

BAKER & MCKENZIE

The International Comparative Legal Guide to:
Gas Regulation 2009

GLG

Global Legal Group

Fluency in the global language of gas and law.

BAKER & MCKENZIE

Baker & McKenzie provides a full range of legal services to the gas industry through a worldwide network of approximately 3900 lawyers practicing from more than 60 offices in 38 countries.

To get world-class advice, you need an instinctively global law firm – Baker & McKenzie.

Domestic or multinational, your business operates in an integrated global economy. You need legal advisers who see your world the way you do.

We combine an uncompromising commitment to excellence with fluency – in the way we think, work and behave. It's based on deep local roots and the experienced global perspective that

comes from helping companies navigate sophisticated legal and business issues at home and across borders, cultures and practices around the world.

Fluency means sharing our insights, talent and expertise worldwide to the benefit of all our clients. It means richer advice, innovative approaches and exceptionally practical solutions.

Let us show you how fluency can help you.

Frank Gleiter
+49 89 55238 159
frank.gleiter@bakernet.com

www.bakernet.com

Japan

Baker & McKenzie GBJ,
Tokyo Aoyama Aoki Koma Law Office

Paul Davis



Yugo Nagata



1 Overview of Natural Gas Sector

1.1 A brief outline of the country's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; importation and exportation of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.

The Japanese gas industry is dominated by a small number of large companies holding geographical monopolies. Although there are about 233 gas utilities, 173 privately owned and 60 public undertakings, only three - Tokyo Gas, Osaka Gas and Toho Gas - represent about 75% of total gas supply in Japan.

Gas consumption in Japan has been increasing at an average rate of 5.5% per year during the last 20 years (though consumption has fallen since 2000 due to slower economic growth).

Domestic natural gas production amounts to 2.5 bcm and accounts for approximately 3% of demand. Proven domestic reserves are about 40 bcm, expected to be depleted in 16 years at the current rate of use.

Japan has been importing LNG since 1969 and imports have increased to reduce the nation's dependence on imported oil. LNG imports have doubled between 1980 and 2006. Most imports are sourced from Indonesia and Malaysia. Japan is diversifying its import sources as well, to Australia, Qatar, Brunei, UAE, Oman, Alaska and Trinidad and Tobago. Agreements have also been signed with the Russian Federation's Sakhalin 2 project.

There are 27 LNG facilities in Japan, mostly adjacent to individual power plants. Terminals are typically built near areas in which demand is expected to grow, rather than extending gas pipelines from any terminal with available capacity. The terminals have the capacity in the aggregate to import approximately 195 million tonnes per year. One terminal is in construction: Sakaide, and more than three others are planned (Wakayama, Joetsu, Okinawa, etc.).

Japan does not have a network of pipelines, but rather relies on the large number of LNG import terminals. The vertically integrated gas utilities and city gas companies have little reason to develop a network because of their regional monopoly privileges. Gas supply is therefore restricted to areas linked to LNG terminals by pipeline, representing about 20% of urban land, or 5% of the total area in Japan. Pipeline costs are very high in Japan owing to geographical factors, approximately 4-6 times higher than costs in Europe or North America. Consequently, the trunk line network in 2002 stood

at about 1,366 km, compared to 1,955 km in South Korea.

1.2 To what extent are the country's energy requirements met using natural gas (including LNG)?

According to Japan's Ministry of Economy, Trade and Industry (METI), 14% of the country's energy requirements are met by the use of natural gas (including LNG), up from 2% during the oil crisis of 1973. Japan desires to continue to diversify its energy mix and proposes to increase the share of natural gas used to meet its energy requirements to 17.8% by 2030.

The electricity sector uses approximately two-thirds of the total gas consumed in Japan. The industrial sector accounts for around 13% and the residential sector around 12%. The share of natural gas use in electricity generation has grown from 1% in 1970 to 24% in 2006.

1.3 To what extent are the country's natural gas requirements met through domestic natural gas production?

As there are virtually no domestic gas reserves or production, Japan is dependent on imports for 97% of its gas consumption.

Surveys have identified methane hydrate deposits off the Pacific coast, in the middle of the Japanese archipelago. Reserves are estimated at 7,400 bcm of methane, enough to support Japan's natural gas use for 100 years. The government proposes to start commercial production from 2016, though obstacles to commercialisation include insufficient technology and experience to extract methane from solid structures.

1.4 To what extent is the country's natural gas production exported (pipeline or LNG)?

Given its limited natural gas resources, Japan's natural gas production is used domestically and is not exported.

2 Development of Natural Gas

2.1 Outline broadly the legal/statutory and organisational framework for the exploration and production ("development") of natural gas reserves including: principal legislation; in whom the State's mineral rights to natural gas are vested; Government authority or authorities responsible for the regulation of natural gas development; and current major initiatives or policies of the Government (if any) in relation to natural gas development.

The Government's Basic Energy Policy has several purposes,

including using national and local public organisations to manage energy demand, advocating long-term energy demand planning, and promoting local and global environmental protection through sustainable development at home and abroad. More specifically, the policy aims to reduce dependence on oil, diversify energy supply sources, and develop domestic energy production, including nuclear power and renewable energies.

Because the government recognises the importance of natural gas for diversifying sources of energy beyond Middle Eastern oil, it is now focusing on new projects which can exploit the supply of natural gas. Currently the government is focusing on the Sakhalin reserves as a supply source.

The Government encourages exploration for and development of gas resources, both in Japan and overseas, by providing assistance to private companies by way of government commission work, equity investment, loans, debt guarantees and various tax incentives. The assistance is largely provided through Japan Oil, Gas and Metals National Corporation (JOGMEC), the successor of JNOC.

The main laws regarding the exploration and production of natural gas reserves are the Law for the Development of Petroleum and Combustible Natural Gas Resources which was passed in 1952, the Mining Law which was passed in 1950, the Mining Safety Law which was passed in 1949, the Gas Utilities Industry Law which was passed in 1954, and the High Pressure Gas Regulation Law which was passed in 1951.

The Law for the Development of Petroleum and Combustible Natural Gas Resources has as its purpose “to provide for exploiting petroleum and gas, taking into account their special properties, and to promote the exploration for gas, in order to ensure they are developed rationally in the public interest” and covers matters such as the prevention of intrusion, well spacing, gas to oil rates, Ministerial orders regarding methods of exploitation, secondary extraction, subsidies, investigation regarding oil strata and enquiries as to combined energy resources.

Another relevant law is the Special Measures Law concerning the Development of Petroleum and Combustible Natural Gas Resources with the Implementation of the Agreement between Japan and the Republic of Korea concerning Joint Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries. This special law was passed pursuant to a Treaty between the two countries and requires special mining rights to be obtained in order to explore or exploit the continental shelf between Japan and Korea.

The authorities responsible for the regulation of natural gas development include METI, the local Bureaus of Economy, Trade and Industry which are the local organs of METI, and Governors of prefectural and city governments.

2.2 How are the State’s mineral rights to develop natural gas reserves transferred to investors or companies (“participants”) (e.g. license, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

Petroleum and natural gas are deemed to be minerals under the Mining Act. Under the Mining Act, only persons who hold a mining right may explore for, exploit or refine minerals or conduct other activities ancillary thereto.

Mining rights are divided into exploration rights and exploitation rights. Mining rights are deemed to be real rights and are dealt with in accordance with the laws concerning immovable property.

Applications for mining rights are made to the Director, Bureau of Economy Trade and Industry. The Director is required to consult with

the governor of the prefecture concerned regarding each application.

A third type of right is a mining lease which must be obtained if mining is to be conducted on another party’s mining area.

2.3 If different authorisations are issued in respect of different stages of development (e.g., exploration or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

The terms “exploration” (for which an exploration right is required) and “exploitation” (for which an exploitation right is required) are not defined in the Mining Law.

The exploitation area for petroleum or natural gas must not be less than 15 hectares or more than 350 hectares, unless a different area is “inevitable for the natural development of the mineral”.

The duration of an exploration right is two years from the acceptance of a mining application. The exploration right may be extended for three additional periods of two years each in the case of petroleum. However, the Director of the relevant Bureau of METI will not permit an extension unless:

- (1) he determines that the owner has explored with the utmost effort;
- (2) continuation of the prospecting is necessary to confirm the condition of the deposit; and
- (3) the holder has duly paid the taxes on the area.

Once an application for a mining right is approved, the applicant must pay the taxes and register the right within 30 days or the approval becomes invalid. The holder must then commence work within six months of the date of registration.

However, there is no date on which an exploration right application itself will expire, and METI is not required to either approve or disapprove an application within any particular period. In practise, METI has not processed applications unless the applicant indicates it really wants to proceed.

Taking advantage of this fact, the practice in the industry has been to make an application and leave it as an application, rather than to go through the processes of obtaining an actual exploration right. Applications are given priority in the order in which they are received. Large areas of Japan’s territorial waters are covered by such “pending” applications, commonly referred to as “priority rights concessions”.

It is rumoured that some applications have been pending for 30 or 40 years.

The holder of a mining right must furnish a plan of operations to the Director of the relevant bureau before commencing operations. In the case of an exploitation right, the plan must be approved by the Minister consulting with the Director of the Bureau of Mine Safety and Inspection under the Mining Law and the Law for the Development of Petroleum and Combustible Natural Gas Resources. At the stage of manufacturing high pressure gas, if the volume of gas produced exceeds 100 cubic meters a day, authorisation is required from the local prefectural governor. Also, when a large quantity supply is to be made by a gas utility, a report must be filed with METI.

2.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of natural gas reserves (whether as a matter of law or policy)?

The State participates in the development of natural gas by granting subsidies to the holders of mineral rights exploring for natural gas

under Article 14 of the Law for the Development of Petroleum and Combustible Natural Gas Resources.

2.5 How does the State derive value from natural gas development (e.g. royalty, share of production, taxes)?

Since the development of natural gas is done by private initiative, it is not the policy of the government to raise significant profits out of natural gas development.

The State only derives revenue from natural gas development through fees and taxes such as the registration license tax under Article 43 of the Mining Law.

Registration fees are 97,700 yen per mining right and 61,700 yen per exploration right. Registration license taxes are also payable, the amount depends upon the type of right, but the highest such tax was 200,000 yen in 2005.

2.6 Are there any restrictions on the export of production?

Natural gas produced in Japan is not exported, but exports are not prohibited.

2.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

Japan has minimal restrictions on foreign exchange transactions. There are no restrictions on the remittance of the profits abroad.

2.8 What restrictions (if any) apply to the transfer or disposal of natural gas development rights or interests?

Changes in ownership are effective only when reported to the Director of the Bureau of International Trade and Industry in accordance with procedures laid down in a Ministerial Ordinance.

Article 17 of the Mining Law provides that only a Japanese citizen or a Japanese body corporate can be a holder of the mineral right, unless rights for non-citizens are otherwise stipulated in international treaties.

The following matters are noted on the Mining Register:

- (1) establishment, change, extension of term, transfer, expiration and limitation on disposal of a mining right;
- (2) secession of co-owners of a mining right; and
- (3) establishment, change, transfer, nullification, and limitation on disposal of a mortgage on an exploitation right.

2.9 Are participants obliged to provide any security or guarantees in relation to natural gas development?

Article 117 of the Mining Law requires the provision of security, not to exceed one percent of the value of minerals extracted in the previous year, if the Director finds it necessary to secure payment for compensation for damage. Such security may take the form of either a cash payment or national bond.

2.10 Can rights to develop natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

An exploitation mining right can be made the subject of a mortgage. Otherwise, mining rights can only be subject to general succession

rights such as inheritance, transfer, coercive collection, compulsory execution, provisional seizure and temporary injunction.

2.11 In addition to those rights/authorisations required to explore for and produce natural gas, what other principal Government authorisations are required to develop natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

Article 35 of the Mining Law provides that mining rights shall not be issued if the mining is against public welfare in regards to health and sanitation, interferes with cultural assets, parks or hot spring resources or is injurious to agricultural, forestry or other industries.

Other authorisations are required under Article 13 of the Mining Safety Law, under which holders of are required to obtain the authorisation of the Mining Safety Manager when constructing works and constructions necessary for mining. Authorisation is also required from the Mining Safety Manager for the excavation plan when the constructing works necessary for the mining are done in places which are likely to cause mine pollution.

Under the Environmental Impact Assessment Law, where a proposal is to be undertaken with participation of the government that may cause serious harm to the environment, an environmental impact assessment (EIA) process must be followed.

2.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in natural gas development? If so, what are the principal features/requirements of the legislation?

Article 39 of Mining Safety Law provides that the Mining Safety Manager can order the former holder of a mining right to construct equipment necessary to avoid mine pollution for five years after the extinguishment of the mining rights.

A mining right holder who abandons his mining rights must conduct a site survey and record the necessary safety measures in the maintenance codes he is required to prepare by law. A report regarding the content of the maintenance code must be filed with the Minister of METI. If the described measures are found not to be appropriate, the Minister of METI can order the modification of the maintenance code.

3 Importation / Exportation

3.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

There are no regulatory requirements, specific to natural gas, with respect to cross-border sales.

4 Transportation

4.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

Gas businesses are regulated under the Gas Utilities Industry Law. Under that Law, "gas businesses" (gas jigyoisha) are separated into general gas businesses, simplified gas businesses, gas transport

businesses, and major gas businesses. General gas businesses supply gas by pipeline to meet retail demand; a simplified gas business responds to retail demand for a specific area by using specific gas generation utilities and pipelines; gas transporters supply large quantities of gas (0.5 million cubic meters or more) by pipelines which they maintain or manage; and major gas suppliers are suppliers who supply large quantities of gas (0.5 million cubic meters or more) and do not include the above-mentioned businesses.

Authorisation of the Minister of METI is necessary to commence general gas businesses and simplified gas business, while only the filing of a report is required to commence the gas transport business and major gas business.

Existing transportation pipelines are not owned by the government but by private gas companies under the Gas Utilities Industry Law. The government encourages maintenance of infrastructure such as pipelines, by granting public aid providing low interest loans, affording land use rights similar to those enjoyed by the gas utilities, and other incentives

4.2 What Governmental authorisations (including any applicable environmental authorisations) are required to construct and operate natural gas transportation pipelines and associated infrastructure?

Filing a report to METI, or separate authorisation from METI, is required for the construction of gas facilities.

4.3 In general, how does an entity obtain the necessary land (or other) rights to construct natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

Most gas pipelines are privately owned and are constructed beneath national roads. The government gives permission to use the land to the gas company under Article 42 of the Gas Utilities Industry Law. In other cases, the gas company either leases the land or constructs facilities on its own land. If private landowners do not consent to surrender the use of their property, the Eminent Domain Law allows the pipeline developer to expropriate the land, if it can show genuine public benefit and the land owner is compensated.

The government is also considering environmental policies to facilitate efficient pipe-laying operations to increase the number of pipelines open to third party access.

4.4 How is access to natural gas transportation pipelines and associated infrastructure organised?

Since the privately owned gas companies own the pipelines, access to pipelines and associated infrastructure is achieved on a contractual basis.

4.5 To what degree are natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?

Pipelines in Japan are not integrated into a comprehensive network. Separate, non-integrated pipelines still constitute a large portion of the transport system. The government has considered the necessity of the integration of LNG facilities and underground reserve facilities.

4.6 Outline any third-party access regime/rights in respect of natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport natural gas compel or require the operator/owner of a natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?

Amendments to the Gas Utilities Industry Law in 2003 extended to all general gas utility companies the obligation to allow third party access to their pipelines. The Gas Utilities Industry Law previously obligated only the top four gas utilities to do so. The 2003 reform included the creation of a new category of "gas pipeline business," defined as the business of supplying gas through self-maintained and self-operated pipelines. These exclude gas utilities (that are already covered), and include domestic producers of natural gas and electric power companies that own pipelines. Effective as of April 2004, persons other than gas utilities are permitted to operate gas supply businesses upon notification to (rather than upon authorisation by) METI.

Gas utilities and gas pipeline businesses are obliged to provide wheeling services when requested, other than on occasions when such person is able to provide reasons acceptable to METI why it should not. According to a report regarding such obligations, an advisory committee of METI indicated that reasons for denying third party access that METI might find acceptable include: gas of a different quality; no extra capacity available on the pipeline; or if the requesting party's credit is not adequate.

4.7 Are parties free to agree the terms upon which natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?

Gas utilities must prepare and notify the public of wheeling service agreements. Approval must be obtained only for changes in charges likely to disadvantage consumers. Changes, such as reductions that are unlikely to disadvantage consumers, which previously required approval, but are now only subject to a notification requirement.

5 Transmission / Distribution

5.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.

The transmission and distribution network is owned by private gas companies, which are regulated under the Gas Utilities Industry Law.

5.2 What Governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?

Under Articles 3 and 37-2 of the Gas Utilities Industry Law, a person who intends to conduct a General Gas Utility Business or a Community Gas Utility Business must obtain a license from METI. Under Articles 37-7-2 and 37-9, a person other than a General Gas Utility shall, when intending to conduct a Gas Pipeline Service Business, notify METI of the matters in the relevant ordinance. A Gas Pipeline Service Provider shall, when intending to provide a Large-Volume Supply (excluding, however, the cases where a Gas Pipeline Service Provider intends to generate gas at a Specified Gas

Generating Facility and supply such gas via pipelines), notify METI of the recipient of the gas supply and other matters specified by ordinance. Whenever the gas company constructs facilities listed under the Ordinance of METI necessary for operating a distribution network, filing the plan of construction with METI is required.

5.3 How is access to the natural gas distribution network organised?

Access to pipelines and associated infrastructure is done on a contractual basis. However Articles 16 and 37-6 of the Gas Utilities Industry Law provide that gas companies must not reject access without a justifiable cause.

5.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?

The system of consignment supply was introduced in the Gas Utilities Industry Law (Article 22). Consignment supply is a system by which a gas company that has accepted gas from other companies through its pipeline, provides gas to the person who has consigned the gas. Whenever the gas companies reject the offer of consignment supply without justifiable cause, the Minister of METI can order the gas company to conduct the consignment supply.

5.5 What fees are charged for accessing the distribution network, and are these fees regulated?

The cost and other conditions of the consignment supply must be filed with METI according to Article 17 of the Gas Utilities Industry Law.

5.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?

According to Article 10 of the Gas Utilities Industry Law, unless authorised by METI, no transfer of the whole or a part of a gas business and no merger or spin-off of a gas company is effective.

6 Natural Gas Trading

6.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.

There are no special regulations applying to the trading of natural gas, other than the related regulations which apply to natural gas transmission and distribution, as noted in section 5 of this chapter.

6.2 What range of natural gas commodities can be traded? For example, can only "bundled" products (i.e., the natural gas commodity and the distribution thereof) be traded?

Natural gas is not traded to any appreciable extent.

7 Liquefied Natural Gas

7.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.

Most natural gas consumed in Japan is imported as LNG. There are no natural gas import pipelines. LNG facilities are not owned by the government but owned by private gas companies regulated under laws such as the High Pressure Gas Regulation Law.

7.2 What Governmental authorisations are required to construct and operate LNG facilities?

According to Article 5 of the High Pressure Gas Regulation Law, in order to manufacture high pressure gas at a facility in which the amount of gas that could be handled by compression or liquefaction exceeds 100 cubic meters a day, authorisation by the prefectural governor is required.

7.3 Is there any regulation of the price or terms of service in the LNG sector?

There is no such regulation.

8 Competition

8.1 Which Governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the natural gas sector?

Competition in the natural gas sector is not separately regulated. However, the regulation of anti-competitive practices is conducted by the Japan Fair Trade Commission in general.

8.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?

Whether a particular practice is anti-competitive is determined according to the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (the Anti-Monopoly Law) and the guidelines issued by the Japan Fair Trade Commission.

The Fair Trade Commission of Japan has issued guidelines establishing Appropriate Gas Transactions. These guidelines cover major gas supply, wholesale supply, consignment supply, retail regulation, and encourage the market to develop terms for third-party access to LNG facilities.

Regulations exist for such issues as private monopolisation, unjust low prices, refusal to deal, discriminatory pricing, discriminatory treatment, dealing on restrictive terms, dealing on exclusive terms, interference with a competitor's transaction, customer inducement by unjust benefits, abuse of dominant bargaining position, and tie-in sales.

8.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?

The Fair Trade Commission may, in order to conduct an investigation with regard to anti-competitive practices, take any one of the following measures:

- (i) ordering persons concerned with a case or witnesses to appear for questioning;

- (ii) ordering experts to appear for expert testimony;
- (iii) ordering persons holding accounting books, documents and other matters to submit the same, or to retain such submitted matters; or
- (iv) entering any place of business of the persons concerned with a case, or other necessary places, and inspecting conditions of business operation and property, accounting books, documents and other matters.

8.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

Article 9 of the Anti-Monopoly Law of Japan prohibits the establishment of a company that may cause excessive concentration of economic power by means of holding of the stock (including shares of partnership) of other companies in Japan, and also prohibits acquiring or holding the stock of other companies in Japan that causes excessive concentration of economic power in Japan. However, there are no procedures of prior approval provided in the law.

9 Foreign Investment and International Obligations

9.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

According to Article 17 of the Mining Law, only Japanese citizens or Japanese corporate bodies can become holders of mining rights, unless stated otherwise in treaty. No conventions providing for such matters have been executed.

Under the Foreign Exchange and Foreign Trade Law, a foreign investor in the gas industry or the natural gas mining industry is required to notify the Minister of Finance and the Minister of METI in regards to the proposed business, objectives, and execution schedule.

9.2 To what extent is regulatory policy in respect of the natural gas sector influenced or affected by international treaties or other multinational arrangements?

According to METI personnel, regulatory policy is not affected by international treaties and other multinational arrangements.

10 Dispute Resolution

10.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; and distribution network owners or users in relation to the distribution/transmission of natural gas.

Article 122 of the Mining Law provides that whenever a dispute

arises regarding compensation for mineral pollution, the parties may seek mediation, though it is not mandatory.

According to Article 171 of the Mining Law, and Article 34 of the Law for the Development of Petroleum and Combustible Natural Gas Resources, the Minister of METI will conduct hearings when an application for review is filed against the Director of the Bureau of Economy, Trade and Industry.

10.2 Is the country a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“ICSID”)?

Japan is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Japan signed the Convention on June 10, 1958 and deposited its instrument of accession on June 20, 1961, declaring, in accordance with Article 1, paragraph 3 of the Convention, that Japan would apply the Convention to the recognition and enforcement of awards made in the territory of another contracting State on the basis of reciprocity.

Japan is a signatory to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. The Convention was signed on September 23, 1965, the deposit of ratification occurred on August 17, 1967, and the treaty entered into force on September 16, 1967.

10.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?

Generally, an irrevocable foreign judgment is recognised and enforced in Japan without re-examination of the merits, subject to certain conditions. The court in which enforcement is sought must be satisfied that each of the following conditions set out in Article 118 of the Japanese Code of Civil Procedure are met:

- 1) a law or treaty gives subject matter jurisdiction to the court that rendered the judgment for which enforcement is sought;
- 2) the defendant either was not served but appeared to defend itself in the proceeding, or was effectively served in a manner other than notice by publication with a summons commencing the proceeding while within the jurisdiction of the relevant court (the “Judgment Jurisdiction”);
- 3) neither the contents of the judgment at issue nor the procedure by which it was obtained is contrary to the public order or good morals of Japan; and
- 4) the Judgment Jurisdiction would give effect to a final and conclusive judgment of the courts of Japan.

There are no special difficulties in enforcing judgments against government authorities or state organs, so long as the foregoing requirements are met.

The recognition and enforcement of foreign arbitral awards is subject to the Arbitration Law. Generally, an arbitral award (irrespective of whether or not the place of arbitration is in the territory of Japan) will have the same effect as a final and conclusive judgment. According to Article 45.2 of the Arbitration Law, recognition may be denied in the case where any of the following grounds are present in items (1) through (7), which must be proven by a party:

- 1) the arbitration agreement is not valid due to limits to a party’s capacity;
- 2) the arbitration agreement is not valid for a reason other than limits to a party’s capacity under the law to which the parties

have agreed to subject it (or failing any indication thereon, the law of the country under which the place of arbitration falls);

- 3) a party was not given notice as required by the provisions of the law of the country under which the place of arbitration falls (or where the parties have otherwise reached an agreement on matters concerning the provisions of the law that do not relate to public policy, such agreement) in the proceedings to appoint arbitrators or in the arbitral proceedings;
- 4) a party was unable to present its case in the arbitral proceedings;
- 5) the arbitral award contains decisions on matters beyond the scope of the arbitration agreement or the claims in the arbitral proceedings;
- 6) the composition of an arbitral tribunal or the arbitral proceedings were not in accordance with the provisions of the law of the country under which the place of arbitration falls (or where the parties have otherwise reached an agreement on matters concerning the provisions of the law that do not relate to public policy, such agreement);
- 7) according to the law of the country under which the place of arbitration falls (or where the law of a country other than the country under which the place of arbitration falls was applied to the arbitral proceedings, such country), the arbitral award has not yet become binding, or the arbitral award has been set aside or suspended by a court of such country;
- 8) the claims in the arbitral proceedings relate to a dispute that cannot constitute the subject of an arbitration agreement under the laws of Japan; or
- 9) the content of the arbitral award would be contrary to the public policy or good morals of Japan.

10.4 Have there been instances in the natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?

No cases in the natural gas sector in which foreign corporations sought judgments against Government authorities were found.

11 Updates

11.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Gas Regulation Law in Japan.

There have been no new developments in gas regulation in Japan. However, there has been some progress regarding a gas called methane hydrate. Methane hydrate is a compound of water and methane, which is also a major component of natural gas. There is said to be 1.1 trillion cubic meters of methane hydrate lying in the seabed around the Japanese coast.

When unfreezing 1 cubic meter of methane hydrate, it is possible to obtain 160 - 170 cubic meters of methane gas. Burning methane gas results in almost half the amount of CO₂ emissions compared to the burning of petroleum or coal.

Japan imports most of its natural gas from foreign countries. As 1.1 trillion cubic meters of methane hydrate is equivalent to approximately 14 years of natural gas consumption in Japan, this methane hydrate is expected to be used as an alternate source of natural gas.

Japan has been researching methane hydrate for the last decade and METI will start its testing from 2009 to try to bring it into commercial use in or after 2018.

Please note that at this stage, these are only commercial developments. To date, there have been no developments in the legal systems with respect to the use of methane hydrate.

Acknowledgment

The authors would like to acknowledge the assistance of their colleague Maki Kawamura in the preparation of this chapter.

**Paul Davis**

Baker & McKenzie GJB
The Prudential Tower, 2-13-10
Nagata-cho, Chiyoda-ku
Tokyo 100-0014
Japan

Tel: +813 5157 2711
Fax: +813 5157 2906
Email: paul.davis@bakernet.com
URL: www.bakernet.com

Paul Davis is a partner of Baker & McKenzie GJB Tokyo Aoyama Aoki Koma Law Office (Gaikokuho Joint Enterprise) and the leader of the firm's Major Projects Group. He specialises in the practice areas of power, natural resources, and infrastructure. Mr. Davis represents Japanese trading, manufacturing and utility companies that are making overseas investments in the resources, power, gas and climate change areas. He also assists foreign investors in newly deregulated electricity, gas and infrastructure sectors in Japan. He has been involved in a number of M&A transactions, and has broad-ranging dispute resolution experience.

Mr. Davis is admitted in the New South Wales, Victoria, Queensland, New Zealand, England and Hong Kong bar associations. He is also registered as a Foreign Admitted Lawyer (gaikokuhō jimū bengoshi) in Japan. Mr. Davis received a Master of Laws (Honours) from Canterbury University in New Zealand in 1967. He studied Japanese law at Nagoya University.

**Yugo Nagata**

Baker & McKenzie GJB
The Prudential Tower, 2-13-10
Nagata-cho, Chiyoda-ku
Tokyo 100-0014
Japan

Tel: +813 5157 2752
Fax: +813 5157 2903
Email: yugo.nagata@bakernet.com
URL: www.bakernet.com

Yugo Nagata, an associate at Baker & McKenzie GJB Tokyo Aoyama Aoki Koma Law Office (Gaikokuho Joint Enterprise), focuses his practice in the area of general corporate law. He was admitted as an attorney in Japan in 2004, and is a member of the Dai-ichi Tokyo Bar Association. In 1997, Mr. Nagata received an LL.B. from Keio University, and he currently serves as a lecturer at Keio University. He is fluent in both Japanese and English.

BAKER & MCKENZIE

東京青山・青木・粕法律事務所

Baker & McKenzie GJB Tokyo Aoyama Aoki Koma Law Office (Gaikokuho Joint Enterprise), a fully integrated law firm, is one of the leading law firms in Japan, and offers a full range of cross-border and Japanese legal services. As a member firm of Baker & McKenzie, the world's leading international law firm, we are able to draw upon a network of 69 offices in 38 countries and over 3,200 attorneys to provide high quality solution-oriented legal services through timely delivery. Our ability to combine Japanese and foreign legal skills enables us to offer outstanding legal service to both clients operating in the Japanese market and clients operating in the international markets.

Our notable strengths are in finance and securities, capital markets, corporate M&A, tax, intellectual property, IT/E-commerce, litigation and major projects.