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## Update: Investment in Renewable Energies in Japan

### 1. Changes in the Renewable Energy Policy

Since the enactment of the Act on Purchase of Renewable Energy Sourced Electricity by Electric Utilities (“**REA**”) on 1 July 2012, thanks to the generous tariff rates granted under the feed-in-tariff (“**FIT**”) scheme established by the REA, a flood of foreign and domestic renewable energy power producers entered into the renewable energy market in Japan. As a result, some utilities faced difficulties in accepting the output from those new renewable energy providers due to their limited grid capacity and the costs for purchasing power from the renewable energy sources have expanded rapidly.

To enhance the efficiency of the system and lower the cost burden of consumers, the Japanese Parliament enacted the “Law partially amending the Act on Purchase of Renewable Energy Sourced Electricity by Electric Utilities”, which will take effect on 1 April 2017 (“**New REA**”). The Ministry of Economy, Trade and Industry (“**METI**”), which already had enforced certain changes to the FIT scheme in 2015 and 2016, has now enacted a Ministerial Ordinance amending the Implementation Rules of the REA (“**New Ordinance**”), effective as of 1 August 2016. The New Ordinance implements new standards for the METI business plan accreditation (“**Accreditation Standards**”), and, for solar energy projects, a deadline of three years from the date of the business plan accreditation (“**Accreditation**,” which is equivalent to the facility accreditation by METI under the current REA) for the start of the power supply (“**Supply Deadline**”). Non-observance of the Supply Deadline can lead to a retroactive reduction of the already acquired FIT or to a shortening of the accredited feed-in period. The Accreditation Standards and Supply Deadline will apply retroactively also to generation facilities with already granted METI facility accreditation, if the grid connection agreement is entered on 1 August 2016 or later. Since these changes may affect the economic performance of renewable energy power businesses or even lead to the invalidation of already granted METI facility accreditations under certain circumstances, close attention should be paid to these changes, which are summarized below with respect to solar energy facilities exceeding the capacity of 10 kW.

#### 1.1 Amendments to the FIT Scheme by the New REA and the New Ordinance

(1) Under the New Ordinance, one of the core requirements of an Accreditation will be the submission of a business plan, which must include, e.g., the following content:

- Explanation that the facility is suited for long-term power production over a term of 20 years;
- Method of compliance with legal requirements and information obligation;
- Details regarding facility maintenance and inspection system;
- Method and further details regarding compliance with output limitation by utilities;
- Time plan showing that power supply can start within three years from the Accreditation;
- Details regarding removal of facility and waste disposal after end of supply period.

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Whereas so far, no business plan had been required, under the New Ordinance, even generation facilities that have already started operation, or that have obtained a facility accreditation on or prior to 30 June 2016, need to submit a business plan by 30 September 2017. For facility accreditations granted between 1 July 2016 and 31 March 2017, a business plan must be submitted within 6 months following the facility accreditation.

(2) Condition precedent for the grant of the Accreditation is the conclusion of a grid connection agreement with the utility, which must at least include the following items:

- Consent of the utility to connect the facility to its grid;
- Determination of the share of the cost burden related to the establishment of the generation facility.

From 1 April 2017, Accreditations will only be granted if the grid connection agreement with the utility has already been concluded. The New Ordinance includes interim regulations for already granted facility accreditations (“**Existing Accreditations**”) as follows: With respect to an Existing Accreditation granted on or prior to 30 June 2016, a grid connection agreement must be entered at the latest by 31 March 2017; with respect to an Existing Accreditation granted between 1 July 2016 and 31 March 2017, a grid connection agreement must be entered within 9 months from such Existing Accreditation. In case no grid connection agreement can be concluded within the above deadline, the respective Existing Accreditations will lose their effect. The New Ordinance stipulates however one exception; in case the METI has commenced a procedure of solicitation of business operators to split the construction costs for the grid connection, and such procedure has been publicly notified, generation facilities with an Existing Accreditation granted on or prior to 31 March 2017 are granted a grace period of 6 months from the completion of the solicitation procedure to enter the grid connection agreement.

(3) The supply of energy from a generation facility must start at the latest within three years from the Accreditation (“**Three-Years Rule**”). In case of a failure to comply with the Three-Years Rule, the METI will be entitled to either reduce the accredited procurement price by a certain percentage (e.g. 5 %), or reduce the supply period for the respective generation facility. The details and further proceedings related to these sanctions are yet under consideration by the METI; a date for the publication of these details has not yet been determined.

The above Three-Years Rule, and the aforementioned sanctions, do not apply to certain Existing Accreditations, for which a grid connection agreement with the content stated in item (2) above has been entered on or prior to 31 July 2016.

For other Existing Accreditations, the New Ordinance stipulates various interim rules related to the calculation of period relevant for the Three-Years Rule.

(4) The system under which the already granted FIT was changed retroactively in case of certain material changes (changes to PV modules, output capacity decrease of 20% or more (prior to start of operation), etc. ) was mostly abolished;

whereas such changes still must be notified to the METI, the FIT is principally not affected thereby. There are however exceptions from this general rule in certain cases, e.g. an output increase may still affect the applicable FIT. Such changes will apply to the Existing Accreditations, provided that a grid connection agreement with the content stated in item (2) above has been entered on or prior to 31 July 2016.

(5) The New Ordinance stipulates also the public announcement of certain details (METI-ID, location, operation of generation facility, etc.) regarding the granted Accreditations through the website of the Agency of Resources and Energy.

**1.2 Latest Amendments to the FIT Scheme in in 2015 and 2016**

Prior to the above mentioned changes, the METI has started implementing certain amendments in 2015, which continue to be effective also under the New REA and the New Ordinance.

**(a) Expansion of Scope of Power Producers subject to Limitation by Utilities**

Prior to the 2015 amendments to the REA, only renewable energy power producers with a capacity of 500 kW or higher were subject to the output limitation applied by the utilities under the REA. However, in view of the fact that the aggregate output of the newly established solar power producers might exceed the estimated grid capacity of the relevant utilities, the revised FIT system has extended the scope for such output limitation (i.e. curtailment) to providers with less than 500 kW capacity. However, the utilities of Tokyo, Chubu and Kansai have declared that, for the time being, they will not apply the curtailment under the revised FIT scheme to power producers with a capacity of less than 50 kW.

The 2015 amendments to the REA also require a solar power producer to install remote output control equipment in its generation facility, but the METI, considering the costs incurred for installing this equipment, has set a certain grace period for this requirement.

**(b) “360 Hours Rule” for the Output Limitation**

In order to ease the negative impact on the solar power producers from the curtailment explained above as much as possible by applying it more sensitively, the 2015 amendments to the REA have revised the annual maximum period for applying the curtailment from 30 days to 360 hours. Thus, when the power output exceeds its grid capacity due to the low demand, etc., despite the utility’s efforts to prevent it, such utility may at its discretion limit the power output it accepts by hours, not days, up to 360 hours annually, for an indefinite amount of power output, without paying any compensation to the affected power producers. In order to assure the proper application of this curtailment by the utilities, the METI regularly monitors the utilities’ grid capacities, establishes the agency regulating the compliance by the utilities and discloses the relevant date of this limitation for the power producers to estimate the scope thereof in advance.

**(c) Prohibition of tentative Holding of Grid Capacity by Power Producers**

In order to secure the maximum grid capacity of each utility, and to ensure proper and smooth operation of business by power producers, the 2015 amendments to the REA prevent power producers from only tentatively holding the grid capacity without having ensured the financing of the project, e.g. by: (i) not paying the grid connection construction costs to the utility (after the amendments, the costs must be paid within 1 month after the conclusion of the grid connection agreement), or (ii) failing to start the operation of the generation facility at the scheduled operation date stipulated in the grid connection agreement (after the amendments, power producers in such case have a right to cancel the grid connection agreement).

The information stipulated above is available at the website of the relevant energy policy committee panel of the METI at [http://www.enecho.meti.go.jp/category/saving\\_and\\_new/saiene/kaitori/kaisei\\_kakaku.html](http://www.enecho.meti.go.jp/category/saving_and_new/saiene/kaitori/kaisei_kakaku.html) (in Japanese only).

**2. Purchase Price for Solar Energy for the year 2015 and 2016**

The METI has announced the new tariff to be applied through the fiscal year 2016 (i.e. from 1 April 2016 through 31 March 2017). Compared to the purchase prices for the previous fiscal year 2015 (applied until 31 March 2016), the tariff for solar energy has been reduced.

The fixed purchase price and contract duration for the period from 1 April 2015 through 31 March 2016 for solar power had been set as follows:

Energy source	Solar					
Procurement category	Less than 10 kW (sale of surplus)		Less than 10 kW (double generator)		10 kW or more	
	Output Limiting Equipment (*)	NO Output Limiting Equipment	Output Limiting Equipment	NO Output Limiting Equipment	1 Apr. 2015 – 30 Jun. 2015 (transition period)	1 July 2015 – 31 March 2016
Tariff/kWh	33 JPY (+ taxes)	35 JPY (+ taxes)	27 JPY (+ taxes)	29 JPY (+taxes)	29 JPY (+ taxes)	27 JPY (+ taxes)
Duration	10 years				20 years	

(\*) The small-scale power producers in the areas subject to the output limitation by Hokkaido, Tohoku, Hokuriku, Chugoku, Shikoku, Kyushu, or Okinawa utilities, which submit the applications for the power purchase agreements on or after 1 April 2015, are legally required to install the output limiting equipment in their power generation facilities to respond to the utilities' output limitation.

The above purchase price and contract duration have been amended for the period from 1 April 2016 through 31 March 2017 for solar power as follows:

Energy source	Solar		
Procurement category	Less than 10 kW		10 kW or more
	Output Limiting Equipment (*)	NO Output Limiting Equipment	
Tariff/kWh	31 JPY (+ taxes)	33 JPY (+ taxes)	24 JPY (+ taxes)
Duration	10 years		20 years

(\*) The small-scale power producers in the areas subject to the output limitation by Hokkaido, Tohoku, Hokuriku, Chugoku, Shikoku, Kyushu, or Okinawa utilities, which submit the applications for the power purchase agreements on or after 1 April 2015, are legally required to install the output limiting equipment in their power generation facilities to respond to the utilities' output limitation.

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