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Introduction to the “Implementation Guidelines for Briefings and Prior Notification Measures” in Preparation for the Enforcement of the Revised Renewable Energy Act

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Contents

1. Introduction
2. Briefings upon Application for Amendment to the Business Plan
3. Scope of "Closely Related Parties" of Renewable Energy Power Generation Business Operators
4. Transitional Measures under the Revised Renewable Energy Act and Practical Measures Leading to the Effective Date
5. Conclusion

1. Introduction

Since the introduction of the FIT (Feed-in-Tariff) scheme in 2012, the amount of renewable energy, mainly solar power generation, has increased. This, however, has made the local community increasingly concerned about its impact on safety, disaster prevention, landscape and environment, as well as the disposal of power generation facilities in the future. In light of the circumstance, the Ministry of Economy, Trade and Industry (“METI”) established the “Working Group for Long-term Use of Renewable Energy Resources and Community Coexistence” (“Community Coexistence WG”). From May 2023 onwards, the Community Coexistence WG has been discussing the details on how to revise the “Act on Special Measures for the Promotion of

Use of Electricity from Renewable Energy Sources” (Act No. 108 of 2011, the “Renewable Energy Act” or simply “the Act”) and the enforcement regulations thereof (METI Ordinance No. 46 of 2012; hereafter, “Enforcement Regulations”). Based on the discussions, one of the revisions to the Renewable Energy Act will be requiring certain business operators to implement briefings to local residents as part of the requirements for application of FIT/FIP (Feed-in-Tariff/Feed-in-Premium) certification, in order to enable renewable energy businesses to coexist with the local community through providing appropriate information to local residents.

In anticipation of the enforcement of the revised Act (“Revised Renewable Energy Act”) on April 1st of this year, the Revised Enforcement Regulations and “Implementation Guidelines for Briefings and Prior Notification Measures” (“Implementation Guidelines for Briefings” or simply “Guidelines”) have been promulgated on February 20, 2024, which set forth the details for such briefings to local residents.¹ In this paper, we will introduce some of the important points of these developments particularly in briefings upon application for amendment to the business plan and discuss practical measures based on such points.

2. Briefings upon Application for Amendment to the Business Plan

The Revised Renewable Energy Act requires conducting and providing briefing sessions (or advance notice measures, depending on the types of renewable energy facilities) (“Briefings”) to local residents when applying for certification of business plans for renewable energy power generation projects, mainly at all high-voltage and extra-high-voltage renewable energy power plants, with certain exceptions. The implementation of Briefings has been added to the existing approval requirements (Article 9, Paragraph 2, Item 7 and Paragraph 4, Item 6 of the revised Act.). The new requirement applies not only for applications for certification of a business plan for new projects but also for certain applications for amendment to the business plan for existing projects. Unless Briefings are conducted, certification of the new business plan or amended business plan may not be approved (Paragraph 1 and 4 of Article 10 of the revised Act).

Chapter 5 of the Implementation Guidelines for Briefings “Briefings upon Application for Amendment to the Business Plan” clarifies the kinds of application for amendment to the business plan that are subject to the Briefings requirement. Specifically, the following application for amendment to the business plan calls for the implementation of Briefings (see also Article 8-2 of the Revised Enforcement Regulations):

- (1) Changes to the approved business operator due to business transfer, merger or company split;
- (2) Changes to closely related parties of the approved business operator;
- (3) Changes to the location of the renewable energy power generation facilities;

¹ The details of the Revised Enforcement Regulations and Guidelines can be confirmed from the below:

- https://www.enecho.meti.go.jp/category/saving_and_new/saiene/kaitori/dl/announce/20240220.pdf
- https://www.enecho.meti.go.jp/category/saving_and_new/saiene/kaitori/dl/announce/20240220_se_tsumeikai.pdf

- (4) Changes that increase the approved output of the renewable energy power generation facilities by 20% or more, or by 50 kW or more, from the date of the new approval or the latest Briefings, whichever is later;
- (5) (For solar power generation facilities) changes that increase the total solar panel output by 20% or more, or by 50 kW or more, from the date of the new approval or the latest Briefings, whichever is later; or
- (6) Changes to the renewable energy power generation facility that will require the implementation of Briefings.

With respect to the changes to the approved business operator due to transfer of business, merger or company split described in item (1) and the change of closely related parties described in item (2) (details will be described below), the necessity for the implementation of the Briefings was prompted by the concern that in such situations where renewable energy power generation business operators are replaced, problems typically arise due to lack of communication with the local community (as in the case of starting a new project). However, since these events frequently occur in M&A transactions of renewable energy power generation projects, such new requirements on the business may have significant impact on such transactions practically, and currently we have been asked for legal advice on this point.

3. Scope of “Closely Related Parties” of Renewable Energy Power Generation Business Operators

Discussions at the Community Coexistence WG up to November last year suggested that Briefings should also be required in the event of a “change in the beneficial owner.” However, it is not exactly clear who the “beneficial owner” would be. The Revised Enforcement Regulations only stipulates “change of closely related parties of an approved business operator” (Articles 8-2 and 9 of the Revised Enforcement Regulations). In turn, the newly promulgated Implementation Guidelines for Briefings defines “closely related party” as follows:

A “closely related party” is:

- (i) a member of the approved business operator (if the approved business operator is a membership company (mochibun kaisha));*
- (ii) a shareholder holding a majority of voting rights in the approved business operator (if the approved business operator is a stock company (kabushiki kaisha));*
- (iii) a TK (tokumei kumiai) investor holding a majority of the TK investment in an approved business operator; or*
- (iv) the parent company of an entity specified in (i) through (iii) above (Parent Company as defined in Article 8, Paragraph 3 of Regulation 11 on Terminology, Forms and Preparation Methods of Financial Statements (Ministry of Finance Order No. 59, 1963)).*

Based on this definition, matters worth noting are as follows: (1) if the approved business operator is a limited liability company (*goudou kaisha*) or other membership company, even a non-executive member is considered to be a “closely related party” under the Guidelines; (2) a

TK investor which is seen in the so-called GK-TK scheme is also considered to be a “closely related party” if the person holds a majority TK interest; and (3) each parent company of a member in a membership company, a shareholder holding a majority of the voting rights in a stock company, and a TK investor holding a majority TK interest is also considered to be a “closely related party.” Notably, the implementation of Briefings is expected to be necessary even when changing these persons.

4. Transitional Measures under the Revised Renewable Energy Act and Practical Measures Leading to the Effective Date

The supplementary provisions of the Revised Enforcement Regulations and page 14 of Material 1 of the 12th Community Coexistence WG “Preparation for the Enforcement of the Revised Renewable Energy Act” mention the transitional measures for FIT/FIP Briefings requirement. It is stated there that applications for new approvals or applications for amendment to the business plans after the date of enforcement of the Revised Renewable Energy Act (April 1, 2024) will be subject to Briefings requirements without any special transitional measures, except for those subject to competitive bidding process in FY 2023. It is also clearly stated that applications filed after the deadline for application for approval in FY 2023 (solar, wind, small and medium hydropower, and geothermal power above 10 kW: December 15, 2023 / biomass: December 1, 2023) will be subject to the Briefings requirement for FIT/FIP approval, as such FIT/FIP approval will be granted on or after April 1, 2024.

Applications for amendment to the business plan that will require implementation of the Briefings after the effective date of the Revised Renewable Energy Act (April 1 this year) are classified into the following three categories according to the reasons thereof:

- (1) Grounds that require application for amendment to the business plan even before the effective date (transfer of business, change of the installation location, change of the approved output, change of the total output of solar panels (in the case of solar power generation facilities));
- (2) Grounds that require a subsequent notification of change before the effective date (merger or company split); or
- (3) Grounds that require neither application for amendment to the business plan nor subsequent notification of change before the effective date (change of a closely related party²)

In light of the above policies on the transitional measures, the Revised Renewable Energy Act will not apply to the abovementioned items (1) (transfer of business etc.) and (2) (merger and

² Except for change of a managing member of an approved business operator (if it is a membership company), which needs a subsequent notification of change.

company split), and the implementation of the Briefings will be unnecessary, in practice, if the application for amendment to the business plan was completed before the deadline for application for approval in FY 2023 or the notification for change was completed before the effective date, as applicable. To be precise, approved business operators would be subject to the Briefings requirement, unless they duly file the application for amendment to the business plan before the deadline for application for approval in FY2023 or they fully complete the notification for change before the effective date (as applicable). It will not be sufficient for approved business operators to just complete the applicable transactions for the event (i.e., execution of agreement, completion of payment settlement, and closing) before the effective date.

However, it should be noted that the deadline for application for amendment to the business plan in FY 2023 has already passed for the events covered in item (1) (change of approved business operator due to business transfer, and change of installation location, certified output or total output of solar panels) above.³ If an application for amendment to the business plan for any of these has to be submitted, the application will have to be submitted on or after April 1, 2024, and therefore the implementation of Briefings will be required.

Regarding mergers or company splits of renewable energy power companies which are events covered in item (2) above, public notice procedures are normally required under the Companies Act, which in turn necessitates a period of at least one month for public notice in the official gazette (Articles 789 and 799 of the Companies Act). Further, because a certificate of corporate registry reflecting changes due to a merger or company split is required as an attachment to the subsequent notification of changes, in addition to the period required for the procedures for merger or company split,⁴ the period from the filing of an application for registration of a commercial change to the completion of registration (generally around 1-2 weeks depending on the circumstances) needs to be taken into account. In light of these circumstances, it seems to be generally difficult to implement a merger or company split from now on and complete the procedures required under the Companies Act such as public notice procedures, procedures to change commercial registration, and the subsequent notification of changes under the Act by the end of March 2024.

With respect to the events in item (3) “change of closely related parties” above, it is understood that the implementation of the Briefings shall not be required if the events subject to item (3) has become effective before the effective date. In other words, with regard to changes to (i) members in a membership company, (ii) shareholders holding a majority of the voting rights in a stock company, (iii) TK investors holding a majority of the TK interests or (iv) the parent company of those listed in (i) through (iii) above, which are set out in the Guidelines as “closely related parties,”

3 "Deadline for Application for Approval under the Act on Special Measures Concerning Renewable Energy during FY 2023 (Announcement)" New Energy Division, Agency for Natural Resources and Energy, dated November 22, 2023

https://www.enecho.meti.go.jp/category/saving_and_new/saiene/kaitori/dl/announce/20231122.pdf

4 Agency for Natural Resources and Energy "Summary of Change Procedures for Each Change" (Updated on April 1, 2023)

https://www.enecho.meti.go.jp/category/saving_and_new/saiene/kaitori/dl/fit_2017/henkou_seirihyou.pdf

as long as these events are fully completed before the effective date (April 1, 2024), the implementation of Briefings will not be required.

5. Conclusion

Further analysis and consideration on the implementation of the Briefings should be made after the actual enforcement of the Revised Renewable Energy Act, including any impact on practical transaction schedules.

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- This newsletter is published as a general service to clients and friends and does not constitute legal advice. Should you wish to receive further information or advice, please contact the authors as follows:

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