

► Projects & Energy Practice Team Newsletter

Atsumi & Sakai's Renewable Energy Team has provided legal support to numerous renewable energy projects in Japan since the Feed-in Tariff Act regime came into effect in 2011, and this newsletter provides an update from the team on recent trends and legal developments in the renewable energy market in Japan.



## Renewable Energy News

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### Trends in Important Laws and Regulations

#### 1. AMENDMENTS TO THE FEED-IN TARIFF (FIT) ACT

The Act on Special Measures Concerning Procurement of Electricity from Renewable Energy Sources by Electricity Utilities (the "Feed-in Tariff Act" or "FIT Act") was substantially amended effective from 1 April 2017 (the "Amendments"). Consequential amendments to subordinate regulations have also subsequently been made. The three key Amendments are set out below.

##### A. Revised Approval Process:

Prior to the Amendments, approval by the Ministry of Economy, Trade and Industry ("METI") of only the power generation facility was required for a power generation facility to qualify as a "Renewable Power Generation Facility" under the FIT Act. Following the Amendments, approval by METI of the business plan of a renewable power generation business which must include information on the following (the "Business Plan") is required:

- power generation business operator (the "Operator");
- generation facilities;
- connection agreement with utility company (copy of agreement to be included);
- construction schedule for installation of the facilities;
- person responsible for maintenance of the facilities; and
- estimated costs for maintenance, decommissioning and removal of the facilities.

To facilitate a smooth implementation of the post-Amendments approval process, the Agency for Natural Resources and Energy has published guidelines on how to prepare Business Plans for solar, wind, hydro, geothermal and biomass energy businesses (the "Guidelines"). Operators must prepare their Business Plans and also operate their power generation facilities in accordance with the Guidelines. The Guidelines cover all aspects of renewable power generation starting from the planning of the power generation business to the decommissioning and removal of the facilities after the power generation business is closed. If an Operator fails to follow an approved Business Plan, METI may instruct it to rectify its operation, order an improvement, or cancel the approval under the FIT Act.

##### B. Obligation of Operators approved prior to Amendments:

An Operator which obtained approval of a generation facility as a "Renewable Power Generation Facility" prior to the Amendments must file with METI a Business Plan including



documents which show that the utility company agreed to connect the facility prior to the Amendments.

##### C. Procurement price bidding post-Amendments:

Power procurement prices for solar generation projects of 2,000 kW or more are to be determined through a bidding process. The first bidding process is now underway. This is for a solar power generation project of 500 MW and with the condition that bids be JPY 21/ kWh or less. The winning bidder will be announced in November 2017.

#### 2. DISQUALIFICATION OF "DIVIDED PROJECTS"

When conducting multiple power generation projects at the same location, Operators have sometimes sought to divide the projects so as to avoid regulation under the Electricity Business Act. On 14 July 2017, METI announced new criteria for determining whether projects are genuinely "divided projects". Under the new criteria, an application for the approval of a Business Plan submitted on or after 14 July 2017 will be rejected if:

- (a) the same type of renewable power generation facility is installed on adjacent land; and
- (b) either: (i) the Operator of the two power generation projects are the same person/company, or (ii) the owners of land on which the power generation facilities are built are the same.

However, there are exceptions under which projects will be typically be deemed divided, such as when there are public roads or rivers dividing the land on which the projects sit, or if all the power generation facilities in question are special high voltage facilities (2,000 kW or more).

### 3. REVISION OF FIT PRACTICE FOR SOLAR GENERATED POWER

The purchase price to be paid by a utility company for electricity generated by a solar power generation facility is typically fixed at the time of approval under the FIT Act and gradually decreases over time at a pre-determined rate (the "FIT Price"). On 31 August 2017, METI amended ministerial ordinances relating to the FIT price. The major amendments are outlined below:

#### A. Solar Cell Output Increase:

If total output (DC) of solar cells changes beyond certain thresholds, the FIT Price will be changed in specified situations.

Prior to the ministerial amendments, if there is an increase in the output (AC) of an entire solar power generation facility, the FIT Price for its power would typically have been changed from the FIT Price of the year when the facility was approved, to the FIT Price of the year when the increased output was approved.

Following the ministerial amendments, with effect from 31 August 2017, the FIT Price for a solar power facility will be changed as above not only in the above situation but also when the total output (DC) of the solar cells of the facility increases by either 3% or more or 3 kW or more, or decreases by 20% or more.

Importantly, if this new FIT Price adjustment is triggered with respect to a solar generation facility of 2,000 kW or more which won a bidding process, its bid will be cancelled. As stated above, the first round of bidding is currently underway and the next round is planned for July 2018.

#### B. Re-execution of Connection Agreement:

In the case where a connection agreement is re-executed, the FIT Price for the facility will typically be changed from the FIT Price of the year when the facility was approved under the FIT Act, to the FIT Price of the year when the connection agreement was re-executed if the connection agreement was re-executed because:

- (a) the connection agreement was cancelled as a result of the Operator's failure to pay its agreed contribution for construction costs or similar costs of the facilities; or
- (b) the connection agreement is re-executed by the parties because of any of the following: (i) the power transmission system (network) of the connection location was changed due a reason attributable to the Operator; (ii) the utility company decided to establish a new line access that was originally planned to be established by the Operator; or (iii) a planned new access line was changed from an overhead line to an underground line (or vice versa).

### 4. RELAXATION OF REGULATIONS ON CONVERSION OF AGRICULTURAL LAND

On 25th July 2017, the Japanese Cabinet decided that the regulations restricting the conversion of agricultural land to industrial land should be relaxed by amending the Agricultural

Land Act. The amendment would not be limited to a specific industry, so this could potentially be used to establish solar and wind power generation facilities on agricultural land. Legislation to give effect to this decision is yet to be introduced, however, observers expect such legislation to be prepared in the near future.

### 5. PUBLICATION OF INFORMATION ON APPROVED BUSINESSES UNDER THE REVISED FIT ACT

On 12 October 2017, METI published important information relating to renewable energy projects which had been approved for designation as a "Renewable Power Generation Facilities" under the FIT Act before 15 September 2017 on its homepage. The published information includes the following information in relation to renewable power generation projects: (i) the ID number of the business (an ID number is given to every approved business), (ii) the name of the Operator, and the individual appointed as its representative, (iii) the type of renewable energy, (iv) the power output to be generated by the facility, and (v) the location, or proposed location, of the facility. METI plans to update the information and add information on newly-approved projects every month. This published information will be quite useful for those who are considering acquiring renewable energy projects.

### 6. BIOMASS: REGISTRATION UNDER THE CLEAN WOOD ACT

On 20 May 2017, the Japanese government implemented the *Act on Promotion of Distribution and Utilization of Legally Harvested Wood, Etc.* (the so-called "Clean Wood Act"); the purpose of this Act is to promote the distribution and usage of legally harvested wood and wood products. Under this Act, the Japanese government has adopted a system to register companies which handle legally harvested wood as "Registered Wood-related Operators". Operators using wood biomass as fuel can also register, and once registered can also use the designation "Registered Wood-related Operator". It is hoped that the Clean Wood Act regime will encourage the use of legally harvested, wood etc., in the biomass power generation business. The commencement date for registration has yet to be announced.

### ■ Highlights of Renewable Energy Deals

On 15th September 2017, following a public tender, a consortium led by Hitachi Wind Power Ltd. was selected as the Operator for an offshore wind power generation project at Kashima Port, Ibaraki Prefecture; the project's total output is about 93.6 MW, and the total project cost approximately JPY 49 billion.

On 8th September 2017, Shinsei Bank Limited, as sole lender, entered into loan agreements to provide financing of JPY 11.7 billion for a wood biomass power plant, JRE Kamisu Biomass Power Generation, to be built in Kamisu-shi, Ibaraki Prefecture. The total generation capacity of the plant will be approximately 24.4 MW, and all the wood to fuel the facility will be sourced in Japan.



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