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Changes to decommissioning reserve requirements for solar power projects

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Introduction

The Act on Special Measures Concerning the Procurement of Renewable Energy Electricity by Electricity Solar-Power Generation Operators (Law 108 of 2011) (the Special Measures Act) introduced the feed-in tariff (FIT) system in Japan. The act was partially amended by article 3 of the cross-sectoral Law for Partial Amendment of the Electricity Business Act, etc in order to Establish a Resilient and Sustainable Electricity Supply System, which was promulgated in June 2020.

The amendments to the Special Measures Act pursuant to the Law for Partial Amendment of the Electricity Business Act, etc in order to Establish a Resilient and Sustainable Electricity Supply System (the amendments) are scheduled to come into effect on 1 April 2022.

The amendments require operators of solar-power generation facilities with capacities of at least 10kW (solar-power generation facilities) to maintain a decommissioning reserve (for further details please see "[Updates to solar FIT decommissioning fee regulations](#)").

According to the interim report issued by the Ministry of Economy, Trade and Industry's (METI's) working group,⁽¹⁾ this decommissioning reserve system for solar-power generation facilities has been introduced to address public concerns regarding the abandoning or dumping of solar-power generation facilities, given that the barrier to participation in the Japanese solar power market is relatively low.

Pursuant to the amendments two types of decommissioning reserve systems are available:

- an external reserve system – the required funds are deposited with the Organization for Cross-Regional Coordination of Transmission Operators (OCCTO); and
- an internal reserve system – the required funds are maintained by the solar-power generation operator itself.

The external reserve system is the generally applied rule. However, the internal reserve system will be available to solar-power generation operators that can satisfy certain conditions.

On 30 June 2021, in response to these amendments, METI revised the relevant ordinance to provide additional details and particulars concerning the application of the external reserve system and the internal reserve system.

External reserve system

In principle, unless the solar-power generation operator qualifies for the internal reserve system, the external reserve system will apply, pursuant to which the solar-power generation operator must deposit the decommissioning reserve with the OCCTO for at least the final 10 years of the applicable solar-power generation project's procurement period.

The amount of the decommissioning reserve under the external reserve system will be calculated based on the generation capacity of the relevant solar-power generation facility. The specific calculation details were announced by METI in its official notice of 30 June 2021. In brief, solar-power generation operators under the external reserve system must deposit, as a decommissioning reserve, between ¥0.52 and ¥1.62 per kWh with the OCCTO, depending on the facility's transmission commencement date.

The solar-power generation operator may obtain a refund of the reserve deposited under the external reserve system if:

- METI has confirmed the completion of the solar-power generation facility's decommissioning; or
- the solar-power generation operator has implemented a decommissioning reserve under the internal reserve system.

Internal reserve system

Alternatively, a solar-power generation operator may use the internal reserve system, provided that the relevant criteria, as outlined below, are satisfied.

A solar-power generation operator that wishes to make use of the internal reserve system must expressly state its intention to independently maintain a decommissioning reserve for the project in its power generation business plan, which must be submitted to METI for approval. Such solar-power generation operators must include a description of how they intend to raise and manage a sufficient decommissioning reserve in their power generation business plan. These considerations include:

- the total amount of funds to be reserved for decommissioning costs (which must be at least the amount reasonably required to decommission the solar-power generation facility);
- the contemplated schedule for establishing the decommissioning reserve (which must be established no later than the requirement under the external reserve system – namely, for at least the final 10 years of the project's procurement period);
- where the decommissioning reserve funds will be maintained; the funds must be maintained with either a financial institution or an affiliate of the solar-power generation operator that is listed on a stock exchange;⁽²⁾ and

- if funds in addition to the decommissioning reserve will be used for the decommissioning of the project, a description of such funds, which must be guaranteed, must be given.

In addition, the solar-power generation operator must agree to publish its decommissioning reserve fund amount annually.

If the solar-power generation operator fails to satisfy any of the above criteria, it will be required to use the external reserve system for management of the decommissioning reserve.

Upon METI's approval of such a power generation business plan, the solar-power generation operator can secure the decommissioning reserve for its own account.

Comment

A solar-power generation operator that wishes to operate a solar-power business in Japan must describe in its power generation business plan for approval by METI not just the fundamental points of how it intends to develop and operate the relevant solar-power generation facility, but also how it will procure and maintain funds that are reasonably sufficient to address all of the costs associated with the facility's decommissioning upon the project's completion. For any solar-power generation operator that wishes to make use of the internal reserve system, its power generation business plan must, in addition to the general requirement to specifically describe its decommissioning reserve, demonstrate that it satisfies the relevant criteria.

This new reserve system is scheduled to commence on 1 July 2022 as per the amended Special Measures Act. Prior to this commencement date, it is anticipated that METI will publish additional guidance that will detail the requirements for the new reserve system, including as regards the internal reserve system criteria outlined above.

It will be worth monitoring the situation and any developments as they unfold.

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Endnotes

(1) This working group was established in 2019 to discuss the establishment of a decommissioning reserve system.

(2) In respect of a contract with a financial institution, the contract must provide for matters relating to the plan of the solar-power generation business and the management of the internal reserve in question. It must also ensure that the internal reserve's fund will not be used for any purposes other than those stipulated in that contract.