

► 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

### Current Situation of Wind Power in Japan and Legal Restrictions

#### SUMMARY

In Japan, the Feed-in Tariff Act ( "FIT Act" ) went into effect on July 2012.

Under the FIT Act, wind power enterprises certified by the Ministry of Economy, Trade and Industry ( "METI" ) are entitled to sell generated electricity to power companies at the price at the time of certification ( "purchase cost" ) for twenty years.

While the gross electricity generated by wind power enterprises which had begun operation before June 2012 amounted to approximately 2.6 million kW, the number of enterprises is on the rise since the implementation of the FIT Act, with certified wind power enterprises generating as much as 6.97 million kW during the period between July 2012 and December 2016.

The government aims at satisfying 1.7% of total electricity demand (10 million kW) with wind power by the year 2030.

#### 1. SELLING PRICE OF ELECTRICITY

The purchase cost used to be 22 yen/kW for onshore wind power plants of more than 20 kW and 55 yen/kW for less than 20 kW, but on October 1, 2017, the purchase cost for onshore wind power plants of more than 20 kW will be reduced to 21 yen/kW. Additionally, purchasing of offshore wind power at a fixed price of 36 yen/kW started in April 2015. It has already been decided to lower the purchase cost of onshore wind power of more than 20 kW to 20 yen/kW in April 2018 and then to 19 yen/kW in April 2019. For onshore wind power of more than 20 kW, in the case of renewals (replacements) of facilities, the purchase cost was set at 18 yen/kW in April 2017, but it has been decided to lower the cost to 17 yen/kW in April 2018 and further to 16 yen/kW in April 2019.

[ PURCHASE COST ACCORDING TO THE FIT ACT ON WIND POWER PROJECTS ]

TIME OF CERTIFICATION	ONSHORE WIND POWER OF MORE THAN 20 KW	ONSHORE WIND POWER OF MORE THAN 20 KW (REPLACEMENTS)	OFFSHORE WIND POWER OF MORE THAN 20 KW	ONSHORE WIND POWER OF LESS THAN 20 KW
Between July 2012 and March 2015	22 yen/kW	N/A	N/A	55 yen/kW
Between April 2015 and March 2017	22 yen/kW	N/A	36 yen/kW	55 yen/kW
Between April 2017 and September 2017	22 yen/kW	18 yen/kW	36 yen/kW	55 yen/kW
Between October 2017 and March 2018	21 yen/kW	18 yen/kW	36 yen/kW	55 yen/kW
Between April 2018 and March 2019	20 yen/kW	17 yen/kW	36 yen/kW	To be determined
Between April 2019 and March 2020	19 yen/kW	16 yen/kW	36 yen/kW	To be determined

#### 2. AMENDMENT OF THE FIT ACT (APRIL 2017)

April 2017 saw a significant revision of the FIT Act ( "2017 Amendment" ). Principal amendments are as follows:

- (1) **Shifting of certification from facilities to projects:**  
Before the 2017 Amendment, METI would certify wind power facilities under the FIT Act, but after the 2017 Amendment, it has changed to certifying wind power projects instead. As a result, METI now assesses whether the plans on facility maintenance and the removal and disposal of the facilities after the termination of a project are appropriate, and then certifies them.
- (2) **Period of certification has been moved forward:**  
Before the 2017 Amendment, operators would first have their facilities certified and then carry out the proceedings, such as applying to a power company for a grid connection, but after the 2017 Amendment, operators first conclude a connection contract with a power company and then receive certification from METI.
- (3) **Operators' non-compliance with statutory laws and ordinances will forfeit their certification:**  
After the 2017 Amendment, if operators do not comply with statutory laws and ordinances on land utilisation or safety, METI can issue them with an improvement and if they still do not obey this mandate, their certification may be revoked.

The revised FIT Act will apply to wind power projects certified prior to the 2017 Amendment, if they submit a business plan to METI within a certain period (in principle, by the end of September 2017). However, if they fail to submit a business plan within this period, their certification will be revoked.

### 3. STATUTORY REGULATIONS REGARDING ONSHORE WIND POWER PROJECTS

Upon installation of onshore wind power facilities, various statutory regulations come into play. In Japan, there are three levels of regulations, namely by state, prefecture and municipality, so it is necessary to check all of them. Further, departments in charge of the respective regulations are mutually independent, meaning in principle companies must confirm and consult with each department on the regulations. The main statutory regulations worthy of attention are as follows:

#### (1) Locational and environmental restrictions:

Statutory laws, such as the Forest Act, Agricultural Land Act, Natural Parks Act, City Planning Act and Act on Protection of Cultural Properties and ordinances of the region apply to the installation of a wind power facility and operation of power generation business, depending on the location of installation. From the perspective of environment preservation, the Noise Prevention Act, Natural Environment Preservation Act, Conservation of Species Act, Landscape Ordinance and regional ordinances also apply. There are cases where these regulations prohibit or limit land utilisation or installation of facilities, or where it is mandatory to obtain a permit of the state or municipality prior to installation. Because research on applicable regulations and other processes, such as those for obtaining a permit, often takes a reasonable amount of time, it is necessary to start preparations early.

#### (2) Environmental Impact Assessments:

Wind power projects must undertake an environmental impact assessment ("EIA") in the planning phase. The process of EIAs for wind power generation projects usually takes three to four years and this burdens new operators greatly. Therefore, the government aims at halving the duration required for EIAs and in so doing, is taking measures, such as shortening the examination period by state and starting the investigations for EIAs earlier for certain cases experimentally.

#### (3) Regulations on design and construction:

If the height of a tower exceeds 15m, the Building Standards Act will apply, which necessitates affirmation by an eligible person belonging to a municipality or a private company. If exceeding 60m, it is required to conduct a prescribed subsurface investigation and structural calculations and to obtain a permit from the Ministry of Land, Infrastructure and Transport. In addition, design and construction of wind power facilities shall be in compliance with the Electricity Business Act, Control on Electrical Appliances and Materials Act and other statutory laws and ordinances and guidelines.

In order to engage in construction in Japan, a construction company shall acquire a construction business license in Japan. It is possible for foreign companies to establish an office in Japan and acquire a license, but as it requires meeting financial and human resource requirements (such as hiring executive managers and engineers) and other requirements, it takes time to acquire a permit. As such, not so many foreign companies acquire a construction business license in Japan.

### 4. OFFSHORE WIND POWER GENERATION

In Japan, the development of offshore wind power generation has been delayed compared with European countries. As of the end of 2016, the gross electricity generated by offshore wind power firms amounted to approximately 60 MW.

However it has gradually been improving. On revision of the Port and Harbour Act in July 2016, a new system of public subscription for offshore wind power projects was introduced and in February 2017, an operator was chosen to operate offshore wind power at a harbour in Hibikinada in northern Kyushu. According to the business plan for the wind power project at Hibikinada harbour, the total output amounted to 220 MW. Likewise, at Kashima Port in Ibaraki, an operator was chosen in July 2017 amounting to a total output of 93.6 MW. In addition, a floating offshore wind farm in Nagasaki Prefecture (2MW) started commercial operation in 2016.

In response to these latest developments, one after the other Japanese companies have been announcing constructing plans for SEP (Self Elevating Platform) vessels. With these enabling usage of domestic SEP vessels optimised for seas around Japan, a shortening of maritime construction and cost reduction are expected.

In regard to legal restraints, also on the installation of offshore wind power generation, an EIA will be required and various locational and environmental restrictions, the Building Standards Act and Electricity Business Act will apply. Additionally, adjustments to rights possessed by stakeholders of the sea areas, such as fishing rights, will be necessary.

### 5. FINANCE

#### (1) Requests for bankruptcy remoteness:

In project financing of renewable energy generation enterprises in Japan, it is common to allow a general incorporated association (*ippan shadan hojin*) that has neutral parties, such as certified public accountants in executive positions, retain equity of the power generation company for the purpose of bankruptcy remoteness.

In this case, sponsors of the power generation business contribute to the project as asset managers, or invest in the project as silent partners (*tokumei kumiai in*).

#### (2) Setting of pledges for step-in, and submission of sponsor letters:

Under Japanese law, in general, it is impossible to comprehensively pledge the assets of a security grantor in whole. Therefore, security interests will be set per individual asset, as is also the case of security interests for step-in in project finance of wind power enterprises. Namely, for example, it can be conceived that a company will take out factory foundation mortgages (*kojo zaidan teito*) on blades, towers or any other power generation facilities and rights of land-use (superficies and leasehold) necessary for wind power generation, pledges or securities by way of assignment (unofficial type of security interest that transfers ownership of the collateral to the creditor whilst withholding the right to recover on satisfaction of the debt) on all rights emerging from various contracts concluded by the power generation company (including the power purchase agreement and insurance contracts), and pledges on equity of the company. Further, submission of sponsor letters to the creditors is also commonly practiced by sponsors so that they can undertake certain business risks.



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