THE ENVIRONMENT AND CLIMATE CHANGE LAW REVIEW

FOURTH EDITION

Editor
Theodore L Garrett

THE LAWREVIEWS

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PREFACE

Environmental law is global in its reach. Multinational companies make business plans based on the laws and regulations of the countries in which they are headquartered and have manufacturing facilities as well as the countries in which they distribute and sell their products. Moreover, multinational companies have global environmental, health and safety goals and practices that tend to be worldwide in their scope for reasons of policy and operational consistency.

For these and other reasons, this fourth edition of *The Environment and Climate Change Law Review* is timely and significant. This book offers a review, by leading environmental lawyers, of significant environmental laws and issues in their respective countries around the world, with updates since last year's edition.

Climate change continues to dominate international environmental efforts, and we have also witnessed efforts to promote sustainability. Many countries are making efforts to promote conservation and renewable or green energy. Changes in reliance on coal and nuclear energy have an impact on the demand for other energy sources. All of these changes affect efforts to reduce greenhouse gases.

Environmental law continues to change and evolve, as new regulations are adopted and existing rules are amended or challenged in courts or interpreted by agencies. In the United States, for example, 2017 witnessed the inauguration of a new President and the beginning of an administration that has different priorities in the related areas of environment and energy. Future editions of this book will continue to focus on changes and developments around the globe.

This book presents an overview and, of necessity, omits many details. The book should thus be viewed as a starting point rather than a comprehensive guide. Each chapter of this book, including mine, represents the views of the author in his or her individual capacity, and does not necessarily reflect the views of the authors' firms or clients, or the authors of other chapters, or my views as the editor. This book does not provide legal advice, which should be obtained from the reader's own lawyers.

I wish to thank the many authors who contributed their time and expertise to the preparation of the various chapters to this book. I also wish to thank the editors at Law Business Research for their continued attention to this project. We hope this book helps you to gain a better understanding of the international scope of environmental law.

Theodore L Garrett
Covington & Burling LLP
United States
January 2020

Chapter 12

JAPAN

Hiroshi Fujiwara[1]

I OVERVIEW

After the disaster occurring as a result of the 11 March 2011 earthquake in Japan, all nuclear power plants in Japan had to suspend their operations until they had completed a review process to confirm that they complied with the new safety standards. Due to these stringent new standards, among all the nuclear power plants, only nine nuclear power plants have passed the review and successfully resumed their operations so far. In 2019, the declining nuclear industry has suffered further serious setbacks due to (1) the decision of the Nuclear Regulation Authority not to grant any extension of the deadline for installing counterterrorism facilities into existing nuclear power plants; and (2) the scandal involving the Kansai Electrical Power Company (KEPCO)'s management accepting bribes from a construction company that was contracted by KEPCO for the construction of a nuclear power plant.

In the worst case scenario, the operations of all nuclear power plants in Japan may be suspended in the near future, and, to offset the resultant decrease of power supply, electric companies may need to increase the operating rates of their coal thermal power plants again (just as they did after the Fukushima disaster in 2011). Based on such circumstances, and the insufficient increase in renewable energy sources, serious doubt may be cast on Japan's ability to comply with its long-term commitment to the Paris Agreement, and Japan's position as a 'promoter' of coal thermal power plants (which is already criticised internationally) could attract further attention and criticism from environmental groups, both domestically and abroad.

II LEGISLATIVE FRAMEWORK

i National legislation

In Japan, the legal framework with respect to environmental protection has evolved in the midst of the extreme environmental pollution that Japanese society has suffered since the era of high economic growth following World War II (around the 1950s to 60s). Particularly, the large-scale emission of chemicals, NOx, SOx, etc., emitted from industrial plants into public water and the air caused disastrous health hazards to citizens residing in industrialised regions and led to a number of civil lawsuits. Since this became a serious political issue, the national Diet enacted the Pollution Countermeasures Act in 1970, as a general law providing for the national government's obligation to take countermeasures for the prevention of pollution with respect to the environment.

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Since this act focused on prevention of pollution and did not cover protection of the natural environment, it was later integrated into, and replaced by, the Basic Environment Act in 1993. The Basic Environment Act provides for the fundamental policy and obligations of the national government and local municipalities with regards to the conservation of environment and prevention of pollution. Under this act, the national government is obligated to, among other things, (1) establish a basic environmental plan outlining the comprehensive and long-term policies and implementation measures for environmental conservation,[2] and (2) establish environmental quality standards with regard to air and water pollution, soil contamination and noise. The act does not have any clauses providing for specific legal obligations or restrictions imposed on business operators or operation of their businesses, and such matters (i.e., obligations or restrictions applicable to particular environmental aspects, such as air quality, water quality, noise and contamination of land) are regulated by separate individual laws, which will be further explained in Section VI.

Environmental quality standards are set forth as administrative targets that the national government and local municipalities should achieve through the implementation of their environment policies, and they do not have any legal binding effect over the general public. However, since most local municipalities have referred to these standards when they set compliance thresholds pursuant to individual laws regulating specific environmental factors, and a number of court rulings considered violation of these standards as one of the important elements to recognise in tort claims, these standards are said to have obtained 'de facto' status.

After the legislation of the Basic Environment Act, the Basic Act for Establishing the Recycling-based Society was enacted in 2000, and the Basic Act on Biodiversity was enacted in 2008, as a subset of the basic laws providing for the fundamental policy and obligations of the national government and local municipalities with regard to the promotion of recycling and biodiversity.

In the field of climate change, a draft of the Basic Act for Countermeasures against Global Warming (which, among others, aims to establish a nationwide carbon emission trading scheme) was prepared and proposed by the Cabinet to be delivered to the national Diet on March 2010, but this proposed legislation was not passed by the Diet and was cancelled due to the political aftermath of the Fukushima Daiichi nuclear disaster. Because of this, even as of today in Japan there is no law comprehensively addressing climate change matters.

ii Regulation of local municipalities

Local municipalities in Japan take the form of a two-tier system, the upper tier municipality is called a 'prefecture' and the lower tier municipality is called a 'city, town, or village'. Each local municipality is guaranteed legislative power over matters within its territorial jurisdiction by the Constitution of Japan. Although ordinances legislated by local municipalities must not conflict with regulations set forth by national statutes, most national statutes addressing environmental matters have specific clauses entitling local municipalities to set environmental standards higher than national level standards, and to expand the regulated business, facility or substance to those not regulated by national level statutes. Since such heightened stringent

2 The first basic environment plan was publicly announced on 1994, and has been amended and updated every six years thereafter (the fifth basic environment plan was publicly announced in 2018).

or expanded standards at the level of local municipalities are widely seen in Japan, review of local level regulations could have high practical importance for compliance with applicable environmental standards.

Local municipalities in Japan have often resorted to administrative guidance to achieve their administrative targets. Legally speaking, administrative guidance is considered to be merely the provision of advice requesting voluntary compliance and does not have any legal power over the general public. However, despite such legal nature, administrative guidance has often been used (and abused) by officials of administrative agencies and business operators were forced to abide by such guidance. Such problematic situation led to the amendment to the Administrative Procedure Act so that its non-binding nature and prohibition of abuse were specifically provided for in the statute. Unfortunately, even after such amendment, a number of local municipalities still have substantial authority granted to them under titles such as guidance guideline, application guidance, etc., and business operators are forced to abide by such guidance (although the legality of such administrative guidance is questionable).

iii International agreements

Japan is a party to a number of bilateral and multilateral environmental agreements, including the United Nations Framework Convention on Climate Change (the Paris Agreement), the Vienna Convention for the Protection of the Ozone Layer, the Convention on Biological Diversity and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

III THE REGULATORS

i National government

In Japan, environmental regulations are enforced by the national government and local municipalities. Among national governmental agencies, the Ministry of Environment has a primary role to protect and preserve a sound environment and enforces a wide range of regulations relating to preservation of natural environment, prevention of pollution, waste disposals, etc. However, there is a substantial number of environment related regulations for which other ministries have primary enforcement authority and the Ministry of Environment has limited secondary regulating authority. Such co-enforced regulations include, among others, regulations related to production of chemical substances, the location of plants, prevention of sea pollution, recycling of certain materials, conservation of forests, rivers and coasts and environmental impact assessment. Most of these environmental regulations are enforced primarily by the Ministry of Land, Infrastructure, Transport and Tourism, the Ministry of Economy, Trade and Industry (METI) and the Ministry of Agriculture, Forestry and Fisheries. Since these ministries are also in a position to promote relevant industries (e.g., construction and maintenance of infrastructure network), the Ministry of Environment is expected to properly exercise its supervisory authority for the protection of a sound environment.

ii Local municipalities

Since a close relationship with and deep knowledge of the environment is indispensable for proper and efficient implementation of environmental regulations, the authority to receive, review, and grant permit, approval, filing, etc., is usually delegated to local municipalities (prefectures or cities, towns, and villages) by relevant regulations. Legally, these delegated

authorities are divided into two categories, those pertaining to 'statutorily delegated matters' and 'autonomy matters'. Compared to 'statutorily delegated matters', local municipalities are allowed a wide range of discretion in terms of enforcement and interpretation of the policies with respect to relevant regulations, as long as they comply with relevant clauses of statutes. Although national governmental agencies often issue documents describing how to interpret and enforce relevant clauses of delegated matters to maintain proper enforcement of regulations, such documents are only advisory in nature and do not bind local municipalities if a subject matter is classified as an 'autonomy matter'. On the other hand, if a subject matter is classified as a 'statutorily delegated matter', national governmental agencies may issue legally binding remedial instruction to a local municipality breaching relevant notifications.

iii Courts

Japanese courts have performed a critically important role in the development of tort law rules in the field of pollution, and some important rulings were viewed seriously by Diet members and led to political solutions through special legislation with respect to certain areas of pollution. In addition, civil lawsuits and administrative lawsuits are often used by environmental protection groups and citizens affected by environmentally unfriendly development to suspend or cancel such development projects.

IV ENFORCEMENT

i Enforcement by regulators

Most environmental regulations provide for specific clauses entitling administrative agencies to issue administrative guidance, orders for improvement, or orders for temporary suspension and revocation of permits, to violators of regulations. A non-negligible number of regulations obligate regulators to first impose a less restrictive enforcement measure (e.g., administrative guidance) and entitle them to impose a more restrictive measure if violators do not cease or remedy their violations. A number of environmental regulations adopt an indirect approach and require the violation of an order for improvement as one of the elements for criminal liability.

ii Criminal procedures

Since only a public prosecutor has legal authority to file an indictment under the Japanese criminal law regime, if an administrative regulator considers it necessary or appropriate to impose a criminal penalty on a violator of an environmental regulation, he or she must forward the case to a prosecutors' office together with a request for prosecution. There is no special criminal procedure applicable to violations of environmental laws and such violations are processed and adjudicated pursuant to the Criminal Procedures Act.

Since both the Criminal Act and the Criminal Procedures Act adopt a traditional approach and view natural persons as subject to criminal penalties rather than entities, if an environmental law is violated by a corporation, a representative of such corporation is usually pursued for criminal liability, unless such violation is attributable to acts or omissions of a particular employee that are irrelevant to the operation of business by such corporation. In addition, most environmental laws have specific clauses that impose a monetary penalty on a corporation if its representative or employee is punished due to a violation of such laws, but almost all of these regulations set a very low monetary penalty (e.g., a maximum of ¥1 million) and are often criticised by environmental groups in this respect.

iii Civil proceedings

Historically, civil proceedings and court rulings played a very important role in the development of environmental law in Japan, and these measures are often resorted to even today by environmental groups and citizens potentially affected by environmentally unfriendly development projects.

Particularly, developments in the field of environmental tort law have contributed to the mitigation of the practical difficulties of proving damages and the causal relationship between such damages and environmental law violations when citizens file a tort or suspension of operation claim against violators. Such general tendency can be seen clearly in a series of rural court rulings that ordered the operators of industrial waste disposal facilities to provide compensation for damages or suspend operations. However, it is still difficult for environmental groups and citizens to object to decisions by administrative agencies in court (e.g., to challenge the legality of a regulator's decision not to cancel the permit of a violator and grant a permit to an environmentally questionable project), since Japanese courts strictly interpret qualifications to file this type of claim in the litigation process.

V REPORTING AND DISCLOSURE

i Reporting to authorities

Most environmental regulations have specific clauses that obligate those who operate plants and other facilities subject to such regulations to immediately report to the authorities in the case of a violation of the applicable regulations. Even in a case where a relevant statute does not have such a clause, regulatory authorities are generally allowed to grant licences with reasonable conditions, including an obligation to report a violation of law, licence requirements, etc., and authorities may cancel licences in the case of a violation of such conditions.

ii Disclosure obligation to potential purchasers

There is no statutory obligation or regulation requiring a seller to disclose potential environmental liabilities to prospective purchasers; rather, such non-disclosure is addressed and interpreted pursuant to the default rules under the Civil Code. In the case of land contamination, if a seller is aware of the land contamination at the time of selling the land, then this sale can be cancelled by a purchaser on grounds of deception in most cases. In addition, real estate brokers are legally obliged to disclose to potential purchasers information materially adverse to the value of purchased land, and land contamination is usually considered material information.

iii Disclosure in financial statements or reports

Although the concept of Environmental, Social and Governance investment has increasingly been drawing attention from investors and companies in the Japanese market, there is no statutory disclosure obligation that focuses on environmental aspects and is applied to financial statements or other reports prepared by Japanese companies. The Ministry of

Environment commenced a pilot project to establish a platform for voluntary disclosure of environmental information in 2013. The platform entered into an operational verification stage in 2018 and has been seeking the participation of companies.[3]

iv Whistle-blowers protection

The whistle-blower protection law prohibits employers from treating employees who have engaged in whistle-blowing protected under the law disadvantageously (including dismissal and demotion). Whistle-blowing protected under the law is limited to that related to violations of laws specifically set forth in the exhibit, the violation of which could affect the general public physically or materially, but most environmental protection laws are listed in the exhibit. The whistle-blower protection law sets forth civil law rules that are applicable to the disadvantageous treatment of whistle-blowers and does not have any clause that imposes administrative or criminal sanctions on employees who breach the rules. Therefore, an employee must resort to a labour tribunal case or civil lawsuit should an employer treat him or her disadvantageously in violation of the law.

VI ENVIRONMENTAL PROTECTION

i Air quality

The Air Pollution Prevention Act regulates the emission of SOx, NOx, soot and dust, volatile organic compounds (VOC), mercury and other substances designated by the relevant cabinet order, and the emission standards applicable to each of such regulated substances are stipulated in the relevant ministry ordinance. The obligations under the act are applied only to facilities that emit regulated substances and fall under any category of the facilities listed in the relevant cabinet order (such facilities include those typically used in metal refining business, the petrochemical industry, organic chemical industry, inorganic chemical industry and waste disposal industry) and exceed the scale threshold also specified in the same cabinet order.

No permit or approval is required for the installation of regulated facilities, but a person wishing to install a regulated facility must submit a prior filing to a competent department of the prefecture that has territorial jurisdiction over the contemplated location of such facility, and may not commence the installment until 60 days have elapsed from the filing. During the 60-day review period, a prefecture reviews the submitted filing and may issue an order to change or abandon the installation plan of the facility if such facility does not meet the applicable emission standards. Such emission standards are applied to regulated facilities on a continuing basis after the completion of installation, and prefectures may issue an order for improvement or an order temporarily suspending the operation of such facility in the case of a violation. In addition, a total emission volume control regime is applied to areas designated in the cabinet order as areas requiring restrictions that are more stringent than the statutory water quality standards to achieve and maintain the Environmental Quality Standards within such areas.

3 www.env-report.env.go.jp/outline.html.

The act also entitles the Minister of the Environment to set emission standards applicable to automobiles. Such emission standards will be reflected and incorporated into automobile safety standards under the Road Transport Vehicle Act and reviewed during mandatory automobile inspections.

ii Water quality

The Water Pollution Prevention Act regulates the emission into public water of water containing harmful substances designated by the cabinet order, and sets water quality standards (such standards are stipulated in the relevant ministry ordinance in a manner where a maximum permissible level is set for each category of harmful substances). The obligations under the act are applied only to facilities that fall under any category of facilities listed in the cabinet order as facilities that emit liquid waste (such facilities include those typically used in the petrochemical industry, organic chemical industry, inorganic chemical industry, livestock industry and food manufacturing industry).

No permit or approval is required for the installation of regulated facilities, but a person wishing to install a regulated facility must submit a prior filing to a competent department of the prefecture that has territorial jurisdiction over the contemplated location of such facility, and may not commence the installment until 60 days have elapsed from such filing. During such 60-day review period, a prefecture reviews the submitted filing and may issue an order to change or abandon the installation plan of the facility if such facility does not meet the applicable water quality standards. Such water quality standards are applied to regulated facilities on a continuing basis after the completion of installation, and prefectures may issue an order for improvement or an order temporarily suspending the operation of such facility in the case of a violation. In addition, a total emission volume control regime is applied to areas designated in the cabinet order as areas requiring restrictions that are more stringent than the statutory emission standards to achieve and maintain the Environmental Quality Standards within such areas. Prefectures having territorial jurisdiction over such designated areas must prepare a total reduction plan and set total volume standards applicable to regulated facilities that emit water exceeding the thresholds set forth in the ministry ordinance.

Regulations under the Water Pollution Prevention Act are not applied to the emission of water into sewage systems operated pursuant to the Sewage Act, and the Sewage Act provides for a similar type of regulatory scheme to control the quality of water to be emitted into sewage systems.

iii Chemicals

The Chemical Substances Control Act[4] comprehensively regulates the safety review process, manufacture, import and use of new chemical substances to prevent environmental pollution and hazards to human health and the ecosystem. The act was enacted in 1973 and chemical substances that were produced and distributed before such legislation were listed in the Existing Chemical Substances Register and are treated as 'Existing Chemical Substances' under the act. If a chemical manufacturer or importer intends to manufacture or import a new chemical substance, it must file an application and go through the safety review process

4 The act is formally known as the 'Act on the Evaluation of Chemical Substances and Regulation of Their Manufacture, Etc.'.

conducted by governmental agencies. Based upon the result of such review, the new chemical substance will be categorised into one of five categories in accordance with its risk to the environment, human health and the ecosystem.

Among the five categories, 'Type 1 Specified Chemical Substances' are most heavily regulated and a manufacturer or importer must obtain a permit for the production or import thereof. On the other hand, the manufacture and import of the chemical substances in the other four categories are only subject to annual reporting obligations. If certain statutory requirements are met, regulators may issue a change order to decrease the amount of Type 2 Specified Chemical Substances that a manufacturer or importer may manufacture or import.

In addition, under the PRTR Act,[5] certain types of business operators manufacturing, using or releasing designated chemical substances are legally obligated to annually report the release or transfer amount of such substances and the national government prepares and discloses statistical data based upon such reports.

iv Solid and hazardous waste

The Waste Management and Public Cleansing Act regulates the generation, transport and disposal of solid and hazardous wastes. Under the act, it is clearly provided that business operators are primarily responsible for the disposal of industrial wastes generated by their activities and such legal responsibility remains even if business operators duly outsource the transport and disposal of industrial wastes to a licensed waste transport/disposal business operator. A business operator that generates not less than 1,000 MT of waste per year must prepare and submit a reduction and disposal plan in respect of its waste and report on the implementation status of such plan to the competent department of the relevant prefecture.

To engage in the transport or disposal business of industrial waste, a business permit must be obtained from the relevant prefecture. The standards for reviewing an application for a business permit are stipulated in the act and the ministry ordinance therefor. The requirements for such permit include, among other requirements, sufficient facilities and the ability of the applicant to properly and continuously operate the waste transport/disposal business and such ability includes the financial soundness of the applicant. Such financial soundness requirement usually involves a review of the total amount of funds necessary for the commencement of the business, the details of fund procurement measures and the financial statements of the applicant such as balance sheets and profit and loss statements.

In addition, the import and export of certain harmful wastes are regulated by the Act concerning Regulations on Exports and Imports of Specified Harmful Wastes, Etc. (which is a domestic law passed to comply with the treaty obligations under the Basel Convention) and a person wishing to import or export regulated harmful wastes must obtain a permit pursuant to the procedures set forth in the Foreign Exchange and Foreign Trade Act.

v Contaminated land

As a general law regulating the prevention and remedying of land contamination, the Land Contamination Countermeasures Act divides contaminated land into two categories, 'Areas Requiring Remedial Work' and 'Areas Subject to Reporting Obligations'. These two types of areas are designated and publicly announced as regulated by prefectures based upon

5 The act is formally known as the 'Act on Confirmation, etc. of Release Amounts of Specific Chemical Substances in the Environment and Promotion of Improvements to the Management Thereof'.

information gathered through land inspections conducted pursuant to the act or on a voluntary basis by landowners. Since a land inspection obligation arises only if the statutory requirements are met and such requirements are met in very limited circumstances, there is no guarantee that areas that are not designated as regulated areas under this act are actually free from land contamination.

If (1) the result of a land inspection indicates that, due to pollution by harmful substances, the relevant land does not conform to the standards set forth in the ministry ordinance for the act and (2) such pollution could potentially cause damage to human health, such land will fall under 'Areas Requiring Remedial Work' and the relevant prefecture may order the landowner to prepare, submit and implement a decontamination plan. If (a) such pollution is attributable to another person, (b) the relevant prefecture considers it appropriate to make such polluter conduct remedial work, and (c) the landowner does not object thereto, the prefecture must issue such order to the polluter instead of the landowner (even if such order is not issued to the polluter but to the landowner, it would not legally prevent or restrict any civil claim by the landowner against the polluter). Permissible remedial measures are not limited to removal of pollution from land and a landowner or polluter may choose from the types of remedial measures set forth in the ministry ordinance for the act.

On the other hand, if requirement (1) above is satisfied but requirement (2) is not, such land will fall under 'Areas Subject to Reporting Obligations'. The owner of such land is not legally required to perform any remedial work but must submit a prior filing if any changes will be made in respect of the shape or nature of such land.

VII CLIMATE CHANGE

i Framework legislation

The Act on Promotion of Global Warming Countermeasures provides for a general framework to promote climate change prevention and imposes responsibilities on the national government, local municipalities, business operators and citizens. The act only imposes on certain business operators an annual reporting obligation regarding the volume of greenhouse gas emissions and does not contain any regulations prohibiting or restricting greenhouse gas emissions. Such reported information is consolidated by and disclosed as statistical data to the general public by the national government.

Around 2010, the 'Basic Act for Countermeasures against Global Warming' was prepared and discussed by the national government to establish and introduce a nationwide carbon emission trading scheme but such legislation was not passed by the Diet and was cancelled due to the political aftermath of the Fukushima Daiichi nuclear disaster. Due to the unpopularity of the carbon emission trading system among industries in Japan, there is no realistic prospect of this act being revived and passed by the Diet in the foreseeable future.

Because of this, there is currently no nationwide carbon emission trading scheme or national level statute in Japan that obligates business operators to reduce the volume of greenhouse gas emissions.

ii Promotion of energy efficiency

The Act on the Rational Use of Energy regulates and promotes the effective use of fuels, heat and electricity consumed at or by plants, business offices, transporters, etc. Under the act, business operators whose annual consumption of energy exceeds the statutory threshold are obligated to appoint an energy administration officer, prepare a mid to long term plan for

effective energy use and submit annual reports. If regulators deem the energy efficiency of and improvements by a regulated business operator to be significantly insufficient, they may issue instructions to remedy such insufficiency. The latest amendment to the act was made in 2018 to expand the regulated businesses to internet retailers.

In addition, the Act on Sophisticated Methods of Energy Supply Structures promotes the use of non-fossil fuel energy sources among electricity retailers, heat suppliers, manufacturers of petroleum products, etc. Pursuant to this act, METI sets forth a target ratio for non-fossil fuel energy sources by regulated business operators and failure to achieve such target ratio can lead to instructions, advice, recommendations or orders by regulators. To promote compliance with such regulation by electricity retailers, the government established a new auction system in 2018, through which electricity retailers may purchase certificates representing non-fossil fuel energy value and rely on such certificates for the calculation of their non-fossil fuel energy source ratio obligations.

iii Promotion of renewable energy sources

After the introduction of a feed in tariff system under the FIT Act in 2012,[6] the ratio of renewable energy sources increased in Japan but due to the low entrance barrier and low development risk of solar power plants, new development projects disproportionately focused on the construction of solar power plants and the act was not sufficiently successful in promoting other types of renewable energy sources. In addition, the sudden increase of solar power plants in rural areas caused friction with local communities and raised safety concerns among the general public and this led to the amendment of the Environmental Impact Assessment Act in 2018, which expands regulated development projects to solar power generation projects.

XIII OUTLOOK AND CONCLUSIONS

An expert committee is currently reviewing and discussing a new framework for the FIT Act on and after 2021 and it is reported that any large-scale solar power plants to be installed on and after 2021 will be subject to a feed-in premium scheme instead of the current feed-in tariff scheme.

It is asserted that the Abe government's reluctance to discuss and solve the deep rooted problems of the government's nuclear policy (such reluctance is probably motivated by a fear to engage in a politically sensitive topic) and the practical (and political) impossibility of constructing a new nuclear power plant will inhibit nuclear related industries and undermine their mid to long-term business feasibility as an industry. Because of such business circumstances, we might see a large-scale market reorganisation in this field in the next couple of years.

6 The act is formally known as the 'Act on Special Measures Concerning Procurement of Electricity from Renewable Energy Sources by Electricity Utilities'.

Appendix 1

ABOUT THE AUTHORS

HIROSHI FUJIWARA

Nagashima Ohno & Tsunematsu

Hiroshi Fujiwara is a partner at Nagashima Ohno & Tsunematsu. He has been involved principally in the area of project development, project finance, energy, environment and other infrastructure-related transactions and general corporate matters on behalf of Japanese and foreign clients. He particularly put his focuses on the area of project development by foreign investors and has rich experiences of providing advice with regards to environmental regulations applicable to project development in Japan to foreign clients.

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