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Regulatory Framework over Export of CO₂ from Japan

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1. Introduction

In recent years, export of carbon dioxide (CO₂) from Japan to overseas for the purpose of CCS (carbon dioxide capture and storage) have been attracting attention from the media. Under Japan's foreign exchange and foreign trade control regulations, export of certain goods to foreign countries is subject to the approval of the Minister of Economy, Trade and Industry ("**METI**"). In connection with the scheme of export of CO₂ toward overseas CCS, recently, an amendment to the Export Trade Control Order (Cabinet Order No. 378 of 1949) was promulgated as of November 19, 2025, under which, export of gas containing CO₂ for the purpose of CCS became subject to the approval process by METI. In particular, a new item "35-5" was added to the Appended Table 2 of the Export Trade Control Order, covering the following item:

"Gas containing carbon dioxide as defined in paragraph 1.7 of Annex I to the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Material, 1972, which is exported for the purpose of disposal as defined in paragraph 4.1 of Annex I thereto"

With respect to this amendment in November 2025 (i.e., the amendment to the Export Trade Control Order concerning approval for export of CO₂), METI has issued a public notice entitled "Approval for the Export of Gas Containing Carbon Dioxide" (the "**Public Notice**"). According to the Public Notice, as of January 19 of this year, the practical operation of the

approval procedures by METI with respect to export of gas containing CO₂ pursuant to Article 2 of the Export Trade Control Order and item 35-5 of Appended Table 2 thereto has commenced.

It should be noted that these provisions under the domestic law (i.e., Article 2 of the Export Trade Control Order) are closely related to the requirements under the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Material, 1972 (the "**London Protocol**"), which is an international treaty aimed at the protection of the marine environment. Accordingly, I will introduce the outline of the Public Notice including its relationship with the requirements under the London Protocol.

2. Outline of the Public Notice over Approval for Export of Gas Containing CO₂

2.1. Outline of the London Protocol (as Introduction)

As the introductory discussion, I will review the requirements under the London Protocol in the context of the Public Notice. The London Protocol is an international treaty aimed at the protection of the marine environment and was adopted in 1996. The London Protocol in principle prohibits dumping of "wastes or other material" into the sea; however, dumping may exceptionally be permitted where authorization is obtained in accordance with the Annexes to the London Protocol.

Given that CO₂ falls within the scope of "wastes or other material" under the London Protocol, the 2006 amendment to the London Protocol added to Annex I "CO₂" that is captured for the purpose of CCS. As a result, sub-seabed storage of CO₂ is now permitted, provided that authorization is obtained in accordance with the relevant Annexes to the London Protocol.

As noted above, while the London Protocol primarily regulates "dumping" of "wastes or other material" into the sea, it also contains provisions regulating "export" of such "wastes or other material". Under the London Protocol prior to the 2009 amendment, "export" of "wastes or other material" for the purpose of ocean dumping was broadly prohibited.

However, in order to promote CCS more, an amendment to the London Protocol was adopted at the meeting in 2009 to allow, as an exception, export of CO₂ solely for the purpose of sub-seabed storage; provided that, "export" of CO₂ is permitted only where the exporting country and the receiving country have entered into an agreement in respect of such international exchange of CO₂ for the purpose of sub-seabed storage.

In Japan, the abovementioned 2009 amendment to the London Protocol (i.e., allowing of export of CO₂ for CCS purposes) was approved by the Diet of Japan at its ordinary session in 2024. However, in order to make the amendment to the London Protocol effective, ratification by two-thirds of the contracting countries is required. As of the date hereof, this requirement for effectiveness of the amendment to the London Protocol is not yet satisfied.

Therefore, notwithstanding Japan's ratification by the Diet of Japan, the amendment to the London Protocol has not yet been effective. Nevertheless, pursuant to a resolution adopted at the meeting of contracting countries in 2019, the contracting countries that have deposited with

the International Maritime Organization (IMO) a declaration on the provisional application of the 2009 amendment to the London Protocol are permitted to apply such amendment to the London Protocol provisionally.

2.2. Public Notice in light of the Requirements under the London Protocol

In regards of the Public Notice, this section outlines the contemplated practice over approval for export of CO₂ under Article 2 of the Export Trade Control Order, which commenced on January 19 of this year (as noted above).

First of all, the meaning and interpretation of the following phrase which is introduced at the beginning of this newsletter are provided in the amended the ministerial circular entitled "Operational Guidelines concerning the Export Trade Control Order."¹

"Gas containing carbon dioxide as defined in paragraph 1.7 of Annex I to the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Material, 1972, which is exported for the purpose of disposal as defined in paragraph 4.1 of Annex I thereto"

According to this ministerial circular (as amended), the term "*disposal as defined in paragraph 4.1 of Annex I*" as referred to in the London Protocol shall mean intentional disposal of "wastes or other material" under the London Protocol into the sea from vessels, aircraft, or platforms or storage in the seabed and the subsoil thereof.

Next, the Public Notice adopts the two (2) requirements set forth in Article 6, paragraph 2 of the London Protocol as the preconditions for approval of export of CO₂. That is, the Public Notice provides that approval for the export of CO₂ shall be granted only where the following conditions are satisfied:

An agreement has been concluded or an arrangement has been made with the importing state that includes the contents set forth in (a) and (b) below, and the export is conducted in accordance with such contents:

(a) *Confirmation and allocation of responsibilities for granting permits between the exporting state and the importing state in accordance with the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Material, 1972 (the "London Protocol") and other applicable international law.*

(b) *In cases where the export is made to a non-contracting party to the London Protocol, provisions equivalent to those of the London Protocol (including provisions on the granting of permits and permit conditions that conform to Annex II to the London Protocol), which ensure that the export does not contravene the obligations of contracting parties under the London Protocol to*

¹ This amendment to the ministerial circular was made concurrently with the Public Notice, and this ministerial circular governs the interpretation and application of the Export Trade Control Order.

protect and preserve the marine environment.

It should be noted that the two requirements (a) and (b) above represent the minimum requirements that must be satisfied in order to obtain approval for export of CO₂ under the Export Trade Control Order.

Accordingly, even where the requirement in (a) is satisfied in relation to an export transaction between contracting countries to the London Protocol, approval for export of CO₂ may nonetheless be denied, if such export would cause significant harm to the Japan's public interest, etc.².

3. Conclusion

As described above, the development of the legal framework concerning the export CO₂ primarily for the purpose of overseas CCS is currently in progress. Future developments in this area in particular legal aspects thereof will continue to be closely monitored by us.

² This article is intended solely to provide a summary of the Public Notice and does not express any individual opinion or legal interpretation with respect to any specific case involving the export of carbon dioxide.

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