

Client Alert

Energy

JUNE 2024

For more information,
contact:

Mark Davies
+81 3 4510 5604
mdavies@kslaw.com

Daisuke Shimodaira
+81 3 4510 5623
dshimodaira@kslaw.com

Michael Meade
+81 3 4510 5624
mmeade@kslaw.com

King & Spalding

Tokyo
Shin Marunouchi Building
12th Floor
5-1, Marunouchi 1-chome
Chiyoda-ku
Tokyo 100-6512
Japan
Tel. +81 3 4510 5600

Price-Gap Subsidy Program – Japan Enacts Act on Promotion of Hydrogen Society

INTRODUCTION

About half a year has passed since our last client alert was posted regarding the Japanese government's "Interim Report" published on 6 December 2024 concerning the price-gap subsidy program for "hydrogen, etc.". Since that time, the Japanese Cabinet issued a "Bill on Promotion of Supply and Use of Low-Carbon Hydrogen, etc. for Smooth Transition to Decarbonized Growth-type Economic Structure" in February setting forth the primary concept of the price-gap subsidy program, and the bill was then submitted to the Diet and subsequently passed by both Houses of the Diet and enacted on 17 May 2024 (hereinafter, the "**Act on Promotion of Hydrogen Society**" or the "**Act**").

The Act was promulgated on 24 May 2024 following its enactment. Since it is stipulated that the Act will "come into effect from the date specified by the Cabinet Order within a period not exceeding six months from the date of promulgation" (Article 1 of the Supplementary Provisions of the Act), it will come into effect at the latest by 24 November 2024; however, as discussed below, the timing of the enforcement of the Act is expected to be sometime this summer.

In the Interim Report, the term "hydrogen, etc." was used to refer to products such as ammonia, synthetic methane and synthetic fuel, which are compounds of hydrogen, in addition to hydrogen, but in the Act, "hydrogen, etc." is defined to mean "hydrogen and its compounds as specified by the Order of the Ministry of Economy, Trade and Industry" (Article 2, Paragraph 1 of the Act). Further details of the definition are to be provided in this "Order of the Ministry of Economy, Trade and Industry" which will be formulated in the future.



Although no changes to the breakdown of “hydrogen, etc.” are expected at present, it is advisable to check the content of the said ministerial order once publicized. Please therefore note that “hydrogen, etc.” in this alert is used in that context.

OUTLINE OF THE ACT ON PROMOTION OF HYDROGEN SOCIETY

The chapter structure of the Act and the relevant provisions are as follows:

Chapter 1	General Provisions (Articles 1 and 2)
Chapter 2	Basic Policies, etc. (Articles 3 to 6)
Chapter 3	Approval of Business Plan of Supply, etc. of Low-Carbon Hydrogen, etc. (Article 7 to 9)
Chapter 4	Support Measures Pertaining to Approved Supply, etc. Business Plan (Articles 10 to 31)
Chapter 5	Matters, etc. that Should be the Standards of Judgment of Hydrogen, etc. Supplier (Articles 32 to 34)
Chapter 6	Miscellaneous Provisions (Articles 35 to 46)
Chapter 7	Penal Provisions (Articles 47 to 52)

The chapters that are most closely related to the price-gap subsidy program are Chapters 3 and 4 highlighted in yellow above, and the general process under these two chapters is that if an applicant prepares and submits a business plan and receives approval from the competent minister, the applicant can then receive a subsidy (including other incentives such as special exemptions in relation to certain legal restraints).

FUTURE FLOW

The Minister of Economy, Trade and Industry has indicated that the Ministry of Economy, Trade and Industry (“METI”) is currently targeting to start the process for applications from business operators around this summer and to start providing support by the end of this year. In order to meet this timeline, the Act must be in force by the time the application process starts this summer. Based on this premise, it is believed that METI is currently preparing (1) basic policies in respect of the Act, and (2) regulations to enforce the Act together with the guidelines for subsidy applications, and that JOGMEC is currently preparing (3) the procedures, requirements and terms and conditions for granting subsidies.

(1) Basic Policies

The Act stipulates that the Minister of Economy, Trade and Industry will formulate basic policies based on the Act, and that such policies are to mainly state (i) the significance and target of supply and use of low-carbon hydrogen, etc., (ii) the measures to be implemented intensively for realizing Japan’s “Green Transformation” (GX), and (iii) ways to achieve self-reliant supply of low-carbon hydrogen, etc. (Article 3 of the Act).

It is also stipulated that the central government and local governments shall comprehensively and effectively facilitate measures to promote the supply and use of hydrogen, etc. based on such basic policies (Articles 4 and 5 of the Act), and related business operators shall cooperate with such measures in accordance with the basic policies and engage in related investment and business activities (Article 6 of the Act).



After preparing the draft basic policies, METI is expected to submit the draft for public comment to hear opinions from business operators and to then deliberate to reflect the public comment results, make a cabinet decision, and finally publicize the basic policies. It is likely that the draft basic policies will be announced this June, and readers of this alert should continue to pay attention for any news or updates from METI in this regard.

(2) Enforcement regulations and application guidelines

With regard to the matters that are to be specified in the “Order of the Ministry of Economy, Trade and Industry” pursuant to the Act – which include the definition of “hydrogen, etc.” as mentioned above, assessment standards for approval, and details of the contents of subsidies) – it is expected that regulations giving force to these matters under the Act will be formulated by METI. Based on the general enforcement process of laws in Japan, it is likely that the draft regulations will be formulated and submitted for public comment simultaneously with the basic policies mentioned above, such that the matters stipulated in the “Order of the Ministry of Economy, Trade and Industry” will be enforced around this summer.

In addition to the enforcement regulations, it is likely that application guidelines setting out the detailed procedures and requirements for business operators to prepare applications for support will also be published at the same time as the enforcement regulations in order for METI to start the process for applications by this summer.

Therefore, readers of this alert should pay close attention to announcements and public comment information from METI over the next few months.

(3) Procedures and requirements, etc. for granting subsidies

As mentioned in our previous alert on the “Interim Report”, the Japan Organization for Metals and Energy Security (“**JOGMEC**”) will act as an executive organ that handles services related to granting subsidies, and JOGMEC’s role in such capacity has been reaffirmed by the Act (Article 10 of the Act). In other words, while METI takes the initiative in approving a business plan for eligibility in the subsidy program, JOGMEC will be in charge of ultimately granting the subsidies to those business operators who have received such approval. As mentioned above, the requirements for granting subsidies (e.g., qualifications and procedures and eligible structures for receiving subsidies) are not stipulated in the Act, so it is necessary to wait for decisions and announcements to be made by JOGMEC on such requirements in the near future.

IN CLOSING

Following the enactment and promulgation of the Act on Promotion of Hydrogen Society, we have received a large amount of questions and interest from related business operators concerning the upcoming application process, timeframe and qualification assessment as well as the requirements for being awarded subsidies. As mentioned above, we expect that both METI and JOGMEC are currently working on these tasks respectively on an urgent basis with the goal of rolling out the program by this summer, but the details of what has been determined or discussed at METI or JOGMEC regarding the application process and subsidy eligibility requirements remain unknown as of now. It is expected that the assessment method to be used in the METI approval process will be based off of the “Interim Report”, but we must wait for the next announcement on details from METI and/or JOGMEC.

As has been the case in other similar subsidy programs in Japan, it is very likely that all announcements going forward pertaining to the details and other matters mentioned above will be made in Japanese. It is therefore advisable for overseas business operators considering to apply for the program to partner and cooperate with domestic business operators to understand and examine the details of the forthcoming procedures and requirements. We plan to issue another alert once the full picture of the program, including the requirements for granting subsidies, are made public.



ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,300 lawyers in 24 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered “Attorney Advertising.” View our [Privacy Notice](#).

ABU DHABI	CHARLOTTE	DUBAI	LONDON	NORTHERN VIRGINIA	SILICON VALLEY
ATLANTA	CHICAGO	FRANKFURT	LOS ANGELES	PARIS	SINGAPORE
AUSTIN	DALLAS	GENEVA	MIAMI	RIYADH	TOKYO
BRUSSELS	DENVER	HOUSTON	NEW YORK	SAN FRANCISCO	WASHINGTON, D.C.
