

## Renewable Energy Act Amendment Adds Briefing Session Requirements

Finance Law Newsletter

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### 1. Introduction

On April 1, 2024, an amendment to the Act on Special Measures Concerning Promotion of Utilization of Electricity from Renewable Energy Sources (the “**Renewable Energy Act**”)<sup>1</sup> came into effect. Among several important revisions, the most noteworthy is the requirement to hold briefing sessions for local residents. This addition will have a significant impact on project finance practices for FIT/FIP renewable energy projects, as briefing sessions will become necessary not only when projects newly receive FIT/FIP certification but also when projects already certified for FIT/FIP undergo certain important matter changes. This newsletter provides an overview of the briefing session revisions.

### 2. Renewable Energy Projects Requiring Briefing Sessions

Pursuant to the amendment, prior notification to local residents is required, in principle, when FIT/FIP certification is newly obtained or when certain important matters are changed for a project that has received FIT/FIP certification. Solar power generation projects with an output of less than 10 kW, roof-mounted solar power generation projects, and projects subject to the Act on Promoting the Utilization of Sea Areas for the Development of Marine Renewable Energy Power Generation Facilities are exempt from the prior notification requirement.

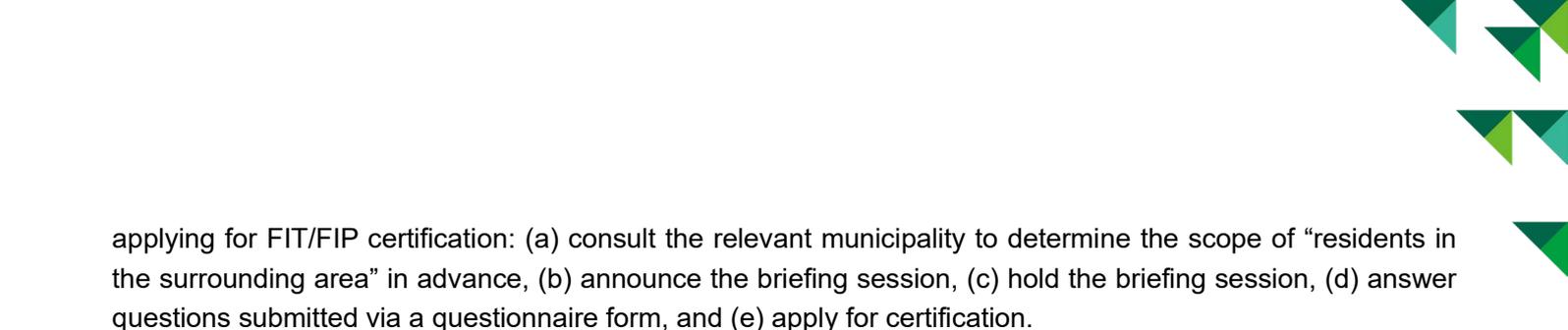
One of two procedure types must be implemented: (a) briefing sessions or (b) prior dissemination measures. For high-voltage power sources (output of 50 kW or more but less than 2,000 kW) and special high-voltage power sources (output of 2,000 kW or more), a briefing session is required instead of prior dissemination measures. For low-voltage power sources (output of less than 50 kW), with certain exceptions, it is sufficient to implement prior dissemination measures. However, even for low-voltage power sources, a briefing session is required if a renewable energy power generation project is being conducted by the same operator or a closely related party within 100 m of the low-voltage project’s site boundaries and the combined output of the projects is 50 kW or more.

### 3. Briefing Session Process

Pursuant to the amendment, the following steps in relation to briefing sessions need to be followed when

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<sup>1</sup> Based on the “Act for Partial Amendment of the Electricity Business Act for Establishment of Electricity Supply Systems toward the Realization of a Decarbonized Society.”



applying for FIT/FIP certification: (a) consult the relevant municipality to determine the scope of “residents in the surrounding area” in advance, (b) announce the briefing session, (c) hold the briefing session, (d) answer questions submitted via a questionnaire form, and (e) apply for certification.

**a. Confirmation of Scope of “Residents in the Surrounding Area”**

The scope of persons who should be informed in advance of a briefing session (*i.e.*, the scope of “residents in the surrounding area”) covers: (i) persons residing within a certain distance from the project site boundaries, (ii) owners of land adjacent to the project site or of buildings on the adjacent land, and (iii) persons deemed necessary by the mayor of the municipality where the project is located.

For item (i), the distances are as follows: (A) 100 m if the output of the power generation facility is less than 50 kW, (B) 300 m if the output of the power generation facility is 50 kW or more, or (C) 1 km, regardless of (B) above, if the project is subject to an environmental impact assessment under the Environmental Impact Assessment Act (limited to Type I businesses).

In practice, confirmation of item (iii) is important because it is subjective and may take time to determine, thereby affecting the briefing session schedule and FIT/FIP certification application. According to the “Guidelines for Implementation of Briefing Sessions and Prior Dissemination Measures” promulgated on February 20, 2024 (the “**Guidelines**”), it is necessary to consult in advance with the municipality where the project is located and follow the opinion of the municipality regarding the scope of “residents in the surrounding area.” In such prior consultations, the applicant is required to submit a document in accordance with the format prescribed in the Guidelines and to attach explanatory materials that are intended to be distributed at the briefing session, as well as a map showing the location of the project and the scope of “residents in the surrounding area.” It should be noted that explanatory materials must be prepared for prior municipality consultations.

**b. Briefing Session Announcement**

Once the scope of “residents in the surrounding area” is confirmed with the relevant municipality, an announcement that meets the requirements set forth in the Enforcement Regulations of the Renewable Energy Act and the Guidelines must be made at least two weeks prior to the briefing session.

The announcement must be distributed in writing by mail or door to door, posted on a circular, or published in a public bulletin or magazine (print only) of the relevant municipality; no other methods may be used. While an announcement may be made online, such an announcement is only sufficient where accompanied by an in-person or in-print method as described in the preceding sentence. In addition, an announcement must be made through the electronic disclosure system of the Agency for Natural Resources and Energy, and to this end, information on the holding of the briefing session must be provided to said agency. The announcement must clearly state the matters provided in the Guidelines, which include the form of the announcement.

## c. Briefing Sessions

### i. Timing

A briefing session must be held at least three months prior to the date of applying for FIT/FIP certification. In certain cases where a project will have a significant impact on local residents, a briefing session must be held not only before such application but also at an early stage of project implementation.

### ii. Content

According to the Enforcement Regulations of the Renewable Energy Act, a briefing session must cover:

- (a) an outline of the project's business plan;
- (b) matters related to compliance with relevant laws and regulations;
- (c) matters related to acquisition of the right to use the site where the power generation facility will be installed;
- (d) an outline of construction work for installation of the power generation facility;
- (e) matters related to related parties (including major investors);
- (f) the project's possible effects on the safety, landscape, natural environment, and living environment of the surrounding area, and the preventive measures to be taken to preserve the same;
- (g) matters related to removal and disposal of waste materials; and
- (h) (when making a change to material matters of a FIT/FIP certificate) matters related to smooth and secure business succession, such as succession of agreements with local authorities.

According to the Guidelines, "major investors" as used in item (v) above means (A) where the project operator is a GK (*godo kaisha*), the members of the project operator, (B) where the project operator is a KK (*kabushiki kaisha*), the five shareholders holding the highest percentage of voting rights in the project operator, (C) the five holders of the highest percentage of TK (*tokumei kumiai*) investments in the project operator, and (D) the parents of entities (A) through (C). Please note that this information was previously not necessarily made public by project operators but is now required to be made public as the amendment has come into effect.

If the information provided in a briefing session differs from the actual renewable energy project conducted and is no longer true, strict measures may be taken, such as not granting or revoking certification. In addition, when a project is subject to bidding, it should be ensured that the explanation of the project outline will not affect the competitiveness of the bidding process.

### iii. Procedure

Project operators must attend briefing sessions. If a project operator is a corporation, an officer or employee of the project operator who is capable of giving a sufficient and appropriate explanation of the project is required to attend and give the briefing. Even if a contractor with expertise and technical knowledge is present, the entity responsible for giving the briefing is the project operator. The primary person giving the briefing or responding to questions from residents must participate in person, but those who give supplementary explanations or respond to questions from residents in a supplementary manner can participate remotely via an online meeting tool.

Residents must be given an opportunity to ask questions and express opinions (“**Questions**”), and the same must be answered or responded to in good faith. According to the Guidelines, if such answers or responses are determined to not be in good faith, strict measures may be taken, such as not granting or revoking certification.

Factors used in determining “good faith” include:

- (a) responses are factual and accurate;
- (b) responses are objective and specific;
- (c) responses include an explanation of the reasoning and background behind them; and
- (d) if there is a risk of infringing personal privacy rights or other rights by providing a response, a response should be given to the extent possible, and if a response cannot be given, the reason for such inability should be explained.

The briefing session must be recorded, and the recording must be stored appropriately until the end of the project’s FIT/FIP period so that the same can be submitted to the Agency for Natural Resources and Energy upon request, in the event that an objective verification of the information contained in the materials submitted at the time of applying for certification becomes necessary. In addition, the Guidelines prohibit the external publication of audio/visual recordings of briefing sessions. If an operator externally publishes an audio/visual recording of a briefing session, strict measures may be taken, such as not granting or revoking certification.

After accepting Questions for a period of at least two weeks after a briefing session, the operator must respond to those Questions in writing and in good faith. Individual answers need not be provided to each person who submits a question, but in principle, answers to the Questions should be made in the same manner as when announcing the briefing session.

#### **d. Applying for Certification**

Where the briefing session requirement applies to a project, the project owner must include in its application for certification a report and other necessary documents proving that a briefing session was held. According to the Guidelines, the specific documents to be attached to the application for certification are (i) materials related to the scope of “residents in the surrounding area,” (ii) materials related to the announcement of the briefing session, (iii) materials that can confirm that all topics were covered in the briefing session, (iv) a list of attendees, (v) minutes of the briefing session (such minutes must cover the entire briefing session and include verbatim minutes of the question-and-answer portion), (vi) questions received and responses provided, and (vii) a summary report of the briefing session (the form for which is provided in the Guidelines). If any falsehoods are found in these materials, strict measures may be taken, such as not granting or revoking certification.

## **4. Certificate Amendments**

### **a. Amendments Requiring a Briefing Session**

Briefing sessions are required not only for new FIT/FIP certifications but also for renewable energy power generation projects that have already been certified under the FIT/FIP system when a project owner seeks to make changes to certain material matters of a project.

The changes in material matters requiring a briefing session are (i) changes in the certified operator, (ii) changes

in closely related parties, (iii) changes in the project site (e.g., addition or removal of land parcels), (iv) increases of 20% or more or 50 kW or more of the certified output or panel capacity, and (v) projects that newly fall under the requirements necessitating a briefing session. In addition, when a project under the FIT system is transferred to the FIP system, a briefing session is not required.

The changes in a certified operator requiring that a briefing session be held include not only changes due to business/asset transfers but also mergers or company splits, bankruptcy proceedings, and enforcement of security interests or voluntary sale of property. In other words, a briefing session also is required when a project finance lender steps in as part of its enforcement process.

The Enforcement Regulations of the Renewable Energy Act define “closely related parties” as those who have a close relationship with a certified operator in terms of capital or a similar financial relationship. The Guidelines provide a more detailed definition of “closely related parties,” which includes the following persons:

- (i) where the certified operator is a GK (*godo kaisha*), its members;
- (ii) where the certified operator is a KK (*kabushiki kaisha*), shareholders holding a majority of the voting rights in the certified operator;
- (iii) investors who hold a majority of the TK (*tokumei kumiai*) interests in the certified operator; and
- (iv) parent companies of the entities in items (i) through (iii) above.

If there is any change in such “closely related parties,” a briefing session must be held.

#### **b. Amendments to Business Plan**

When briefing sessions are required as described in a. above, briefing sessions must be held at least three months prior to the application for certification of such changes. As noted above, prior to any briefing session, the scope of the “surrounding area” must be determined through consultations with the relevant municipality. Such consultations are likely to take time, so making changes to a project’s business plan will take a while.

If a prior briefing session has been held in accordance with the Renewable Energy Act, it is sufficient to explain only the matters that are to be changed and which were not explained in the previous briefing session. However, if the briefing session in relation to a proposed change is the first session to be held after the amendment to the Renewable Energy Act comes into effect, the briefing session must cover all of the topics required for a new certification.

## **5. Applicability to Applications Submitted Prior to April 2024**

The briefing session requirement under the amendment to the Renewable Energy Act became effective on April 1, 2024 and applies both to applications for certification and certification amendments as described in Section IV. above, made on and after April 1, 2024 as well as applications made prior to April 1, 2024 which are under review and are expected to be approved on or after April 1, 2024.



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