

ENERGY & INFRASTRUCTURE BULLETIN

December 2018

**METI Publishes Answers to Public Comments
on Proposed Changes to the Feed-in Tariff Scheme
for Renewable Energy in Japan**

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I. Introduction

On 5 December 2018, the Japanese Ministry of Economy, Trade and Industry (“**METI**”) published (i) its answers (the “**Answers**”) to public comments¹ on the proposed amendments (the “**Original Proposal**”) to the feed-in tariff (“**FIT**”) scheme under the Act on Special Measures Concerning Procurement of Electricity from Renewable Energy Sources by Electricity Utilities (the “**Act**”) and (ii) revised rules (the “**New Rules**”) on pre-operational, METI-certified solar power projects.² The New Rules will take effect upon promulgation of an amendment to the Enforcement Regulations for the Act and the METI Announcement (*kokuji*). This bulletin outlines the key features of the New Rules in view of the Original Proposal and the Answers.

¹ 1,617 opinions were presented.

² The Answers are available at

<http://search.e-gov.go.jp/servlet/Public?CLASSNAME=PCMMSTDETAIL&id=620118020&Mode=2>, and the New Rules are available at

<http://www.meti.go.jp/press/2018/12/20181205004/20181205004.html> (both are in Japanese only).

The Original Proposal also contained other measures such as expansion of the scope of changes to business plans for biomass projects that require METI certification, which are out of the scope of the Answers and the New Rules. Please see our previous bulletin (November 2018) at

<http://www.mhmjapan.com/content/files/00032693/ENERGY%20INFRASTRUCTURE%20BULLETIN%20201811.pdf> for the general background and contents of the Original Proposal.

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II. Method of Changing the Rules

Original Proposal
Amendment to (i) the Enforcement Regulations for the Act and (ii) the METI Announcement (<i>kokujū</i>). (Issue) Taking into account that the proposed measures substantively change the applicable FIT rate in an inevitable and retrospective manner, there is a question as to whether such change can be implemented by the amendment to the above regulations without having to amend the Act.
Answer
No change from the Original Proposal. The Answer presents METI's justification for the method of changing the rules. ³

III. Target Projects and Exemptions

Original Proposal
The proposed measures apply to all solar power projects of 10kW or more that (i) were certified by METI between 1 July 2012 and 31 March 2015 and (ii) are not subject to the so-called “three-year rule” (<i>i.e.</i> , an interconnection agreement (<i>setsuzoku keiyaku</i>) was executed by 31 July 2016) (the “ Target Projects ”). Upon submission of an application by each project company for commencement of grid interconnection construction work (<i>keitou renkei kouji chakkou moushikom</i>) (the “ Application ”), a transmission and distribution utility (the “ Utility ”) automatically determines the earliest date to commence interconnection.
(Issue) Many projects that have raised funds based on the existing FIT rate will be subject to the Original Proposal. A change of applicable FIT rate and the FIT off-take term may cause a significant impact on the cash projection of such projects.
New Rule
Exemption from the proposed measures (<i>i.e.</i> , no change of applicable FIT rate occurs, and the “one-year rule” does not apply) is granted to such projects that satisfies either of the following requirements: (a) construction plan notification (<i>kouji keikaku todoke</i>) is accepted by the authority pursuant to the Electricity Business Act (the “ Construction Plan Notification ”) on or before 5 December 2018 (the Construction Plan Notification is required for solar power projects of 2MW or more); or (b) (i) the project company objectively proves, by official records, to have genuinely commenced development construction on or before 5 December 2018, ⁴ (ii) the Construction Plan Notification is accepted on or before 30 September 2019, and (iii) it is verified that the construction plan in respect of such Construction Plan Notification is initiated on or

³ Please see numbers 8, 80 and 98 of the Answer.

⁴ For example, project companies subject to forest development permits can satisfy this item (b)(i) if they have obtained such permits and filed the development commencement notice on or before 5 December 2018.

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before 31 October 2019.

(Remarks)

- Unless the above requirements are met, the Target Projects are subject to the New Rules uniformly without taking into account individual circumstances of such projects save for postponement of the implementation of the New Rules for certain projects (please see section IV below).
- Project companies that fall into either (a) or (b) above (the “**Exempt Project Companies**”) are still required to submit the Application and may be subject to administrative orders in the event of undue delay in grid interconnection.
- The above exemptions will not apply if the project companies change the solar panels (please see section VI below).

IV. Modification and Extension of Application Deadline

Original Proposal				
The proposed measures for solar power projects take effect on 1 April 2019. Project companies must submit the Application by the latter half of January 2019 to ensure that the existing applicable FIT rate remains as is.				
(Issue)				
For some projects (in particular, large-scale projects and projects subject to the environmental impact assessment process required by local ordinance (the “ Local EIA ”), it is difficult to comply with the above deadline to submit the Application.				
New Rule				
New deadlines are as follows:				
		Application		(c) Commercial Operation Deadline
		(a) Submission Deadline	(b) Acceptance Deadline	
General Rule		1 Feb 2019	31 Mar 2019	31 Mar 2020
Exception	2MW or more	Aug 2019	30 Sept 2019	30 Sept 2020
	Local EIA	Feb 2020	31 Mar 2020	31 Dec 2020
(Remarks)				
<ul style="list-style-type: none"> • The extended deadlines would still be difficult to comply with for certain projects. • In general, the period between (b) and (c) above is one year. However, such period afforded to projects subject to the Local EIA is only nine months. • If the initial Application is not submitted or accepted by the relevant deadline, the project companies must commence operations within one year from the date of acceptance of the initial Application. • The Application is uniformly required for all the Target Projects that have not commenced operation by the above submission deadline even if the grid interconnection work has already commenced or the exemptions as discussed in section III above apply. 				

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V. Conditions for the Application

The following issues have been raised with respect to the conditions for submitting the Application.

1. Obtaining Land Use Rights

Original Proposal
Project companies must obtain the land use rights (e.g., complete negotiations with landowners) before submitting the Application.
(Issue) For some large-scale projects, additional acquisition of adjacent land will be necessary during the course of construction. Such projects will be subject to a possible decrease of the applicable FIT rate.
New Rule
Before submitting the Application, project companies must actually obtain the land use rights <u>on the sites to be occupied by the power generating facilities</u> .

2. Obtaining Permits and Licences

Original Proposal
Project companies must actually obtain <u>the permits and licences necessary for development/operation of the projects</u> before submitting the Application.
(Issue) Current practice of obtaining the permits and licences at an appropriate time before the scheduled date of grid interconnection will no longer be accepted.
New Rule
Project companies must actually obtain <u>the following permits</u> (if necessary for the projects) before submitting the Application: (a) Permits for exclusion from agricultural promotion zone and agricultural land conversion (acceptance of applications for such permits may suffice); and (b) Permits for forest development.
(Remarks) · Project companies must obtain the above permits before the modified/extended deadline; otherwise, reconsideration of the business plan will be inevitable.

3. Completion of Environmental Impact Assessment Process

Original Proposal
Project companies must <u>complete the Local EIA</u> (if necessary) before submitting the Application.
(Issue) Requiring completion of the Local EIA process would be too inflexible given that such process may be too time-consuming depending on the local ordinance that mandates such assessment.

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New Rule
Project companies must <u>make a public announcement of the environmental impact assessment statement (<i>hyouka-sho</i>) and complete the public review process (<i>koukoku jyu-ran</i>)</u> before submitting the Application.
(Remarks)
<ul style="list-style-type: none"> Project companies must complete the public review process of the environmental impact assessment statement before the modified deadline, which has been postponed by one year; otherwise, reconsideration of the business plan will be inevitable.

4. Subsequent Amendment of Certified Business Plan

Original Proposal
<u>Absence of a possible amendment to the certified business plan</u> is a prerequisite for submitting the Application. If the plan is subsequently amended, the project company must re-submit the Application, which could trigger a change of FIT rate.
(Issue)
The Original Proposal is too inflexible in that it applies to all types of amendments to the certified business plan including those not affecting the grid interconnection schedule.
New Rule
<u>Absence of a possible request for METI's certification of amendment to the business plan after submitting the Application and before commencing the operation</u> is a prerequisite for submitting the Application. If such request becomes necessary after submitting the Application and before commencing operations, the project company must re-submit the Application, which could trigger a change of FIT rate. On the other hand, an amendment to the certified business plan that (i) only requires notification (either pre- or post-amendment), or (ii) is made after commencing operations, does not necessitate re-submission of the Application.
(Remarks)
<ul style="list-style-type: none"> Any amendment to the certified business plan, regardless of the relevance to the grid interconnection schedule (such as change of the project companies, change of lot numbers of the sites, and change of the solar panels), will necessitate re-submission of the Application, triggering a change of FIT rate, if such amendment is subject to METI certification of amendment.

5. Subsequent Change of Scheduled Date of Grid Interconnection

Original Proposal
Project companies must <u>re-submit the Application if the scheduled date of grid interconnection requires changes</u> due to reasons that are not solely attributable to the Utilities.
(Issue)
The applicable FIT rate may be changed even if the grid interconnection work is delayed due to a reason not attributable to the project companies such as natural disaster or other force majeure events.

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New Rule
Regardless of the reason, subsequent changes of the scheduled date of grid interconnection <u>do not necessitate re-submission of the Application (i.e., no change of applicable FIT rate occurs).</u>
(Remarks)
<ul style="list-style-type: none"> Please note that re-submission of the Application will be required if amendment to the certified business plan becomes necessary and such amendment is subject to METI certification of amendment (please see paragraph 4 above).

VI. Change of Solar Panels

Project companies that are subject to the new deadline for commercial operation under the New Rules may change the solar panels before submitting the Application without the existing FIT rate being affected. This measure took effect on 10 December 2018, allowing the project companies to reduce costs. Please note, however, that if the Exempt Project Companies change the solar panels, they will no longer be exempt from the New Rules (i.e., they will be subject to the new “one-year” rule and the applicable FIT rate may change).

VII. Conclusion

The Original Proposal stunned the pre-operational, METI-certified solar power project companies and their financiers because it involved stringent measures against them. The volume of opinions presented during the public comment process substantiates the keen interest shared by many participants in those projects. Apparently, the underlying purpose of the Original Proposal – to address increased costs passed on to consumers – is widely accepted, and many of the comments consisted of constructive feedback that seek to modify the measures to be more reasonably practicable. Based on such comments, the New Rules present flexible and reasonable solutions in some respects.

However, there still remain unaddressed issues, and even the New Rules require extra caution as mentioned above. Even though project companies that have already filed Construction Plan Notification are exempt, and the Application deadline for large-scale projects and projects subject to the Local EIA has been extended, the relevant participants subject to the New Rules should take urgent action to properly deal with the issues.

As clearly recognised in the fifth edition of Japan’s Strategic Energy Plan (July 2018), addressing increased costs for consumers and promoting more cost-effective projects have both become pressing issues in terms of the

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utilisation of renewable energy as a major power source. Project companies, and even those who handle renewable energy sources other than solar power, regardless of the applicability of the New Rules, should bear in mind that they are expected to achieve more cost effectiveness and to commence operations as early as possible. It is important for participants in renewable energy projects to closely observe government policy shifts and analyse each project plan from a broader perspective. Going forward, we will continue to monitor and report on legislative and regulatory developments as they arise.

NEWS

➤ **Top Rankings in "Asialaw Profiles 2019: The Definitive Guide to Asia-Pacific's Leading Domestic and Regional Law Firms (23rd edition) "**

Mori Hamada & Matsumoto has achieved top rankings as one of the "Recommended firms" in Japan, Myanmar and Thailand in the "Asialaw Profiles 2019: The Definitive Guide to Asia-Pacific's Leading Domestic and Regional Law Firms (23rd edition) " due to its impressive reputation in all of the practice areas mentioned below.

Our Yangon Office is the only Japanese firm in Yangon to be selected as one of the "Recommended firms" and to receive such high rankings. Our Bangkok Office (Chandler MHM Limited) has also been selected as one of the "Recommended firms" as shown below.

Japan

Practice Areas

Outstanding

- Banking and finance
- Capital markets
- Competition/Antitrust
- Construction
- Corporate and M&A
- Dispute resolution
- Investment funds
- Labour and employment
- Regulatory

Highly Recommended

- Intellectual Property
- Restructuring & Insolvency
- Tax

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Recommended

- Private Equity

Industry Sectors

Outstanding

- Banking and financial service
- Consumer goods and services
- Energy
- Real estate

Highly Recommended

- Media and entertainment

Recommended

- Insurance
- Technology and telecommunications

Myanmar

Practice Areas

Recommended

- General business law

Industry Sectors

Highly Recommended

- Energy

Recommended

- Infrastructure
- Real estate

Thailand

Practice Areas

Outstanding

- Banking & Finance
- Corporate/M&A

Highly Recommended

- Construction
- Restructuring & Insolvency

Recommended

- Capital markets

Industry Sectors

Outstanding

- Banking and financial services

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- Energy

Highly Recommended

- Industrials and manufacturing
- Infrastructure
- Real estate

Recommended

- Consumer goods and services

➤ Top Ranking Received From Chambers Asia Pacific 2019

Mori Hamada & Matsumoto and our lawyers are recognized in the practice areas named below in Chambers Asia-Pacific 2019. Our Yangon Office was again the only Japanese firm to receive rankings in the categories "General Business Law – Myanmar" and "General Business Law: International Firms – Myanmar". Our Bangkok Office (Chandler MHM Limited) and its lawyers have also received prestigious rankings as shown below.

For more information, please refer to the Chambers' website.

Practice Areas

Japan

- Banking & Finance (Band 1)
- Capital Markets (Band 1)
- Capital Markets: Securitisation & Derivatives (Band 1)
- Competition/Antitrust (Band 1)
- Corporate/M&A (Band 1)
- Dispute Resolution (Band 2)
- Employment (Band 1)
- Insurance (Band 1)
- Intellectual Property (Band 2)
- Investment Funds (Band 1)
- Projects & Energy (Band 1)
- Real Estate (Band 1)
- Restructuring/Insolvency (Band 2)
- Tax (Band 2)

Japan – Osaka

- General Business Law (Band 3)

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Myanmar

- General Business Law (Band 4)
- General Business Law: International Firms (Band 3)

Thailand (Chandler MHM Limited)

- Banking & Finance (Band 2)
- Corporate/M&A (Band 2)
- Projects & Energy (Band 1)

Lawyers

Japan

- Banking & Finance
Leading Individual: Satoko Kuwabara, Masanori Sato, Takahiro Kobayashi, Hiroki Aoyama
- Banking & Finance: Financial Services Regulation
Senior States people: Toru Ishiguro
- Capital Markets
Leading Individual: Katsumasa Suzuki, Taro Omoto
Senior States people: Toru Ishiguro
Up and Coming: Toshimitsu Nemoto
- Capital Markets: J-REITs
Leading Individual: Yasuhiko Fujitsu, Taro Omoto
- Capital Markets: Securitisation & Derivatives
Leading Individual: Masanori Sato, Akira Ehira
- Competition/Antitrust
Leading Individual: Kenji Ito, Hideki Utsunomiya
- Corporate/M&A
Leading Individual: Shin Kikuchi, Satoko Kuwabara, Hajime Tanahashi, Tomohiro Tsuchiya, Gaku Ishiwata, Atsushi Oishi, Yuto Matsumura, Takayuki Kihira, Yoshihiro Kojima
- Recognised Practitioner: Hirokazu Hayashi
- Dispute Resolution
Leading Individual: Mugi Sekido
- Employment
Leading Individual: Chisako Takaya, Taichi Arai
- Insurance
Leading Individual: Masakazu Masujima
- Intellectual Property

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Leading Individual: Yutaka Miyoshi

- Investment Funds

Leading Individual: Yasuzo Takeno, Ken Miura, Nobuharu Onishi

- Projects & Energy

Leading Individual: Takahiro Kobayashi

- Real Estate

Leading Individual: Eriko Ozawa

Up and Coming: Naoki Ishikawa

- Restructuring/Insolvency

Leading Individual: Soichiro Fujiwara, Ryota Yamasaki

- Tax

Leading Individual: Atsushi Oishi

Recognised Practitioner: Makoto Sakai

Myanmar

- General Business Law

Leading Individual: Win Naing

- General Business Law: International Firms

Recognised Practitioner: Takeshi Mukawa

Thailand (Chandler MHM Limited)

- Banking & Finance

Leading Individual: Jessada Sawatdipong

Senior States people: Albert T. Chandler

Recognised Practitioner: Joseph Tisuthiwongse

- Corporate/M&A

Leading Individual: Ratana Poonsombudlert

- Projects & Energy

Leading Individual: Jessada Sawatdipong, Joseph Tisthiwongse

Senior States people: Albert T. Chandler

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➤ Promotions at Chandler MHM

Co-Managing Partner, Satoshi Kawai is pleased to announce three promotions, effective November 2018: Tananan Thammakiat, who leads the REIT/Capital Markets team is being promoted to Partner; Peerapat Pongrojphao, a key member of the Litigation team is being promoted to Counsel, and Pranat Laohapairoj, a key member of the M&A team is being promoted to Counsel.

Tananan advises major clients on the establishment, and capital increases for REITs and property funds for public offerings (PFPOs), and on the conversion of PFPOs to REITs, including domestic and international offerings. She is also highly experienced with mergers and acquisitions, advising on both domestic and cross-border transactions.

Peerapat is highly experienced in all aspects of litigation, with a focus on: real estate, banking and finance, labor and employment, mergers and acquisitions, restructuring and insolvency, IP, trade competition/international trade, and criminal law. His sector experience is equally broad and includes, food and drug, ICT, and insurance.

Pranat specializes in mergers and acquisitions, anti-trust, corporate, anti-corruption, compliance, and labor law. He works on both domestic and cross-border transactions, and his experience spans multiple sectors, including energy and natural resources, automotive, wholesale and retail, electronics, real estate, ICT, high-value manufacturing, and F&B.

These important promotions support the firm's premier positioning: Top Tier Firm / Outstanding Law Firm / Top Ranked Firm 2018, by The Legal 500 Asia Pacific, IFLR1000, Chambers and Partners Asia Pacific, Asialaw Profiles, and Firm of the Year, Most Responsive Domestic Law Firm 2017, by Asian-mena Counsel, In-House Community. Satoshi Kawai and Niwes Phanchaoenworakul, Co-Managing Partners, concurred in saying, "2018 was an exciting year for the growth and development of our practices and for the firm. Our promotions demonstrate our broad expertise across each of our key practice areas. We look forward to continued growth and ensuring that we are the Firm of Choice for our clients in 2019."

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