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Announcement of Draft Report by ANRE Subcommittee on the Reform of Renewable Energy Regulations

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On 15 December 2015, a draft report outlining new reform policies for Japan's renewable energy system (the "**Draft Report**") was announced by the Subcommittee for Reforming Systems Related to Introduction of Renewable Energy (the "**Reform Subcommittee**"). The Reform Subcommittee was established by the Agency for Natural Resources and Energy ("**ANRE**"), and the Draft Report is the outcome of its review of the current regulations and methods to further promote renewable energy projects in Japan. Whilst the Draft Report does not represent the government's definitive decisions on renewable energy reform, amendments to current regulation are expected to be based on the Draft Report's recommendations, in particular amendments to the Act on Special Measures concerning the Procurement of Renewable Electric Energy by Operators of Electric Utilities (the "**Renewable Energy Act**").

This article sets contains a brief outline of the important items announced in the Draft Report.

1. Background of the Reform of Renewable Energy Regulations

The introduction of the Feed-in-Tariff Scheme under the Renewable Energy Act (the "**FIT Scheme**") has led to a rapid expansion of entry into solar power generation. On the other hand, it is pointed out that a system for promoting generation facilities in other forms of renewable energy is necessary, as longer lead time for developing such facilities is required.. Another issue that has been identified under the existing renewable energy regulations is that some of the projects, which have obtained certificates for the FIT Scheme (the "**FIT Certificates**"), do not come to the stage of commencing operations for substantial periods whilst retaining their high tariff status. There has also arisen an issue that several electric utility operators ("**Utility Operators**") suspended the processing of applications for grid connection due to their

limited capacity. The need for reform has also been spurred by the need to minimize the amount of surcharges levied against consumers under the FIT Scheme, and to review the current renewable energy regulations in line with the recent electricity system reforms.

After reviewing the overall FIT Scheme since September 2015, the Reforming Subcommittee announced on 15 December 2015 its proposals to reform the current FIT Scheme in the form of the Draft Report.

2. Brief Summary of the Draft Report

(1) Reform of the FIT Scheme and the Existing Projects Prior to the Stage of Operations

The Draft Report proposes the revision of the procedure for FIT Certificates. Currently FIT Certificates are issued before the execution of the grid connection agreement (the “**Interconnection Agreement**”) with the relevant Utility Operator. The Draft Report proposes that they should be issued when the Ministry of Economy, Trade and Industry (“**METI**”) confirms the feasibility and appropriateness of proposed projects, including confirmation on the execution of the Interconnection Agreement with the Utility Operator. These measures will avoid the increase in existing pre-operation projects and secure sustainable business by generation business operators. In addition, the Draft Report states that the appropriate timing for determining the tariffs under the FIT Scheme (the “**FIT price**”) is when FIT Certificates under the new FIT Scheme are issued.

The Draft Report states that, among existing projects under the current FIT Scheme which have already obtained FIT Certificates, the projects which have already commenced their operation or executed Interconnection Agreements with the Utility Operators should be treated in such a way to receive the benefits given under the current FIT Scheme (including the FIT Price). On the other hand, it states that it is appropriate to require the other existing projects which have not completed Interconnection Agreements, to obtain a new FIT Certificate again. As a result, it appears that the FIT Price at the timing of the obtainment of the new FIT Certificates will be applicable to such projects (provided, however, the Draft Report also provides that certain grace period will be given for such projects if they are in certain situations such as those where they are delayed because it unavoidably needs to wait for the result of a bid for grid connection to be provided by Utility Operators).

(2) Regulations to Secure Sustainable Power Generation for a Long Term

The Draft Report provides that the Renewable Energy Act should be amended to include certain compliance requirements including securing safety, maintaining the ability to generate powers (through appropriate check-ups and maintenance and appropriate measurement and reporting of the amount of generation) and preparing a plan for the decommissioning and recycling of facilities after the termination of business, in order to continuously secure sustainable power generation for a long term. It also proposes that violation of the above undertakings should be punishable by an administrative order for improvement by the authorities and/or cancellation of the FIT Certificate. In addition, in order to deal

with problems relating to solar facilities and others, the Draft Report proposes, except for projects concerning solar facilities with less than 10kW, to establish a system for checking the status of (i) compliance with the relevant law and regulations such as the use of land, (ii) announcement of information on the issued FIT Certificates to the public, and (iii) provision of such information to local governments.

(3) Reform of the Methods to Determine the FIT Price to Promote More Cost-efficient Facilities

The Draft Report provides that presenting the target FIT Price in a middle and/or long term for each renewable energy source is necessary to increase the foreseeability of future FIT Price. It also proposes amending the methods to determine the FIT Price under the FIT Scheme in a flexible way, including but not limited to, (i) a manner where the FIT Price is determined based on the costs spent by the generation business operator(s) which can generate in a notably efficient manner (so-called "Top Runner Method"), (ii) a manner which pre-determines the schedule of reduction of the FIT Price over certain period, (iii) a manner where the level of reduction of the FIT Price is amended tied with the amount of increase of electricity, and (iv) a manner which the FIT Price is determined by a bid among business operators, which allows the regulator to choose an appropriate standard based on the actual situation of renewable facilities at that point in time, with the reference to schemes adopted in other countries. The Draft Report also proposes amending the term when the relevant FIT Price is applied, from the current term (valid over each fiscal year) to a shorter period (e.g., half-year or quarter of the year).

With this in mind, the Draft Report provides that the FIT Price for solar power generation for business use should be determined based on the Top Runner Method, followed by the bid method, starting from relatively large facilities, in order to achieve further reduction of the FIT Price through competition among the business operators. The Draft Report also provides that the FIT Price for wind power generation should be determined in a way which pre-determines the schedule of reduction of the FIT Price over certain period, in order to encourage efforts by business operators to reduce their construction costs.

In this regard, the Draft Report provides, in respect of the system which allows reduction and exemption of surcharges imposed against consumers, that this system itself should be maintained to keep and strengthen the businesses which need huge electricity in their competitiveness in the international market, but the content of this system should be reviewed from the intent of this system, including the system to check the effort of the businesses needing lots of electricity to reduce consumption of electricity and the impacts of increase of surcharges on their competitive position in international markets, and amendments to the level of reduction and exemption of surcharges.

(4) Systems to Promote Wind, Geothermal or Hydroelectric Power Generation which Require Long Lead Time to Develop

The Draft Report proposes that, in order to enable business operators to foresee the feasibility of their projects, the FIT Scheme should be amended so that the FIT Price for renewable energy, such as wind, geothermal and hydroelectric power, which requires long lead time to develop, is pre-determined several

years ahead (approximately 2 to 5 years). The Draft Report also proposes other items to be amended, such as expedition of the environmental impact assessment by shortening the review period by the relevant government and/or local government, introduction of a system which allows applications to the grid connection before obtaining the FIT Certificate, and a system to support further introduction of renewable energy in response to specific trends experiences in each type of renewable energy, such as strengthening support for self-sustained and sustainable domestic fuel procurement for biomass generation projects.

(5) Reform of the FIT Scheme in adapt to the recent Electricity System Reform

The Draft Report proposes that the entity obliged to purchase the electricity generated from the facilities with the FIT Certificate under the current FIT Scheme should be changed from retail business operators to the transmission and distribution operators, who should be responsible for the operation of the electricity grid and coordination of demand and supply. Having said that, it also states that a generation business operator may choose to deliver electricity to a specific retail business operator if there is an agreement between such generation business operator and retail business operator.

The Draft Report states that further review of the current regulations should be considered in respect of a disclosure system on the curtailment of the generation to increase transparency of information as well as the substantive rules on the curtailment of the generation.

3. Impacts on Renewable Energy Related Projects

As mentioned in Section 2(1) above, this Draft Report proposes amendments to the FIT Scheme which will have a substantial impact on the current business operators. In particular, the proposed new FIT Certificate system will require execution of an Interconnection Agreement with the Utility Operator and review of the feasibility of the proposed project prior to obtaining new FIT Certificates. In addition, the FIT price will be determined when new FIT Certificates are issued. This Draft Report provides that these new rules will also apply to existing projects which have obtained FIT Certificates under the current FIT Scheme, and accordingly it is necessary to carefully monitor the timing of the proposed amendments.

Please note that other than the above there are many items which may have considerable impacts on the development and operation of generation facilities under the FIT Scheme. This includes, but is not limited to, the change of the entity obliged to purchase the electricity under the FIT Scheme, and creation of the concrete rules on the curtailment of the generation (see Section 2(5) above), the compliance requirements applicable to generation business operators, such as the securement of safety, and a system to check the status of compliance with the relevant law and regulations such as the use of lands (see Section 2(2) above), change of the methods to determine the FIT Price including the adoption of a bid for solar power generation for business use (see Section 2(3) above), and expedition of environmental impact assessment (see Section 2(4) above).

4. Concluding Remarks

The Draft Report highlights many areas in the existing renewable energy regulations which require reform. Although the Japanese government has not formally announced the timing of these amendments, it is believed the government will aim to make some of the amendments effective from this year, and to make other amendments effective from the 2017 fiscal year.

Whilst it is possible that the details to the reform will be altered throughout the process of further discussion made at the Reforming Subcommittee and legislative bodies, it is important to cautiously monitor these discussions, and the content and timing of the anticipated amendments.

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