, the Japanese government has recently published a Cabinet Order to the effect that the effective date of the provisions of the CCS Business Act that are related to prospecting and prospecting rights thereunder shall be November 18, 2024.

As such, the provisions of the CCS Business Act which are related to prospecting and prospecting rights have already become effective as of November 18, 2024.

The timeline as described above can be illustrated in the following chart:



Source: “Outline of CCS Business Act“ by the Ministry of Economy, Trade and Industry (“METI”) dated August 2024, page 9.

This newsletter outlines the provisions of the CCS Business Act as related to such prospecting matters thereunder, which have become effective as of November 18, 2024.

2. Outline of Provisions under the CCS Business Act related to Prospecting for CCS Operations

2.1. Process of Grant of Prospecting Rights under the CCS Business Act

Under the CCS Business Act, in principle, the areas where they are likely to be storage complexes will be specified as “Specified Areas” by the government, METI. This system of “Specified Areas” determined by METI is similar to the current regime under the Mining Act in respect to mining rights related to “Specified Minerals” thereunder.

Under this “Specified Areas” regime, upon METI’s designation of a Specified Area and the associated public offering, the (potential) prospecting operators will apply for prospecting rights in respect of such Specified Area, upon which METI will review the applications and select the most appropriate business operator for such prospecting.

The provisions described above under the CCS Business Act, which set forth the process of creation of prospecting rights, have become effective as of November 18, 2024.

For information, there may be preliminary exploration by a potential applicant for prospecting rights, depending on the situation of the targeted location. The relevant provisions under the CCS

Business Act applicable to some of such preliminary exploration activities, inter alia, the seismic prospecting method, have already become effective as of August 5, 2024, ahead of the effectuation of the provisions related to prospecting.

2.2. Criteria for the Creation of Prospecting Rights and the Coordination Process with the Prefecture

In order for the prospecting right to be granted, firstly the applicant is required to demonstrate that it has sufficient financial basis and technical ability to conduct the prospecting activity for the CCS purpose, and that he/she has no past record of any violations of relevant laws, including the CCS Business Act itself.

Furthermore, the requirements for the granting of the prospecting rights are as follows: that the prospecting operation will not hinder any other established storage sites or prospecting site of a third party, as well as it will not hinder mining areas located vertically above the prospecting area held by any third party under the Mining Act of Japan.

In addition to the above criteria, in order for the prospecting right to be granted, the prospecting activity contemplated by the applicant must not be contrary to the public interest, and also, there must not be any risks where the conduct of prospecting activity will be significantly inappropriate or hinder the promotion of the public interest in light of the surrounding social and economic circumstances.

If the above criteria are met, which will be reviewed by METI, the prospecting right will be granted, in which case, the granting of the prospecting right will become available to the public.

In the course of the review process by METI over the application for prospecting right, a certain coordination process with the governor of the prefecture, in which the application for a prospecting right has been lodged in respect of the “Specified Area,” will be carried out upon the submission of the application for the prospecting right.

2.3. Duration Period of the Prospecting Rights

With respect to the prospecting right, unlike CO₂ Storage Rights¹, a statutory time limit is set under the CCS Business Act. In principle, the duration of a prospecting right is four (4) years from the date of the grant thereof, which can be renewed for another two (2) years. There are no limitations on the number of renewals of the period. Accordingly, a prospecting right can last for ten (10) years or more, insofar as each of the renewals for two (2) years is approved by METI.

¹ “CO₂ Storage Rights” are the rights to inject CO₂ into a storage complex underground, which is not the subject of this newsletter, because the provisions of the CCS Business Act relevant to the “CO₂ Storage Rights” have not yet become effective as of now, however, they are scheduled to be effective by no later than May 24, 2026.

3. Other Provisions under the CCS Business Act related to Prospecting Operations

In addition to the basic principles in respect of the grant of the prospecting rights under the CCS Business Act as described in Section 2 above, the following ancillary provisions also related to the prospecting operations have also become effective as of November 18, 2024.

3.1. Obligation to Commence the Prospecting Work and Formulate Prospecting Plan

The holder of a prospecting right must commence the prospecting operation of the relevant prospecting operation within a certain period of time to be determined by an ordinance of METI. In addition, prior to the commencement of the prospecting operation, an operation plan for the prospecting must be formulated by the prospecting operator and must be approved by METI. The operation plan for prospecting must be complied with by the prospecting operator throughout the prospecting operation. Further, the prospecting operator must also regularly report the implementation status of the prospecting operation plan to METI.

3.2. Security Matters related to Prospecting Operations

A prospecting operator shall take the necessary measures with respect to: (a) the excavation of land for the purpose of prospecting operation, and (b) the construction work of the prospecting operation, etc.

The prospecting operator must maintain the storage facilities in accordance with the technical criteria to be stipulated by an ordinance of METI, and in the event of the occurrence of any disaster, etc., related to the prospecting, the prospecting operator must also report to METI.

When installing or constructing facilities for prospecting such as excavation machine, the construction plans describing such facilities must be notified to METI. When the construction of such facilities for prospecting is completed, the prospecting operator must conduct a self-inspection of the facilities before they are put into actual use by the prospecting operator.

3.3. Entitlement of Entry Into and Use of Land for the Purpose of Prospecting

The CCS Business Act provides certain types of authority will be granted to the holder of a prospecting right, so that such holder of the prospecting right will be able to use or forfeit, as the case may be, the surface land as necessary for the prospecting purpose.

3.4. Liability of Prospecting Operator for Damages to a Third Party

If any damages are incurred by any third party, typically to the residents in the nearby area of the

prospecting area, as a result of or due to the excavation of land for the purpose of prospecting or discharging water, then the prospecting operator shall be liable for such damages to such third party.

4. Final Remarks

The remaining provisions under the CCS Business Act, inter alia, the provisions related to CO₂ Storage Rights, will become effective within two (2) years after May 24, 2024. We should be careful of movements by the government toward the effectiveness of the remaining provisions under the CCS Business Act.

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