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NO&T Japan Legal Update

December, 2023 No.43

This issue covers the following topics:

Entertainment and Sport

New Regulation on Stealth Marketing - Influence on Sports Marketing in Japan -

I. Introduction

With younger consumers increasingly turning to experiential rather than tangible products, sports marketing, including sponsorships, partnerships and endorsements, is becoming a more and more effective way for companies to market their products and services in Japan. This emphasis is not limited to private companies; the Japanese government has also made the growth of the sports industry one of its key policies.[1]

A number of legal issues must be taken into consideration when engaging in sports marketing in Japan. One such issue concerns the new regulations on stealth marketing under the Act against Unjustifiable Premiums and Misleading Representations ("Act"), which is generally applicable to marketing and advertisement in Japan.

II. Regulation under the Act against Unjustifiable Premiums and Misleading Representations

The Act regulates certain types of marketing from the perspective of protecting general consumers. One of the primary concerns of the Act is the regulation relating to excessive premiums, which limits the maximum and total amounts of premiums that can be given in connection with a transaction for the provision of goods or services. Another main concern of the Act relates to misrepresentations with respect to the quality of goods and services or transaction terms.

In addition, in December 2022, the Consumer Affairs Agency's study group on stealth marketing published a report stating that stealth marketing should be regulated under the Act after investigating and examining the actual conditions and practices of stealth marketing. In response, in March 2023, the Consumer Affairs Agency added "representations that are difficult for consumers to identify as representations of a business operator" to the scope of unjust representations regulated under the Act, and this change came into effect on October

[1] For instance, the "Third Sports Basic Plan" announced by the Ministry of Education, Culture, Sports, Science and Technology in March 2022 aspires to revitalize sports business which was heavily hit by the pandemic.

1, 2023.

III. What is Stealth Marketing?

"Stealth marketing" generally refers to advertising that is done in such a way that consumers are unaware that it is advertising. For example, if a popular athlete creates a post recommending a sponsor's product on his or her social media account, but consumers are not aware of the sponsorship arrangement between the athlete and the company, these consumers may incorrectly perceive that the athlete is making a disinterested product recommendation based purely on his or her personal preference. This could unfairly lead to a higher degree of consumers' trust than in a normal sponsored advertisement.

IV. New Regulation on Stealth Marketing

While stealth marketing is strictly regulated in some jurisdictions, for example in the guidelines issued by the Federal Trade Commission in the United States, prior to the new regulations there was no Japanese law specifically regulating stealth marketing; instead, there were only some voluntary guidelines set by industry groups. Although representations made in stealth marketing could be illegal under the Act if they were found to constitute a misrepresentation of quality or of the terms of the transactions, where such representations misled consumers into believing that the relevant goods or services were significantly superior to, or more advantageous than, their actual condition, these regulations did not specifically address the dangers specific to marketing conducted by "stealth".

The newly introduced regulation, which was implemented by the cabinet office notification to designate the stealth marketing as one of the misleading representations prohibited under the Act, came into effect on October 1, 2023. The Consumer Affairs Agency has also published guidelines in relation to same. According to these guidelines, the new regulation prohibits representations made by a business operator with respect to transactions involving goods or services supplied by the business operator, where such representations do not make it clear that they are being made by the business operator, thereby making it difficult for consumers to discern that the representations in question are in fact made by the business operator. The overall content of the representation is considered when deciding whether consumers would be misled into believing that the business operator's representation is disguised as a representation made by a third party, such as an athlete. In order for a representation to be "the representation of the business operator", it is necessary that the business operator be involved in determining the content of the representation. In other words, if it is objectively the case that the content of a given representation is determined in the sole discretion of a third party, such a representation would not be subject to the regulation.

V. Influence on Sports Marketing in Japan

Marketing through endorsements by athletes is becoming more common in Japan than ever before, as social media has made it possible for individual athletes to easily leverage their influence on fans and consumers in marketing sponsors' products. If it were to come to light that an athlete was engaged in stealth marketing, the damage to the reputation of both the athlete and the sponsor would be enormous. While this was true even before the introduction of the new regulation on stealth marketing, the impact is now even greater, given that under the new regulation it is clearly illegal conduct. Sponsors need to ensure that the sponsored athletes, as well as the sponsored sports teams and events, properly make the sponsorship relationship clear in their social media posts and other representations. For example, the sponsor's right under the sponsorship agreement to review an athlete's posts for sponsor's products in advance would be an important arrangement in order to avoid inadvertently engaging in stealth marketing.

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Electricity and Gas Supply

Practical notes regarding the 2023 amendments to the Renewable Energy Special Measures Act

I. Introduction

Following establishment of the FIT system in Japan, the introduction of renewable power generation facilities (mainly solar power generation) has been promoted and many new companies have entered the market. While this trend has desirable aspects in terms of achieving the decarbonization goals of Japan, power generation facilities have a significant impact on the local community and environment where they are installed. This has led to growing concerns in local communities regarding the safety[2], disaster prevention, impact on the landscape and environment, and future disposal of such facilities. To promote the introduction of renewable power generation facilities in a sustainable manner, "Regional Symbiosis" (*chi'iki kyōsei*) has become a key phrase for renewable energy projects.

In order to realize Regional Symbiosis, the Working Group on Long-Term Renewable Energy Sources and Regional Symbiosis (the "**WG**"), a working group within the Agency for Natural Resources and Energy, has been examining the situation, discussing the appropriate measures and produced an interim report[3] in February 2023 (the "**Interim Report**"). Based on this Interim Report, the GX Carbon-Free Power Supply Act, which included amendments to the Act on Special Measures concerning Promotion of Utilization of Renewable Energy Sources (the "**Renewable Energy Special Measures Act**"), was submitted to the 211th Diet and was passed in May 2023. The amended Renewable Energy Special Measures Act (the "**Amended Renewable Energy Special Measures Act**") is scheduled to come into force on April 1, 2024.

Since the passage of the GX Carbon-Free Power Supply Act, the WG has been carefully discussing its details. In November 2023, a Second Report[4] (the "**Second Report**") was published.[5]

Although there are some remaining issues, the details of the amendments to the Renewable Energy Special Measures Act have become clear. This newsletter outlines the main contents of the Amended Renewable Energy Special Measures Act as well as the thinking of the WG. It also explains some points that should be noted in practice.

Particular attention should be paid to the following parts of the Amended Renewable Energy Special Measures Act: "III. Addition of briefing sessions for local residents in surrounding areas to the FIT/FIP approval requirements"; "IV. Obligation of approved operators to supervise subcontractors"; and "V. Order to reserve and return amount equivalent to subsidy for FIT/FIP projects". These will all have a significant impact on the implementation and operation of existing FIT/FIP projects and secondary projects.

II. Strengthening of FIT/FIP approval procedures for projects requiring certain permits and approvals

The following permits (1) to (3) regarding land development became requirements for applying for FIT/FIP approval because they are particularly relevant to the safety of the surrounding areas which can be extremely difficult to restore to their original state once the activity subject to the permit has been completed:[6]

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[2] There have been accidents such as the scattering and collapse of solar panels and frames.
[3] https://www.meti.go.jp/shingikai/enecho/denryoku_gas/saisei_kano/kyosei_wg/pdf/20230210_1.pdf
[4] https://www.meti.go.jp/shingikai/enecho/denryoku_gas/saisei_kano/kyosei_wg/pdf/20231128_1.pdf
[5] Based on the Second Report, a public comment solicitation period for the Ordinance for Enforcement of the Renewable Energy Special Measures Act has started (the public comment period ends on December 27, 2023).
[6] This strengthening of the FIT/FIP approval procedures was implemented by amending the Ordinance for Enforcement of the Renewable Energy Special Measures Act, and came into effect on October 1, 2023, without waiting for the Amended Renewable Energy Special Measures Act to come into effect. However, transitional provisions are provided for the following cases:
(i) Projects not subject to FIT/FIP bidding: projects for which FIT/FIP approval applications have been filed without any

(1) Permit for forest land development under the Forest Act

(2) Permit under the Act on Regulation of Residential Land Development

(3) Permit under the three laws for erosion control (Erosion Control Act, Landslide Prevention Act and Act on Prevention of Disasters Caused by Steep Slope Failure)

III. Addition of briefing sessions for local residents in surrounding areas to the FIT/FIP approval requirements

(i) Background

When establishing renewable power generation facilities, there have been instances where trouble has arisen due to a lack of communication between the project operator and local residents, which has sometimes led to serious problems such as opposition movements, reporting to authorities, and lawsuits.

For this reason, the Amended Renewable Energy Special Measures Act stipulates that prior announcement of information to the surrounding community, including briefing sessions for local residents, is a requirement for FIT/FIP approval (Article 9, Paragraph 2, Item 7 and Paragraph 4, Item 6 of the Amended Renewable Energy Special Measures Act). In addition, detailed arrangements for such matters are specified in the Second Report.

In the past, it was not uncommon for briefings for local residents to be held in accordance with local government regulations and other laws and regulations or on a voluntary basis when developing renewable energy projects. However, the Amended Renewable Energy Special Measures Act now stipulates quite detailed requirements for such briefing sessions, including the procedures for holding such briefing sessions and the content to be covered, and it will be necessary to pay attention to "whether these requirements are satisfied" at future briefings for FIT/FIP projects.

(ii) Scope of renewable power generation projects for which briefing sessions should be conducted

In the Second Report, the following general rules have been adopted in relation to power sources for which briefings should be held, taking into account differences in their scale, location, and type of installation.

- Extra-high voltage/high voltage (50kW or higher)
  Since the project is likely to have an impact on the surrounding area and the surrounding environment, a briefing session is required.

- Low voltage (less than 50kW)
  In general, prior announcement of information by means other than a briefing session is sufficient. However, even low-voltage power sources are required to hold a briefing session if multiple power sources are to be assembled within a short distance of each other[7] or if they are to be installed in an area that is likely to have a significant impact on the surrounding area or the surrounding environment.[8]

deficiencies before October 1, 2023.
(ii) Projects subject to FIT/FIP bidding: projects for which the deadline for receiving business plans occurred before October 1, 2023.

[7] According to the Second Report, if there are multiple renewable energy generation projects operated by the same approved operator within the prescribed distance of the residents in the surrounding area, the total output of these multiple power sources will be used to determine whether or not a briefing session is required.

[8] According to the Second Report, the areas are: (1) those subject to the three laws for erosion control which are the Erosion Control Act, Landslide Prevention Act, and the Act on Prevention of Disasters Caused by Steep Slope Failure; (2) those with high risk of damage to renewable power generation facilities in the event of a disaster (landslide disaster warning areas

・ Solar power generation for residential use (less than 10kW)
Not subject to prior announcement requirements.

<table>
<tr><th></th><th>Solar power generation for residential use (*2)</th><th>Installation on roofs
※Excluding residential use solar panels</th><th>Low voltage (less than 50kW)
※Excluding residential use solar panels and installation on roofs</th><th>High/ Extra-high voltage (50kW or higher)
※Excluding installation on roofs</th></tr>
<tr><td>Project site outside areas that are likely to have an impact on the surrounding area or the surrounding environment (*1)</td><td rowspan="2">Not subject to prior announcement requirements</td><td rowspan="2">Not subject to prior announcement requirements (obligation to make efforts to give prior announcement)</td><td>Prior announcement by means other than briefing session required (*3, *4)</td><td rowspan="2"></td></tr>
<tr><td>Project site inside areas that are likely to have an impact on the surrounding area or the surrounding environment (*1)</td><td colspan="2">Briefing session required (*4)</td></tr>
</table>

(*1) The areas are: (1) those subject to the licenses or permits that are required to be obtained as one of the requirements for applying for FIT/FIP approval as they relate to land development that could directly affect disaster hazards; (2) those with high risk of damage to renewable power generation facilities in the event of a disaster; and (3) protected areas if such areas are designated by ordinance for the purpose of protecting the natural environment and landscape.
(*2) Solar power generation less than 10kW
(*3) If there are multiple renewable energy generation projects operated by the same approved operator within the prescribed distance of the residents in the surrounding area, a briefing is required if the total output of those multiple power sources is 50kW or more.
(*4) If all the requirements for briefings under the Renewable Energy Special Measures Act have been met at briefings based on other laws and regulations held prior to making the application for FIT/FIP approval, the requirements for briefings or prior announcement requirements under the Renewable Energy Special Measures Act shall be deemed to be satisfied. However, even in such cases, the approved operator is still required to perform the other necessary procedures such as submitting a report (briefing summary report) that reports the outline of the briefing session.

(Source: Reference Material 1 of the 11th meeting of the WG[9])

(iii) Items to be explained at briefing sessions

The following table provides an overview of the items to be explained at briefing sessions.

Item	Items to be explained
(i) Contents of business plan	➢ Basic information such as power source type, installation type, output scale, and installation location must be explained in an easy-to-understand manner for residents using drawings, images, etc.
(ii) Status of compliance with relevant laws and regulations	➢ Whether or not procedures related to the relevant laws and regulations in (a) through (c) below are required, and if required, the status of obtaining permits and approvals, etc., schedule for procedures, and system for implementation to comply with the laws and regulations (the "Concept of Standards and Operation of the Development Permit, etc. of Solar Power Generation Facilities (agreed upon by the relevant ministries and agencies on May 25, 2023)" will serve as a guideline). (a) Licenses and permits that are required to be obtained as one of the requirements for applying for FIT/FIP approval as they relate to land development that could directly affect disaster hazards: ・ Permit for forest land development under the Forest Act

(including special landslide disaster warning areas) and landslide disaster risk areas); and (3) protected areas if such areas are designated by local government regulations for the purpose of protecting the natural environment and landscape.
[9] https://www.meti.go.jp/shingikai/enecho/denryoku_gas/saisei_kano/kyosei_wg/pdf/011_s01_00.pdf

	・ Permit under the Act on Regulation of Residential Land Development ・ Permit under the three laws for erosion control: (Erosion Control Act, Landslide Prevention Act, and Act on Prevention of Disasters Caused by Steep Slope Failure) (b) In addition to (a), licenses and notifications under laws and regulations stated in the "Report on the Status of Procedures of Related Laws and Regulations Concerning Renewable Energy Generation Projects," which are required to be submitted when applying for FIT/FIP approval. (c) In the case where the ordinance requires permits, licenses, notifications, etc. for development of renewable power generation projects or installation of structures such as renewable power generation facilities, etc., for the purpose of protecting the natural environment and landscape, etc., such permits, licenses, notifications, etc.
(iii) Status of acquisition of rights to use land	➢ With regard to the status of acquisition of rights to use land, based on the viewpoint of the privacy of land owners, etc., instead of presenting the registration of land itself, an explanation of the existence of the right to use land and the status of acquisition of the right to use land is required.
(iv) Outline of construction related to the project	➢ The schedule of the proposed construction (including the expected date of commencement of operation) must be explained.
(v) Information on related persons	➢ If the approved operator is a corporation, the main investor, maintenance and inspection manager, etc., in addition to the representative and directors must be explained.
(vi) Impact of project and preventive measures	➢ Explanatory items need to be organized from each perspective such as safety aspects, landscape, natural environment, living environment, disposal, etc. ➢ The impact on the local community that may be caused by the establishment of a renewable energy project differs depending on the scale of the power source, the area, and other factors. Therefore, it is important to organize the information in such a way that appropriate and sufficient information is provided considering this point. ➢ Considering the circumstances of individual cases, appropriate and sufficient explanations are required to be given to the residents of the surrounding area. Therefore, while the matters to be explained are clearly specified, the explanation should not be limited to a uniform manner but should be appropriate in light of the actual conditions of the area and the circumstances of each individual case. ➢ In selecting the method of explanation, the method of explanation presented by the WG will be used as a reference, but it will not be limited to this. Approved operators are allowed to choose a more objective and appropriate explanation methods based on the actual situation of the community and the circumstances of each individual case. Through this, approved operators are required to provide proactive explanations. ➢ The explanatory items should focus on the actual impact that may be caused by the project and the preventive measures to be taken. Some explanatory items may include items that are not expected to be caused by individual renewable energy projects. In such cases, a straightforward and specific explanation of why the impact is not expected is required.

(Source: Reference Material 1 (with partial amendment) of the 11th meeting of the WG)

(iv) Scope of "local residents in the surrounding area" for briefing sessions

The scope of "local residents in the surrounding area" for briefing sessions is defined as the residents within a "certain distance" of the project site[10] boundary as well as owners of land or buildings located adjacent to the installation site of the renewable power generation facilities.

In addition, for renewable power generation projects that are required to hold briefing sessions, prior consultation with municipal councils that understand the actual conditions of the area is required, and if a municipal council provides an opinion regarding the scope of "local residents in the surrounding area", the scope of "local residents in the surrounding area" is required to be expanded,

[10] According to the Second Report, in general, this refers to the installation site of power generation facilities under the Renewable Energy Special Measures Act and includes not only power generation facilities but also electrical facilities such as circuit breakers, and water intake facilities, water pressure pipelines, and other facilities.

respecting the opinion of the local governments.

The above "certain distance" is, according to Second Report, defined as the following:

- Low voltage (less than 50kW)
  Not more than 100m from the project site boundary

- High voltage (50-2,000kW)/extra-high voltage (2,000kW or higher)
  Not more than 300m from the project site boundary

- Large power sources subject to environmental assessment (Type 1 project) based on the Environmental Impact Assessment Act
  Not more than 1km from the project site boundary

(v) Timing of briefing sessions and points to be noted in secondary projects

(1) Timing of briefing sessions

As a general rule, briefing sessions need to be held at least a certain period of time (3 months) prior to the application for FIT/FIP approval. However, in cases where there is a significant impact on local residents in the surrounding area, such as for cases where obtaining a permit under the law is required as a condition to applying for FIT/FIP approval, multiple briefing sessions are required to be held from the initial stage of the project.

(2) Points to be noted in secondary projects

In the Second Report, it was clarified that, in the case of business transfers[11] or change of substantive controller of the project[12], there are instances where problems arise due to a lack of communication between project operators and local residents, and therefore, it is required to hold a briefing session after the contract for business transfer is signed (or after the announcement if the business transfer is announced to the public) and before applying for FIT/FIP change approval.[13]

At the briefing session, the transferor and transferee are required to explain the transfer, including the matters to be taken over between the transferor and transferee. In addition, in the case of a business transfer, both the transferor and the transferee are required to attend the briefing session.[14]

Until these amendments, it was not necessarily common practice for secondary projects to hold briefing sessions for a wide range of residents, other than the contract counterparties of the project operator, such as landowners, etc. Therefore, these amendments are expected to have a significant practical impact. In light of the requirement to hold briefing sessions that satisfy detailed requirements to obtain FIT/FIP change approval, it will be necessary to consider specific actions and the terms of transactions for each individual secondary project, including the schedule and closing/post-closing conditions, and to make provision for them in the assignment

[11] According to the Second Report, a company split also should be treated in the same way as a business transfer in terms of the briefing sessions.
[12] The specific details of what will constitute a substantive controller and what will constitute a change of the substantive controller of the project owner are expected to be discussed by the WG in the future.
[13] In addition to when there is a business transfer or change of substantive controller of the project owner, briefing sessions are also required when there are changes in important matters in the FIT/FIP approved business plan, such as certain output changes of renewable power generation facilities or changes in the location of the installation site.
[14] In the case of a change of the substantive controller of the project owner, the approved operator itself must attend the briefing session, as is the case for briefing sessions when newly seeking an FIT/FIP approval.

agreement(s).

(vi) Other

In addition to the above, the Second Report contains detailed requirements for matters such as the agenda of briefing sessions, responses to inquiries before and after the session, methods for announcing the session, attendees, and records and reports.

IV. Obligation of approved operators to supervise subcontractors

(i) Background

Although there are many instances of contracting or subcontracting work in renewable power generation projects, the Renewable Energy Special Measures Act does not clearly define the liability of approved operators in the event that a contractor or subcontractor violates the FIT/FIP approved business plan. Therefore, the Amended Renewable Energy Special Measures Act requires approved operators to supervise contractors and subcontractors to ensure that they comply with the FIT/FIP approved business plan (Article 10-3, Paragraph 2 of the Amended Renewable Energy Special Measures Act).

If the approved operator fails to perform its supervisory obligations, it will be subject to an improvement order (*kaizen meirei*) (Article 13 of the same Act) which, if not complied with, will eventually be a cause for revocation of FIT/FIP approval (Article 15, Item 1 of the same Act).

(ii) Details of types of service agreements subject to supervisory obligations

The Second Report lists contracts for services related to procedural agency/project management, design, land development, construction/installation work, maintenance/inspection, decommissioning, and disposal/recycling as examples of the types of service contracts that are subject to the supervisory obligation. However, since the Amended Renewable Energy Special Measures Act stipulates that the obligation applies to the contracting of "all or part of the operations related to renewable power generation projects," a broad range of contractors are considered to be subject to the supervisory obligation.

(iii) Provisions required in the service agreement

According to the Second Report, in order to externally verify the undertaking of supervisory obligations, it is required that a written agreement be executed between the approved operator and the contractor, and that the agreement clearly state that the contractor must comply with the FIT/FIP approval requirements and approved business plan, including compliance with related laws and regulations. In order to effectively ensure this occurs, the agreement must also include items such as a reporting system from the contractor to the approved operator and requiring prior consent from the approved operator when the contractor subcontracts any related work to a third party.[15]

While it is considered standard to execute a written agreement between an approved operator and a contractor even in current practice, it should be noted that when these amendments come into effect, the necessary items described above will be required to be stipulated in the relevant agreement.

(iv) Periodic reporting to the Minister of Economy, Trade and Industry

According to the Second Report, in order to confirm whether the supervisory obligations are being properly performed, approved operators are required to submit periodic reports to the Minister of

[15] In the future, guidelines or other directions are expected to be published providing the appropriate reporting format for a typical case of contracting and examples of the evidence to be used when reporting using objective materials (e.g., photos of the site of the project site, etc.).

Economy, Trade and Industry that contain the following contents.

- Existence or non-existence of written service agreement, counterparty of the service agreement, and outline of the service agreement
- Contents of reports from contractors to approved operators

V. Order to reserve and return amount equivalent to subsidy for FIT/FIP projects

(i) Background

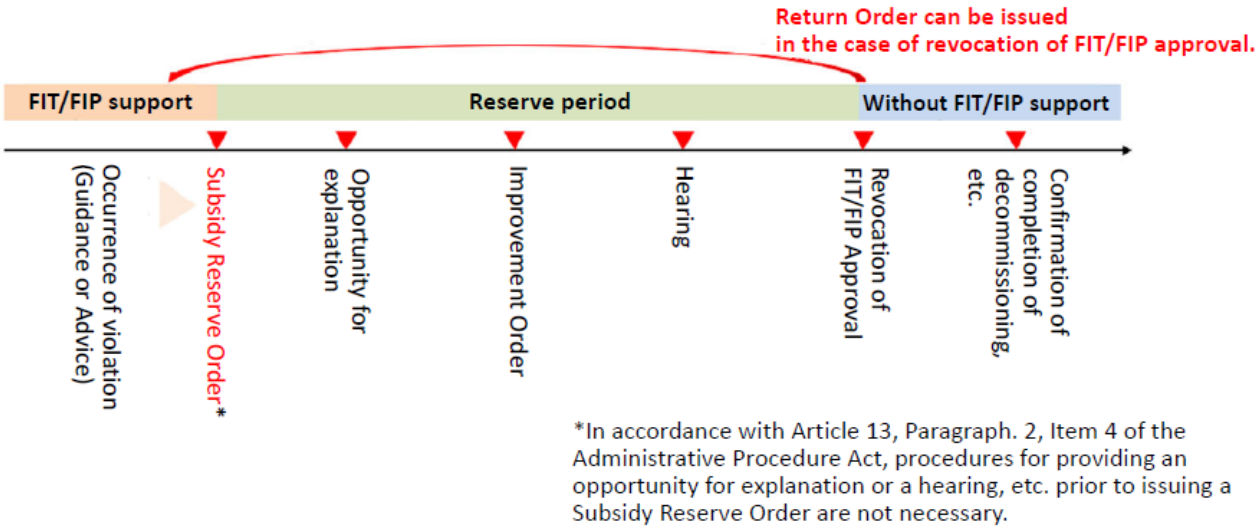
Under the Renewable Energy Special Measures Act, approved operators are required to operate their power generation projects in accordance with their FIT/FIP approved business plans (including compliance with related laws and regulations). In the case of violation, measures such as the issuance of guidance *(shidō)* (Article 12 of the Renewable Energy Special Measures Act), an improvement order (*kaizen meirei*) (Article 13 of the same Act), or revocation of the FIT/FIP approval (Article 15, Item 1 of the same Act) will be taken.

Under the current (i.e., pre-amendment) rules, the approved operator can continue to earn income from electricity sales under the FIT/FIP project until the violation results in revocation of FIT/FIP approval, and a certain period of time is required for revocation of FIT/FIP approval through a hearing procedure under the Administrative Procedure Act. This is a concern for the prevention and early resolution of violations. For this reason, the Amended Renewable Energy Special Measures Act has established a new rule of "**Subsidy Reserve Order**" so that if an approved operator violates the FIT/FIP approved business plan, the amount equivalent to the subsidy for FIT/FIP projects can be promptly withheld by the Organization for Cross-regional Coordination of Transmission Operators, JAPAN ("**OCCTO**").

(ii) Timing of issuance of Subsidy Reserve Order

Since a Subsidy Reserve Order is, in effect, an order to pay the equivalent to the amount of the FIT/FIP subsidy and is therefore a monetary disposition, it has been treated as not requiring an opportunity for a hearing procedure or explanation procedure in accordance with Article 13, Paragraph 2, Item 4 of the Administrative Procedure Act. As for the specific timing of the issuance of Subsidy Reserve Orders, the Second Report states that this will be "at least at the stage when the violations that are subject to administrative dispositions or penalties under the relevant laws and regulations are recognized and objective measures (written guidance, etc.) are taken with regard to the violations". As shown in the figure below, it should be noted that the Subsidy Reserve Order will be issued much earlier than an improvement order (*kaizen meirei*) or revocation of FIT/FIP approval.

[Steps in new institutional measures (in the case of reserve of subsidy or revocation of FIT/FIP approval)]



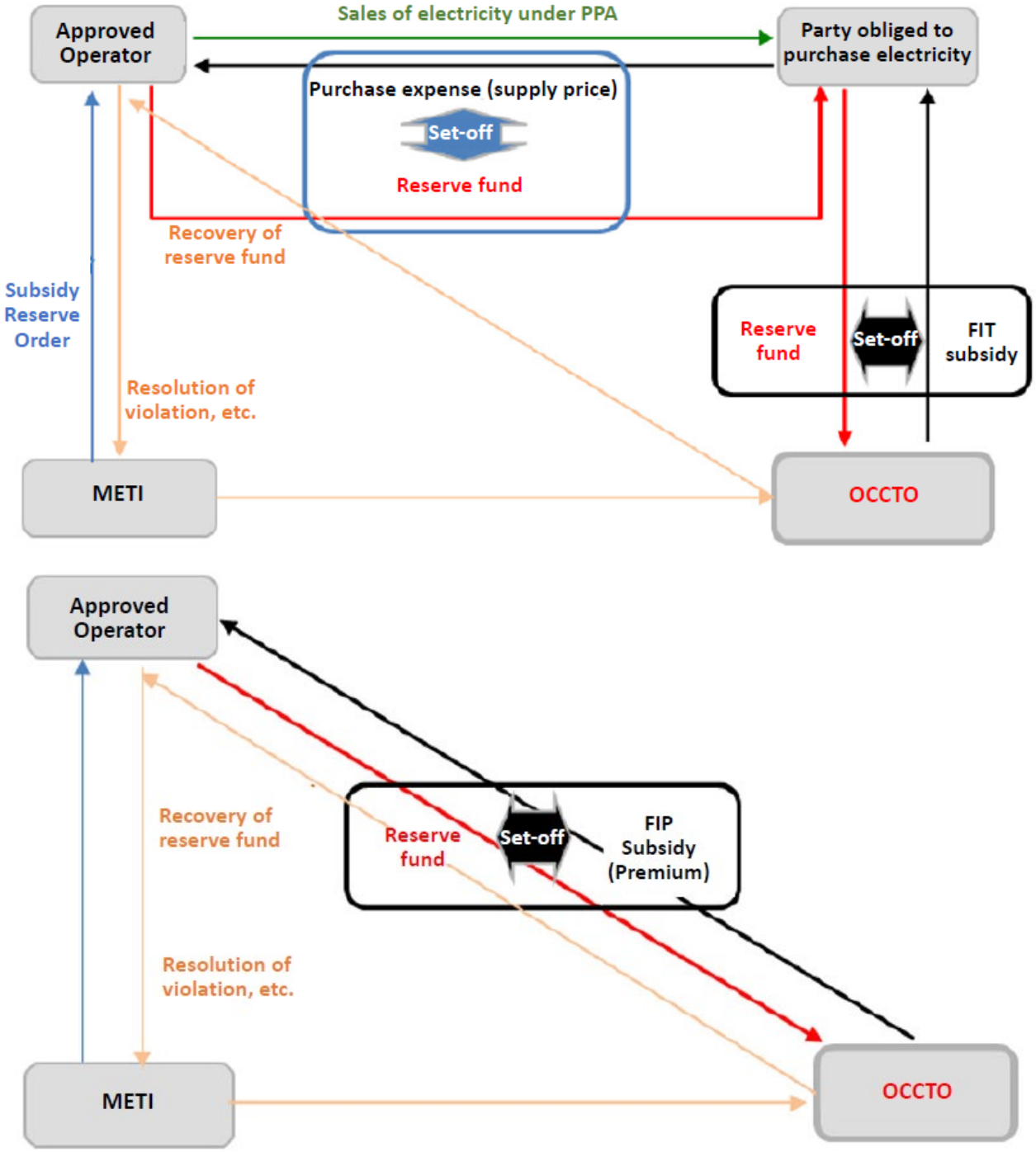
(Source: Figure 1 of the Interim Report)

(iii) Amount to be reserved and method of reserve

Although the specific calculation method of the reserve amount is left to the ministerial ordinance (Article 15-7 of the Amended Renewable Energy Special Measures Act), according to the Interim Report, it is expected that the amount of the "purchase price in FIT scheme minus avoided cost (amount equivalent to revenue in the electricity trading market)" for FIT projects will be approximately equivalent to the reserve amount.[16] In the case of FIP projects, it is expected to be the same amount as the FIP subsidy. In other words, for both FIT and FIP projects, the amount of financial support under the FIT/FIP system is the amount subject to being the reserve amount.

The specific scheme for reservation of the amount equivalent to the subsidy based on the Subsidy Reserve Order is shown in the figure below. In FIT projects, when a Subsidy Reserve Order is issued, the approved operator is supposed to pay reserve funds to OCCTO via the party obliged to purchase the electricity (transmission service operators, etc.), and these reserve funds are supposed to be reserved by offsetting the reserve obligation and the FIT electricity charge.

[16] In addition, the Interim Report states that the amount equivalent to consumption tax, business tax, and supply-demand adjustment expenses shall be deducted from the reserved amount.



(Source: Figures 2 and 3 of the Interim Report)

(iv) Reclaiming reserve funds and Return Order

As an incentive for early resolution of violations, approved operators may request to reclaim an amount equivalent to the reserved subsidy in any of the following cases:

- If the violation has been resolved; or
- If the approved operator discontinues its business and proper decommissioning of renewable power generation facilities has been confirmed.

On the other hand, if the violation is not resolved and the FIT/FIP approval is revoked, the Minister of Economy, Trade and Industry may issue an order for refund or payment of the amount equivalent to

the subsidy ("**Return Order**") (Article 15-11 of the Amended Renewable Energy Special Measures Act). According to the Second Report, in this case, the money related to the Return Order can be effectively recovered by offsetting (i) the right to claim for return or payment from OCCTO to the approved operator arising from the Return Order, and (ii) the right to reclaim of the reserve fund equivalent to the subsidy from the approved operator to OCCTO.

According to the Interim Report, the amount subject to the Return Order is to be taken from a portion of the financial support amount provided under the FIT/FIP scheme, after considering the extent that the approved operator contributed to the violation and other factors.[17]

VI. Expansion of methods of delivery of administrative dispositions under the Renewable Energy Special Measures Act

Under the Renewable Energy Special Measures Act, approved operators are required to notify the Minister of Economy, Trade and Industry of any change of address without delay, but there have been some approved operators who do not properly file such notifications. If the Minister of Economy, Trade and Industry is unable to identify the address of an approved operator, there will be concerns regarding the prompt issuance of administrative dispositions such as an improvement order (*kaizen meirei*) or revocation of FIT/FIP approval for such approved operator.

In consideration of these concerns, the Amended Renewable Energy Special Measures Act clarifies that improvement orders (Article 13 of the same Act), revocation of FIT/FIP approval (Article 15 of the same Act), and orders to reserve funds equivalent to the subsidy (Article 15-6 of the same Act) shall be issued by delivering documents (Articles 52-2 and 52-3 of the same Act). Also, if the address of the recipient is unclear, delivery by public notice (a method in which delivery is deemed to have been made by posting a notice on the bulletin board of the Ministry of Economy, Trade and Industry) is allowed (Article 52-4 of the same Act). It should be noted that, together with the above-mentioned establishment of a new rule for ordering the reserve and return of the amount equivalent to the FIT/FIP subsidy, procedures have been established to promptly take action against approved operators that are in violation of the relevant laws.[18]

[17] Regarding the amount of money subject to the Return Order, the Interim Report states, "In principle, the reserve amount should be required to be returned in the case of revocation of FIT/FIP approval. However, cases leading to the revocation of FIT/FIP approval vary in terms of the level of violation, the degree of deviation from the approved business plan, and the degree of attributable responsibility of the approved operator. The cases may include those that violate the approved business plan but the degree of attributable responsibility of the approved operator is low, and flexible measures should be taken according to the case".

[18] Under the current rules, it is possible to issue an administrative disposition by delivery of public notice in accordance with the Civil Code and the Code of Civil Procedure, but it is required to post the notice on the court bulletin board, or publish it in the official gazette, etc.

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Yutaro Fujimoto has a breadth of experience in providing legal advice on a wide range of energy matters, including both conventional and renewable power plant projects and their finance transactions; electricity and gas transactions; start-ups and M&A in the field of energy; designing legal structures for energy transactions; energy-related dispute resolution; and compliance with energy-related regulations and regimes.
He previously worked as the first Legal Deputy Director in the Policy Planning Division of the Electricity and Gas Market Surveillance Commission, Ministry of Economy, Trade and Industry (METI) in order to support its launch.

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Shunya Suzuki has been involved in a wide variety of energy-related businesses, including the acquisition and operation of renewable energy generation facilities of various complexity and size, power purchase transactions, operation and regulation of retail electric businesses, establishment and revision of terms and conditions and price tables, billing for electricity including handling of non-payment, advice on energy-related alliances, corporate PPAs, and other general corporate matters.

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