

Author:

[E-mail✉ Yasunari Sugiyama](#)

[E-mail✉ Shogo Kaneko](#)

[E-mail✉ Kenya Suzuki](#)

[E-mail✉ Shiori Komatsu](#)

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## I Solar Sharing Scale and Financing

### Introduction

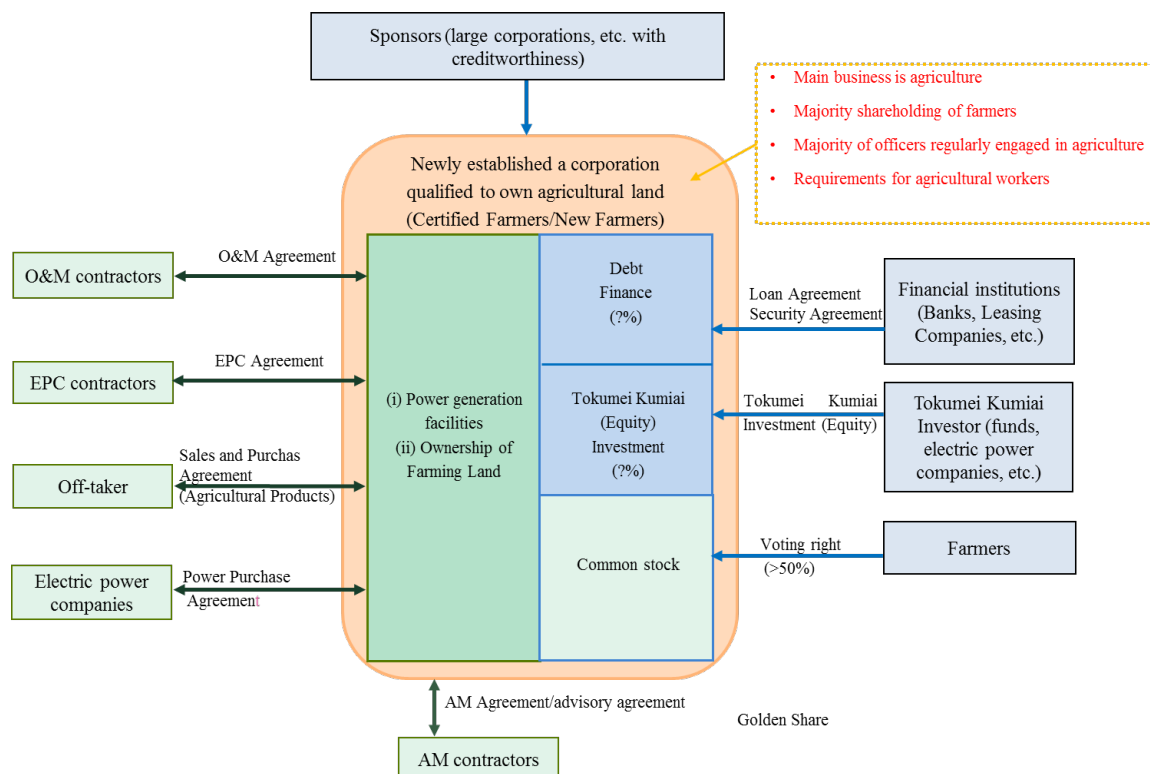
In the previous newsletter, we explained the legal requirements for solar sharing and the form of entry. In the final issue of this three-part newsletter, mainly, we will explain how to increase the size of a solar sharing business and how to raise funds.

(Continuation from the preceding newsletter)

### 6. Corporate finance system (farmers = power producers) accompanying the entry of large enterprises into agriculture

The structural perspective of the previous newsletter placed focus on bifurcation of (a) corporate finance, which relies on the creditworthiness of large companies in the region considering corporate PPA, and (b) the project finance method. However, from a legal perspective, a primary consideration is whether entities are divided into installers of power generation facilities and implementers of power generation projects (hereinafter referred to as "power producers") on the one hand, and those engaging in the farming at the land below the installed apparatuses (hereinafter referred to as "farmers") on the other.

In (a) above, a corporation qualified to own agricultural land, which is established and acquired by a large creditworthy company, etc., as a sponsor, conducts both the power generation business and the agriculture business. Therefore, the farmer and the power producer is the same in that scheme.



In this scheme, the special-purpose companies (SPC) conclude O&M Agreements, EPC Agreements, AM Agreements, and Power Purchase Agreements, and the financial institutions and Tokumei Kumiai (equity investors) fund the SPC with their respective loans and investments. In this respect, the financing method is basically the same as that used for the existing renewable energy business. However, in the schemes where the power producers and farmers are the same, the SPC is required to acquire (or secure the right of use of) agricultural land and satisfy the various requirements to be a corporation qualified to own agricultural land (or agricultural land leasing corporations) described in the previous newsletter. When acquiring agricultural land, it is necessary, in principle, to have a majority of the voting rights held by individual(s) who regularly engage in agricultural business. Whether this form of capital structure is acceptable to the sponsor companies can be an issue. As a measure to have individual(s) who regularly engage in agricultural business hold a majority of the voting rights, it is possible to issue Golden Shares (having consent rights for certain material matters based on the Articles of Incorporation) or through the use of class shares with veto rights. However, it is necessary to consider the extent to which free capital design is allowed under the Cropland Act and whether the authorities will allow such capital structure design.

Under this scheme, the profits of the agricultural and power generation businesses are not separated, and any deterioration in the profits of one business can be covered by the profits of the other. In addition, the scheme does not assume that the alternative sponsor or operator steps in only the power generation business if the profits of the power generation business deteriorate. Similarly, even if agricultural profits deteriorate, it also is not assumed that only the farmers will be replaced. As a result, large sponsor companies' creditworthiness can increase the financeability, and the scheme is close to the corporate finance. On the other hand, even if there is a short-term slump in the agricultural or power generation business or a delay in the renewal of the permission for temporary diversion, default is not necessarily immediate (if repayment and dividends are secured through the sponsor) and, in this sense, it is feasible to evaluate the scheme as a stable finance structure.

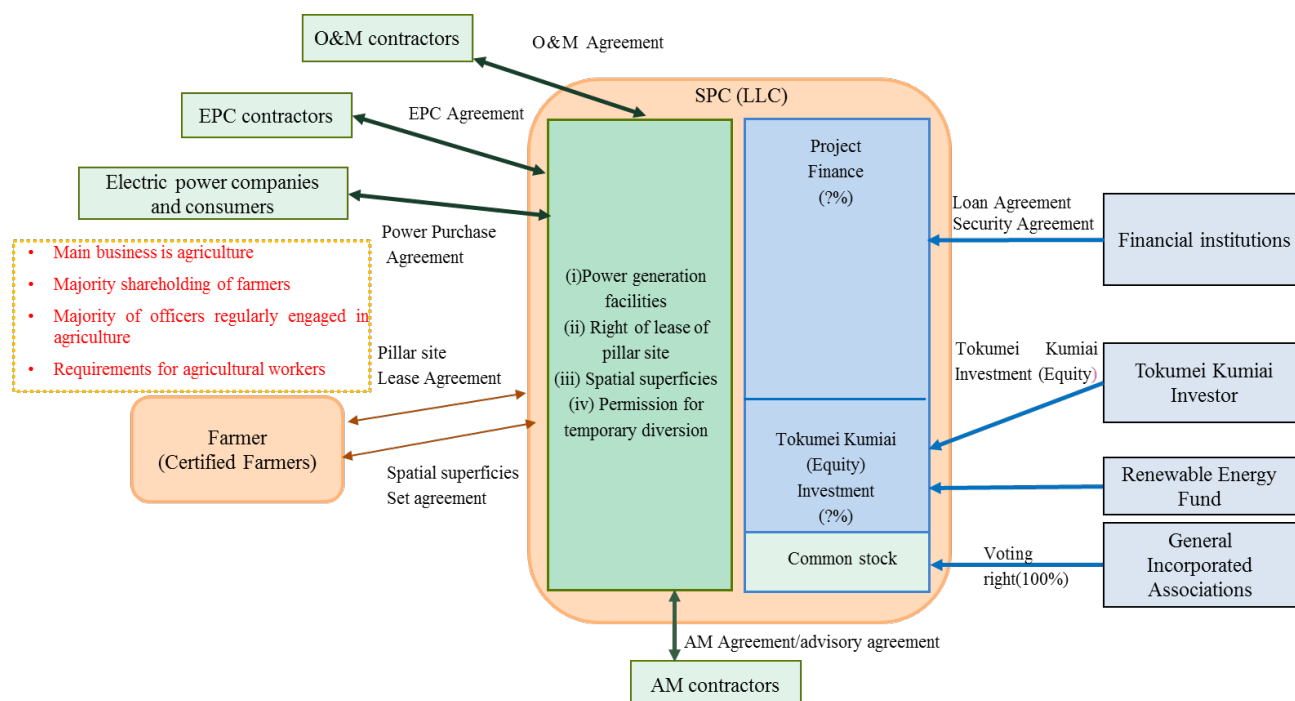
## 7. Form of Solar Sharing Corporations (in the case of farmers ≠ power producers)<sup>Future of Solar Sharing Legislation</sup>

### (1) Points to note in the case of farmers ≠ power producers

Next, we consider a scheme involving separate farmers and power producers. First, to separate farmers and power producers, the following points must be taken into account.

- Upon temporary diversion permit application, it is necessary to submit a document proving that the power producer has agreed to bear the expenses for removal of farm-type power generation facilities, including pillars, on the basis of the cost to be borne by the power producer.
- In addition to the permission for temporary diversion pertaining to pillar part, it is necessary to obtain permission to establish the right to occupy the space where the power generation facilities are installed (the “Spatial Superficies”).<sup>1</sup>

The following schemes can be considered when considering the above points.



### (2) Characteristics when farmers ≠ power producers

In the above scheme, farmers are employed separately from the power producing SPC, which concludes O&M contracts, EPC contracts, AM contracts, and Power Purchase Agreements, while financial institutions provide it loans and *Tokumei Kumiai* (equity investors) invest in it. This is similar to the financing used for existing renewable energy businesses. In the case of the farmer ≠ power producer scheme, the SPC is not subject to the Cropland Act's restrictions on voting rights. Therefore, *Ippan Shadan Hojin* can hold 100% of the equity in the SPC. Accordingly, financial institutions and investors who have already invested in renewable energy businesses can make similar forms of investment in this scheme, which may lower the hurdle for investment decisions.

<sup>1</sup> In this case, it is necessary to set the period for setting such right as the same period as the period for temporary diversion pertaining to pillar part and to set such right at the same time as the application for temporary diversion.

On the other hand, in contrast to the usual renewable energy business scheme, it is necessary to first secure farmers, obtain the right of use for the solar sharing pillar part from the farmers concerned, establish the spatial superficies on the space, and maintain them during the loan period.<sup>2</sup> In addition, when using this scheme, the credit target is basically limited to the cash flow of the project, so it is of utmost importance to ensure that the agricultural component is properly maintained. The proper allocation of risk and cost between the financing side and the project side is necessary in order to popularize and expand transactions. From this point of view, it is important to formulate the structure and system in order to secure permission renewal for the temporary diversion (i.e. proper continuation of farming), obtain the authorization necessary for farming, power generation, and finance, and satisfy the regulatory requirements. However, the requirements under the Cropland Act vary in detail depending on the mode of agricultural land use and the type and organization of the agricultural corporation. As such, it will require very detailed and sophisticated verification abilities and know-how, including cutting-edge legal knowledge, to guide specific projects while conforming to practical formalities and negotiating with authorities; it will be a real opportunity for arrangers and legal counsels to demonstrate their skills.

Under this scheme, the power generation and agriculture profits are separated, and investors basically rely on the profits of the power generation business. In addition, if business profits deteriorate, it is relatively easy for the new sponsor or operator to step in the power generating SPC, making it closer to typical project-financing.

## **8. Future of Solar Sharing Legislation**

From here, based solely on our opinions, we discuss the system and legislative allowances that are considered desirable from the viewpoint of disseminating and expanding solar sharing.

### **(1) Can the permission period for temporary diversion be extended?**

One obstacle to solar sharing financing is that the permission to temporarily divert the pillar part necessary for project implementation is granted only in either three or ten year terms, and cannot be prorated to cover the finance period (around 20 years). We understand that there are two solutions: (a) temporary diversion permission is granted for three or ten years but, if the requirements are deemed satisfied in the examination at the time of expiry, permission renewal/reacquisition is basically (and automatically) allowed, or (b) temporary diversion permission is set at 20 years, but the review is conducted every three or ten years, and the permission is revoked if during such review the requirements are deemed not satisfied. These two solutions are similar in that whether to continue granting the permission for diversion is examined every certain period. However, there is a large gap in the evaluation/treatment in practice.

The desirable measures on the public side, would be to extend the temporary diversion period to 20 years, as in (b) above. However, this is based in the understanding that the reason the current system has temporary diversion periods of 3 years or 10 years is to meet the requirement of receiving periodic reports from farmers and to sufficiently re-check whether proper farming has continued at the time of re-acquisition (renewal) of the temporary diversion. Therefore, it is necessary not only to simply request an extension of such period but also to consider the effectiveness of this “periodic checking” function. In this regard, the introduction of Agritec has made it possible to continuously and regularly visualize and monitor farm areas and manage agricultural product growth and shipment data on-line (relatedly, solar sharing will make it easier to supply power to agricultural land and facilitate introduction of such equipment). When such advances are

<sup>2</sup> It is necessary to establish the right of use of the pillar part and spatial superficies and to create the security in those rights. However, it may be necessary to conduct a complicated study on the method of establishing and creating such right and security interests, as well as satisfy the perfection requirement, in accordance with the Cropland Act.

utilized, the need for periodic examinations becomes unnecessary in order to grant long-term temporary diversion permission to agricultural corporations, as these more reliable development and shipment systems continuously provide data to the authorities.<sup>3</sup>

In this connection, if farming is continued properly, there may be no need to deny another permission for temporary diversion. At present, it seems that the requirements for the renewal of the permission for temporary diversion are not very clear. If it is clarified that, in principle, temporary diversion permits are renewed by default, but that the regulations note there are exceptional cases where renewal is not granted automatically, the predictability and stability of schemes will be ensured, and funding will be more prolific.

## **(2) Positive Positioning of Solar Sharing**

Since the latter half of last year, there has been an invigorating movement toward the introduction of solar sharing involving mega-solar projects. This is because it has been pointed out that the number of suitable sites for ordinary solar power generation has declined, and that the acquisition price of M&A for existing solar power generation facilities or TK investment therein has risen considerably high (i.e. it is necessary to target agricultural land that has not been regarded as appropriate for mega-solar). However, solar sharing is a business scheme that can simultaneously realize two of the primary sustainability aspirations, namely, the creation of clean energy and the securing and improvement of food production. In this regard, various support measures can be considered, such as subsidies and tax incentives, as well as carbon credits for sequestration in farming areas.

In addition, it is difficult for ordinary agricultural corporations to suddenly launch a power generation business targeting mega-solar, from the perspective of human resources and know-how. In the early stage of large-scale solar sharing, it is believed that general agricultural corporations are likely to participate mainly on the farmer side of the farmer ≠ power producer scheme. However, considering the policy objective of improving farmer income, it is undesirable for farmers to be fixed on the agricultural sector (rent income). It is also important for farmers with a certain track record (approved farmers with +α expertise) to shift to a farmer = power producer scheme, and to evolve into a business format that can receive support from specialists in the power generation business as appropriate.

## **9. Combination of Agriculture and Renewable Energy Projects other than Solar Sharing (Rural Renewable Energy Act)**

Finally, we will consider combinations of agriculture and renewable energy businesses other than solar sharing. The Act on Promoting the Generation of Electricity from Renewable Energy Sources Harmonized with Sound Development of Agriculture, Forestry and Fisheries (the "Law for Renewable Energy in Rural Areas") was enacted in 2013. The law aims to revitalize rural, forestry and fishing villages and to contribute to the diversification of energy sources by taking measures to promote the generation of electricity from renewable energy in harmony with the sound development of agriculture, forestry and fisheries in rural areas (Article 1 of the Law for Renewable Energy in Rural Areas). The Law for Renewable Energy in Rural Areas establishes a system for (i) municipalities to create a basic plan for the revitalization of rural areas through the promotion of electricity generation from renewable energy (the "Basic Plan"), and (ii) providing renewable energy power generators (that have been certified based on the Basic Plan) with the advantage of being able to obtain permits or make notifications required by the laws and regulations relative to development of

<sup>3</sup> When considering phased application, it may be possible to adopt an approach such as allowing special measures for temporary diversion in the case of solar sharing on waiver cultivated land and fallow land (such as the inapplicability of the yield requirement under the present circumstances), and expanding the scope of application based on the effects of monitoring, cultivation and management systems on continued farming and yield.

renewable energy power generation facilities in one convenient location. In addition, under the Law for Renewable Energy in Rural Areas, there is room for the conversion of Class 1 agricultural land, which usually is not permitted to be diverted to other types of agricultural land, to land that can benefit from this one-stop approach under the Basic Plan.<sup>4</sup>

"Renewable energy electricity" refers to electricity that is permanently available as a source of energy from solar, wind, hydraulic, geothermal, biomass or other electricity (Article 3-1 of the Law for Renewable Energy in Rural Areas) and is not limited to solar power generation. However, under this law, it is possible to divert the target land and conduct a renewable energy business. Therefore, this law may favor projects in which renewable energy power generation facilities are installed in existing rural agricultural areas and other areas where renewable energy projects other than solar sharing are conducted.

## 10. Concluding

As mentioned above, when considering solar sharing, it is necessary to take into account the Cropland Act and relevant notices and guidelines. Moreover, when examining schemes suited to the actual conditions of each business operator, it is necessary to understand the various systems and conduct advanced legal investigations. There are also issues that need to be overcome when raising funds, but the significance of solar sharing in both the energy industry and agricultural sector should not be underestimated; while the rules and practices are still being established, it is an opportune time to enter this business. We hope that this newsletter will help you consider entering the solar sharing market. If you have any questions or concerns, please feel free to contact us.

## II Impact on Agritech (corporations) in Recent Legal Amendments

(Continuation from the preceding item)

### 4. Guidelines on Open API Development in the Agricultural Sector ver1.0 (formulated February 2021)<sup>5</sup>

#### (1) Value of Open API and Need for Regulation

API (Application Programming Interface) refers to a set of conventions that enable program functions to be used by other programs. By releasing APIs to the public, it is possible to link the services of every person and company. This increased access to services from other industries, and the inherent increase in customers, is expected to promote open innovation, expand existing businesses, and improve service development efficiency. APIs that can be used by third parties, including unrelated external organizations, are known as open APIs, and open APIs are already being used in a number of fields, such as online shopping sites, vehicle dispatching, route mapping services, disaster prevention and emergency services. On the other hand, since open APIs disclose company data and services, there are many issues to consider, such as the risk of data tampering by unauthorized access, the growing threat of other companies entering the market that may disclose services that should be kept secret, and the possibility of server downtime due to the concentration

<sup>4</sup> Specifically, the permission or notification is based on the Cropland Act (including the permission to transfer ownership of agricultural land and to divert agricultural land), the Act on the Promotion of Dairy and Meat Cattle Production, the Forest Act, the Act on Development of Fishing Ports and Grounds, the Coast Act, the Natural Parks Act, and the Hot Springs Act.

<sup>5</sup> <https://www.maff.go.jp/j/kanbo/smart/attach/pdf/openapi-16.pdf>



of API access. In order to address these challenges, open APIs need to be regulated by guidelines, screen the data/services to be disclosed, and determine methods and scope of disclosure.<sup>67</sup>

At agricultural sites as well, with the introduction of smart agriculture technologies, such as data acquisition from sensors installed in agricultural machinery and fields and data management on smartphones using farm management software, there is a growing need to link data from agricultural machinery, equipment, and systems to each other and manage data in a single system in a unified manner. Thus, the further development and utilization of open APIs is expected.

## **(2) Purpose and Scope of the Guidelines**

Considering the above, the "Guidelines for Open API Development in the Agricultural Field ver1.0 (February 2021; hereinafter referred to as the "Guidelines") were formulated for agricultural machinery manufacturers, ICT vendors, and other business operators to promote the development of open APIs that link data obtained from agricultural machinery used by farmers, while taking into account the data items and formats to be linked, the authority of business operators to use the data, and security measures. The Guidelines are to be reviewed as necessary in response to changes in the state of efforts of business operators, the progress of technology and services, the international trend toward standardization of data collaboration, the state of agricultural data utilization, and the laws and guidelines concerning the handling of data.

The Guidelines cover agricultural machinery, specifically, machinery that obtains location information, work records, and crop growth information, environmental measurement sensors that measure temperature, storage facilities that measure yields and quality, and vegetable selection facilities.

## **(3) Guidelines for Data Linkage**

### **(i) APIs Openness and Usage Limitations**

In principle, a machine provider is not supposed to discriminatorily exclude a service provider except in cases where the machine provider judges that there are particular problems with the management control system, security control system, data usage purposes, etc., of the service provider.

### **(ii) Agreement between Farmer and Machine provider**

In agreements for the use by farmers of the machine providers' system, the machine providers shall conclude contracts that assume the provision to third-party interconnection providers based on the Contract Guidelines for AI Data in the Agricultural Sector.<sup>8</sup>

### **(iii) Agreement between Machine Provider and the Interconnection Provider**

It is desirable for machine providers to create models of APIs Terms of Use that incorporate certain elements, when publishing open APIs, and to publish them on their own websites.

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<sup>6</sup> <https://www.soumu.go.jp/johotsusintokei/whitepaper/ja/h30/html/nd133110.html>

<sup>7</sup> <https://www.soumu.go.jp/johotsusintokei/whitepaper/ja/h30/html/nd133120.html>

<sup>8</sup> "Contract Guidelines for AI Data in the Agricultural Sector" <https://www.maff.go.jp/j/kanbo/tizai/brand/keiyaku.html>

**(iv) Authority to Use Provided Data**

To the extent that the farmers who provided the data can use the data for their own farming, interconnection providers can share the data in agricultural ICT services with JA and extension agencies for processing and farming guidance. On the other hand, the so-called "secondary use" of provided data, such as uses for purposes other than agricultural ICT services or services that are likely accessible by unspecified users, is beyond the scope of self-use by farmers and thus not acceptable.

**(v) Responsibility for Storage of Provided Data**

Proper management of data is desired, as interconnection providers who receive data are obligated to fulfill confidentiality and storage obligations regarding such data in accordance with Contract Guidelines for AI Data in the Agricultural Sector.

**(vi) API Standard Specifications**

It is important to agree among service providers on API specifications that enable smooth data exchange, while taking into account WAGRI's (a leading agricultural data collaboration platform) API specifications.

**(vii) Protection of Personal Information**

Data handled by machine providers and interconnection providers are expected to include personal information. Therefore, it is necessary to take appropriate measures, such as obtaining the consent of farmers and taking security measures for the system.

**(viii) Ensuring Security**

Machine providers and interconnection providers are required to take necessary security measures to maintain the confidentiality, integrity, and availability of systems, such as preventing falsification and eavesdropping, preventing information leaks, and managing server loads, bearing in mind that data linked through APIs may contain personal information.

**(ix) Maintenance System**

It is desirable for machine providers to strive to maintain availability so that interconnection providers can access APIs smoothly, and to develop systems to respond to inquiries and requests from interconnection providers and to conduct APIs connection tests.

**(4) Data Standardization**

It is desirable for interconnection providers to standardize the terms, acquisition frequency, methods of obtaining data, environment, and units for processing and comparative analyses of data. For interconnection providers that are difficult to standardize immediately, it is essential to disclose in an easy-to-understand manner the content of the data provided and the data format when providing APIs. In addition, the Guidelines point out that discussions for standardization must continue in order to expand data collaboration in the future.



## **(5) Advantages and Disadvantages of Compliance with Guidelines**

At present, there is no provision for preferential treatment in accordance with the Guidelines, and it is provided in the Guidelines that "they indicate the level of action to be taken for the matters that the parties concerned, such as machine providers, should consider (to be) in common. It should be noted that these do not limit the methods or mechanisms of collaboration through open APIs, nor do they impede the development of services such as data-strategy and inter-company collaboration among providers." However, given the nature of the open APIs of linking, it is anticipated that the latter will be culled when there are companies that comply with the guidelines and those that do not. Therefore, the more the guidelines penetrate among companies in the future, the greater the need for compliance from a business standpoint.

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