

Client Alert

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Renewable Energy in Japan - Recent Developments (Newsletter No. 16)

On November 15, 2013, the *Act on Promotion of Generating Renewable Energy Harmonized with Healthy Development of Agriculture, Forestry and Fishery* (the "**REAFF Law**") was enacted, expanding the range of land potentially available in Japan for solar, wind and biomass projects.

In this newsletter, we will briefly explain the REAFF Law and set out key dates developers should bear in mind in order to take advantage of this beneficial new legislative development.

Overview of the REAFF Law

Set to take effect within 6 months of its publication (i.e. before May 22, 2013), the REAFF Law provides that certain agricultural land, forest land and other types of regulated land be designated and deemed converted for the purposes of renewable energy development, following due authorization pursuant to basic plans to be issued by each local government (each, a "**Basic Plan**"). The national government is expected to issue its basic policy (the "**National Policy**") with regards to the conversion of such land no later than April 2014. In line with the National Policy, each Basic Plan will define the types and scale of renewable energy power generation projects permitted to be carried out on certain locations, whilst bearing in mind the goal of ensuring the sound development of local agriculture, forestry and fisheries businesses.

In addition to the National Policy, each local government must establish and consider the views of a local committee to determine its Basic Plan. Such committees will be comprised of representatives from the local government, power generation businesses, agricultural, forestry and fisheries industries, local residents, academics and any other persons the local government determines necessary. This means that developers have the opportunity to directly contribute to the development of local Basic Plans through submissions to the committee. Local governments are expected to determine Basic Plans shortly after the REAFF Law comes into force. It is therefore recommended that developers begin working on their submissions as soon as possible in order not to miss out on this important opportunity.

Following implementation of a Basic Plan, a power generation company wishing to develop facilities within the designated locations, types and scale set out therein will be able to obtain authorization by submitting a development plan to the local government that satisfactorily ensures the sound development of local agriculture, forestry and fisheries business (a "**Development Plan**"). Examples given in the REAFF Law include (1) illustrating an increase of industry related by-products; and (2) proposing the development of facilities to be used by such industries.

In authorizing a Development Plan, a local government will be required to obtain consent from the relevant minister or mayor of the prefecture concerned. If a Development Plan proposes, for example, the conversion of agricultural land and

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permission is required under the Agriculture Land Law, consent should be obtained from the minister of the Ministry of Agriculture, Forestry and Fisheries ("MAFF") (if such land is greater than 4 ha) or the relevant mayor of the prefecture (if such land is 4 ha or less). Once the Development Plan is duly authorized, permission (under Article 4 of the Agricultural Land Law) for conversion of such agricultural land to land that is able to be used for renewable energy development, will be deemed obtainable by the power generation business. Similarly, following due authorization under the REAFF Law, permissions under the following will also be deemed obtained, significantly simplifying the process:

- (a) Permission for creating land use rights over agricultural land (under Article 5 of the Agricultural Land Law);
- (b) Permission for development of forest land (under Article 11-2 of the Forest and Forestry Basic Act);
- (c) Permission for development within special designated areas (under Article 20.3 of the Natural Parks Law); and
- (d) Permission for drilling of land (under Article 3.1 of the Hot Spring Law).

Below are the links to the REAFF Law in Japanese. We note that at the time of circulation of this publication, no English language versions are available.

<http://www.maff.go.jp/shokusan/renewable/energy/houritu.html>

http://www.maff.go.jp/shokusan/renewable/energy/pdf/re_ene6.pdf

Preparation of Development Plans

In preparing a Development Plan, it is important to take into account the *dual purposes* of the REAFF Law. Whilst the National Policy and local Basic Plans have yet to be implemented, power generation businesses should bear in mind that their proposed developments should be designed to bring real benefits to local agricultural, forestry and fisheries industries.

In this regard, the wind farm recently developed in the town of Yusuhara, located in Kochi Prefecture, is an important case study. Following commencement of operation, the town deposited revenues from the farm into an environmental fund which they set up to provide subsidies to affected forest owners and aid in the development and protection of local forest areas. Similarly in Fukushima, local forestry businesses used revenues and unused materials from their biomass power plant to revitalize the local forestry industry and create employment.

Important timeframes

As set out above, the REAFF Law shall take effect within 6 months of its publication (i.e. before May 22, 2013). The National Policy in connection therewith is expected to be issued by the national government no later than April 2014 and the Basic Plans to be issued in line with the National Policy are expected to be determined shortly thereafter.

While timeframes with regards to the National Policy and the Basic Plans are only indicative at this stage, it is expected that such timeframes will not differ significantly. It is therefore important for developers wishing to construct facilities in agricultural, forestry and other regulated areas to begin preparing submissions as early as possible. MAFF will hold explanatory sessions throughout Japan in January 2014.

Should you require any assistance with submissions or have any questions in connection with the above, please do let us know.