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Environmental Law 2024

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Japan: Trends and Developments

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JAPAN

Trends and Developments

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Recent Regulatory Revisions Affecting Environmental Law

Revision of the Act on Special Measures for Renewable Energy (enforced from 1 April 2024)

On 1 April 2024, the amendment of the Act on Special Measures for Renewable Energy (the "2024 Renewable Energy Act") came into effect. The revision was introduced to deal with the rising tensions between renewable energy producers and residents in the area where renewable energy projects such as wind turbines and solar panels are located. The amendment aims to strengthen the "business discipline" of renewable energy producers, and (i) has made it a legal requirement for renewable energy producers to hold briefing sessions for residents in the surrounding area (holding such sessions will be a requirement for obtaining feed-in-tariff/feed-in-premium (FIT/FIP) certification from the government); and (ii) the relevant government agency (ie, the Ministry of Economy, Trade and Industry, or METI) may suspend the payment of FIT/FIP grants to encourage renewable energy producers to rectify their violation of applicable laws and regulations more promptly.

The details of each of the measures are as follows:

The requirement to brief residents on the project

As noted, under the 2024 Renewable Energy Act, holding briefing sessions for residents in the surrounding area has become a prerequisite for obtaining FIT/FIP certification. Specifically, the 2024 Renewable Energy Act requires producers planning to construct a power source above a certain size threshold to hold a briefing session for residents in the surrounding area to provide the following information:

- the contents of the business plan;
- the status of compliance with relevant laws and regulations; and
- the impact of the project on the environment, and measures to be taken to prevent such impact.

In addition, a regulator may, when approving the change of status in an existing (and already approved) renewable energy power project (eg, in the event of a change of ownership of a renewable energy producer), request that the new business owner conduct briefing sessions for local residents.

Temporary suspension of FIT/FIP grants

Under the 2024 Renewable Energy Act, the regulatory body will have the power to suspend FIT/FIP grants to a renewable energy producer if it is confirmed to have violated relevant laws and regulations. This is to encourage a renewable energy producer to rectify its violation as soon as possible. Once it is confirmed that the violations are corrected, then the renewable energy producer will be able to receive the suspended FIT/FIP grant. On the other hand, if the violation is not resolved and the FIT/FIP certification is revoked, the regulatory body may order the return of the FIT/FIP grant received by the renewable energy producer from the time the violation occurred up to the time its certification was revoked.

According to a government report, the following instances of FIT/FIP grant suspension occurred in 2024 after the enforcement of the 2024 Renewable Energy Act, showing that the government is actively enforcing this newly introduced rule:

- On 2 April 2024, the government took temporary measures to suspend solar power

generation projects (nine projects in total) that violate the Forestry Act. The cases likely involved illegal forestry logging when establishing or expanding renewable energy production sites.
- On 5 August 2024, the government took temporary measures against a total of 342 "farming-type" solar power production projects (ie, projects that purport to engage in both agriculture and solar power production) that it found to be inappropriate, namely in violation of the Agricultural Land Act (eg, projects that did not receive the necessary permissions to convert farmland to solar power units, or those that failed to keep the 80% of their agricultural yield required to register as farmland).

According to the government, it will continue to take strict measures against businesses that violate relevant laws and regulations, as needed.

Other measures taken by the government in relation to the 2024 Renewable Energy Act

The government has announced that it will take the following measures to enforce the 2024 Renewable Energy Act effectively:

- Establish a new enforcement system to strengthen on-site investigations of non-compliant renewable projects.
- In order to conduct on-site inspections and enforce the law against non-compliant renewable projects more efficiently and effectively, the regulatory body will expand its reach by co-operating with relevant ministries and local governments, such as by utilising map information from the Ministry of the Environment's database ("EADAS") and focusing on non-compliant projects that should be prioritised based on the amount of risk such projects pose to the environment.

Further, the government will strengthen its on-site investigations of non-compliant renewable projects by doing the following:

- Allocating a new budget for conducting on-site surveys for non-compliant cases suspected of violating business discipline and related laws and regulations. Site investigations started nationwide from the end of June 2024. The investigation is presently focusing on solar panel sites because these sites were facing the most opposition and complaints from local residents.
- If a violation is confirmed through on-site investigations, the information will be provided to the local offices of the regulatory body and actively shared with other relevant regulatory bodies. The government has announced that it intends to take strict measures against non-compliance, including issuing instructions, suspending FIT/FIP grants, and revoking FIT/FIP certification based on the 2024 Renewable Energy Act.

In particular, the government will strengthen enforcement against "farming-type" solar power production facilities because, according to the report by the Ministry of Agriculture, Forestry and Fisheries (MAFF), about 20% of solar power production sites on farmland face issues with adjacent farmland, such as rendering farmland unusable, and resolution of such issues is urgently needed. MAFF usually takes up such issues, but METI will also use its authority under the 2024 Renewable Energy Act, in co-operation with MAFF, to impose measures such as issuing instructions, suspending FIT/FIP grants, and revoking FIT/FIP certification.

Amendment of the Clean Wood Act (effective from 1 April 2025)

Introduction

Laws and regulations such as the EU's Corporate Sustainability Reporting Directive (CSRD) and Corporate Sustainability Due Diligence (CSDDD) have not been introduced in Japan, with the exception of the Green Purchasing Act, which applies to government contracts, and the Act on Promoting the Distribution and Use of Legally Harvested Wood and Wood Products (also known as the "Clean Wood Act"). The Clean Wood Act was amended in 2023 and will come into effect on 1 April 2025.

Background of the 2023 amendment

The Clean Wood Act was enacted in May 2016 (enforced from 20 May 2017) to protect forests from illegal logging and the subsequent trading of illegally logged wood. The Clean Wood Act was a move by Japan in response to similar laws being enacted in the US (the Lacey Act, December 2008), the EU (rules against illegal logging, March 2013), and Australia (the Illegal Logging Prohibition Act, November 2012). Japan's Clean Wood Act was designed to promote the distribution and use of legally harvested wood by:

- imposing an effort-based obligation on businesses to use legally harvested wood; and
- creating a system where a third-party organisation would register compliant wood-related businesses (ie, businesses that handle legally harvested wood).

However, this "effort-based obligation" and "third-party registration" were not effective enough, and according to a government survey, only covered about 40% of the total demand for wood in Japan, meaning about 60% of wood circulating in Japan came from sources that could not be tracked back to legal logging. This was highlighted by international government meetings attended by Japan, such as G7-related meetings and the APEC Ministerial Meeting on Forestry, and it was pointed out that Japan needed to adopt more effective measures to co-operate in international efforts to stop illegal logging. In addition, when the Clean Wood Act was enacted, it was to be reviewed five years after its enforcement, and the 2023 amendment matches this schedule.

Amendment of 2023

The amendment of 2023 consists of mainly four parts:

(1) Confirmation of legality was elevated (to become a legal obligation rather than an "effort-based" obligation)

The amendment of 2023 has made it obligatory for a "wood-related business" (meaning a business engaged in the manufacture, processing, import, or sale of wooden products; a business that uses wood for construction; and a business that uses wood and wooden products, among others) to do the following when purchasing from logging companies (ie, the source of the wood) or importing wood into Japan:

- collect information regarding the raw materials and confirm the legality of the wood;
- create and store records regarding the information it has collected; and
- share the recorded information when transferring wood to someone else (Articles 6 – 8 of the amended Clean Wood Act).

(2) Obligation for log producers and sellers to provide information

To ensure that confirmation of the legality of the wood required in (1) above is carried out seam-

lessly, log producers and sellers are, if requested by wood-related businesses, obliged to provide information regarding the legality of the logs, such as information on whether the necessary permits were obtained (Article 9 of the amended Clean Wood Act).

(3) Addition of retailers to the list of "wood-related businesses"

To make sure that information regarding the confirmation of the legality of wood is also shared with consumers, retailers of wood products have also been included in the definition of "wood-related businesses" (Article 2(4) of the amended Clean Wood Act).

(4) Other amendments

Other notable amendments to the Clean Wood Act are as follows:

- With regard to (1) and (2) above, the amendment of 2023 makes it possible for the regulatory body to take measures such as instructions and recommendations, warnings, public announcements, and enforcement orders in the event of violations of the Clean Wood Act, as well as imposing penalties on those who do not comply with issued orders (Articles 10, 11 and 45 of the amended Clean Wood Act).
- In addition to the obligations under (1) above, "wood-related businesses" are required to take specific measures to ensure that they are handling legally logged wood, with MAFF setting out the details of the measures that need to be taken (Article 13 of the amended Clean Wood Act).
- A "wood-related business" that meets a certain threshold of size must file annual reports to MAFF regarding the total amount of timber it has handled and the amount it has confirmed to be legal (Article 12 of the amended Clean Wood Act).

Judicial cases and other ongoing disputes

Niigata Minamata disease court case

On 19 April 2024, the Niigata District Court passed a judgment in which it recognised that 26 out of a total of 47 plaintiffs were suffering from Niigata Minamata disease and ordered the originator of the pollution, Showa Denko (now Resonac Holdings) to compensate for damages in the amount of approximately JPY4 million per victim (the claimed amount was approximately JPY8.8 million per plaintiff). The plaintiffs also sued the Japanese government for damages, but the court rejected this claim. The plaintiff (on 1 May 2024) and the defendant (on 19 April 2024) have appealed the case to the Tokyo District Court.

"Minamata disease" is a neurological disease caused by organic mercury poisoning. The name "Minamata" comes from Minamata Bay in Kumamoto Prefecture, Japan, where the disease was first reported. The disease is caused by methyl mercury being ingested by humans via the consumption of fish contaminated with mercury due to discharge in the water system. At first, the mechanism of bioconcentration was little understood in Japan, and even though the first cases of mercury poisoning were reported in the 1950s, it took until 1968 for the government to officially acknowledge the connection between mercury discharge and Minamata disease.

"Niigata" Minamata disease is Minamata disease that occurred in Niigata Prefecture and was caused by mercury discharge into the local Agano River by the Showa Denko plant that was using methyl mercury as a catalyst for producing acetaldehyde (which is an ingredient of acetic acid). The plant was producing acet-

aldehyde from 1936 to 1965, but the first official confirmation of Niigata Minamata disease was in June 1965. The local Niigata Prefecture made the confirmation in response to a report submitted by Niigata University, and while a team of experts at the then-Ministry of Health (MOH, currently the Ministry of Health, Labour and Welfare, or MHLW) reported in March 1966 that the cause of the mercury poisoning was the mercury discharge by the Showa Denko plant, the then-Ministry of International Trade and Industry (MITI, currently METI) was reluctant to accept the connection, leading to a delay in the Japanese government providing aid to those affected. This delay led to the first lawsuit concerning Minamata disease in Japan (including the original one in Kumamoto) only being filed on 12 June 1967, marking the beginning of the so-called "Four Major Pollution Lawsuits" (the other three are (i) the Itai-itai disease lawsuit, (ii) the Yokkaichi asthma lawsuit, and (iii) the Kumamoto Minamata disease lawsuit), all resulting in the plaintiffs/victims prevailing.

The 19 April 2024, judgment by the Niigata District Court was for a case filed with the court for the plaintiffs who were denied status as Minamata disease patients under the Act on Compensation for Pollution-Related Health Damage (the "Pollution Compensation Act", enacted on 5 October 1973) and who were consequently denied compensation from the pollution source (ie, Showa Denko). As noted, the Niigata District Court went beyond the constraints of the Pollution Compensation Act and accepted that 26 persons were sufferers of Niigata Minamata disease. The court also denied the application of the 20-year statute of limitation clause under Japan's Civil Code, judging that the patients could not have made claims within the 20-year period.

Other disputes

There have been cases where facilities above ground have possibly been affected by deep underground tunnels (Maglev, Ken-o Expressway, etc). Tunnel construction might also have caused the disruption of water drainage, and it also generates unwanted construction debris (which is sometimes harmful due to heavy metal content). These factors led to construction delays and lawsuits seeking to halt the construction and/or claim damages.

These issues are yet to be decisively resolved. However, the Act on Special Measures Concerning Public Use of Deep Underground, which is the law that allows deep underground tunnelling without obtaining consent from the landowners above ground may need to be revisited, because the prerequisite for allowing such construction work – that such work will have little impact above ground – is being challenged.

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