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THE CRIMINAL PROCEDURE IN JAPAN



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1. Overview of the Criminal Procedure in Japan

When a crime is committed, investigative authorities, such as public prosecutors and police officers (the "Investigative Authorities"), would investigate the case, and the prosecutor in charge of the case will decide whether or not to prosecute the suspect. If the suspect is prosecuted, then a judge or a panel of judges will examine the case, including the evidence, and decide whether or not the accused is guilty and what punishment is appropriate.

Under the Constitution of Japan, judges are independent from any national administrative agency and must make their decisions in accordance with their conscience, and are bound only by the Constitution and applicable laws. Likewise, prosecutors must make their decisions from a fair and neutral standpoint. Defense counsels must act to defend the suspect/accused.

2. Investigation and Detention

The Investigative Authorities conduct the investigation, which includes interrogation of the suspect, interview of the victim or other relevant persons, search of the house of the suspect and other relevant places, and seizure of articles of evidence. The search, seizure and related acts are conducted without the consent of any relevant person based on a warrant issued by a court.

Subject to the satisfaction of certain legal requirements, the suspect is placed in custody; in other words, he/she is arrested and detained. The legal requirements include the existence of probable cause that he/she committed a crime, that the suspect has no fixed residence, or that there is probable cause that he/she may conceal or destroy evidence, or flee.

The ordinary procedure for detaining a suspect is as follows: within 48 hours after the arrest, the police officer refers the suspect to a prosecutor with the relevant documents; then within 24 hours after receiving such referral of the suspect, the prosecutor files a request for detention of the suspect with a court; and the court decides whether to approve the detention. The first detention period is 10 days. If unavoidable circumstances exist, then the judge may extend the detention period up to another 10 days upon the request of the prosecutor. This means that the total period to detain a suspect from

the day of the arrest to the end of the detention in the investigation stage is at most about 23 days.

Before the above detention period ends, the prosecutor will decide whether the suspect should be prosecuted or released. There are two types of prosecution: a request for trial (hearings in open court) and a request for summary proceedings (an examination of documents only by the judge). If the suspect is believed to have committed more than one crime, then the prosecutor may release the suspect for one crime, and then arrest and detain him/her again for another crime, and conduct the investigation for such other crime.

According to the statistics of the Ministry of Justice, of the total cases decided by the prosecutors' offices throughout the country in October 2018 (104,051 cases in total, including decisions other than whether or not to prosecute, such as transfers to other prosecutors' offices), 28,920 cases (approximately 27.8%) were prosecuted (of such cases, trials were requested for 7,766 cases (approximately 7.5%)) while 56,003 cases (approximately 53.8%) were not prosecuted.

When the Investigative Authorities interrogate a suspect, his/her defense counsel is not permitted to accompany him/her, but the interrogation process is audio or video-recorded in certain cases. Interpreters are engaged if the accused does not speak Japanese. The suspect has the right to remain silent, and the Investigative Authorities must not do anything that may interfere with the voluntary acts of the suspect, such as by using compulsion, torture, threats or inducements. Based on the results of the interrogation, the Investigative Authorities will prepare a written record of the statements of the suspect. The suspect will review the record and, if he/she considers it to be correct, then he/she affixes his/her name and seal on it. However, if it turns out that the suspect affixed his/her name and seal against his/her will, then the judge will not permit the prosecutor to rely on such record as evidence in the trial.

Before the prosecutor decides on prosecution, requests for detention and the like, the defense counsel acts on behalf of the suspect by, for example, stating his/her opinions on the case, and collecting evidence by meeting the victim(s) and relevant parties as well as interviewing the suspect.

3. Trial

The trial is held in open court where observers can attend, but its broadcast by television or other media is not permitted. If a trial is requested while the accused is under detention, he/she will remain detained.

At trial, the case is heard by one judge, a panel of three judges or, in

some cases, three judges and six lay judges (*saiban-in*).¹ They examine the evidence, and listen to statements of the accused as well as the opinions of the prosecutor and the defense counsel. Based thereon, they will decide whether or not the accused is guilty and what punishment is appropriate. The prosecutor and the defense counsel will each submit documentary evidence to the court and question witnesses. If the accused does not speak Japanese, then a court interpreter will interpret the proceedings of the trial. Also, documents written in a foreign language must be translated into Japanese.

Punishments include the death penalty, imprisonment with labor, and fines. Under certain circumstances (for example, a sentence of imprisonment with labor for three years or less), the service of the sentence may be suspended.

Japan has a three-tier court system. According to court statistics, a trial at the district court of first instance takes an average of approximately 2.6 months for cases where the accused admitted to the crime, and where the accused denied the commission of the crime, approximately 8.9 months for cases before a sole judge, or 13.3 months for cases before a panel of judges.

4. Related Systems

(1) Interviewing the suspect/accused, and the sending or receiving of documents or articles

Defense attorneys and other persons may interview the suspect/accused who is under detention. However, interviews by any person other than defense attorneys must be held in the presence of an official, such as a police officer, and are permitted only for a limited length of time. Moreover, interviews, and the sending or receiving of documents or articles are prohibited or restricted if there is probable cause that the suspect/accused may, among others, conceal or destroy evidence, or flee.

(2) Bail

After the prosecution is instituted, the accused, his/her defense counsel, spouse or other persons prescribed by law may request the court for bail. In such event, the court must release the accused except in some instances, such as when the crime committed by the accused is subject to a heavy penalty under the law. However, even in such exceptional cases, the court may still release the accused taking into account whether or not there is any probable cause that the accused may conceal or destroy evidence, or flee, or considering the seriousness of the potential harm that may be suffered by the accused due to continued detention with respect to his/her health, or his/her financial condition, social life, preparation for his/her defense, etc. Before the court decides to grant bail, the defense counsel in many cases presents his/her opinions to the judge by having a meeting with

the judge or submitting a written opinion. To grant bail, the court must order the accused to pay bail. The court may also impose other conditions, such as restrictions concerning the residence of the accused. If the accused fails to appear in court for trial, flees, conceals or destroys evidence, or fails to satisfy the aforesaid conditions, or if there is any other reason, then the court may cancel and confiscate the bail.

1. Lay judges are randomly selected from among Japanese nationals aged 20 and over with the right to vote for members of the House of Representatives of the National Diet to try serious cases involving offenses punishable by death or life imprisonment with or without labor, or those that have caused the death of a victim by intentional criminal acts. (See http://www.courts.go.jp/english/vcms_1f/2018_Court_System_of_Japan.pdf, pp. 14-15.)

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Japan's New Immigration Policy



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An amendment to the Immigration Control and Refugee Recognition Act¹ (the "Immigration Law") introducing new residence statuses was enacted on December 8, 2018 and will take effect on April 1, 2019 (the "Amendment").

Background

Prior to the Amendment, foreign workers considered as highly skilled professionals were eligible for residence status in Japan, but only a few have been able to obtain this status because of the very high skill requirement. The Amendment will introduce new residence statuses based on a broader skill requirement to attract more foreign workers. This is meant to address the shrinking working population² and severe labor shortage in mainly small and medium-sized enterprises.³

Since the number of resident foreign workers will increase, a new agency to control the entry and residence of foreign workers will be established.

Key Points of the Amendment

There are two important points concerning the Amendment. The first point is the introduction of new residence statuses (i.e., Specified Skills No. 1 and Specified Skills No. 2). For foreign workers under Specified Skills No. 1, a certain level of industry-specific skills and Japanese language proficiency are required, and the workers can work in Japan for a maximum of five years. However, they are not allowed to bring their family members with them to Japan. On the other hand, for foreign workers under Specified Skills No. 2, more advanced industry-specific skills are required, and they may bring their family members with them and work in Japan for longer than five years.

The government will accept up to 345,000 foreign workers in 14 industries (e.g., nursing, building cleaning, fabricated materials, industrial machinery, electronics, construction, ship building, automobile maintenance, airlines, hotels, agriculture, fishing, food and beverage manufacturing, and restaurants) for five years after the enforcement of the Amendment.⁴ However, many important details that will be provided in an ordinance to be issued by the Ministry of Justice are yet to be defined.

The second point is that the Ministry of Justice will change one of its bureaus into a separate immigration agency.

Future Prospects

According to a survey, there are 1,280,000 foreign workers in Japan, and about 240,000 of them have the highly skilled professional residence status.⁵ As mentioned above, up to 345,000 foreign workers will be accepted in 14 industries over the course of five years after the enforcement of the Amendment. This change is the first of its kind and may have a big impact not only on the subject industries but on society in general in Japan.

1. Shutsunyukoku kanri oyobi nannminnteihō [Immigration Control and Refugee Recognition Act] Ordinance No. 319 of October 4, 1951.

2. See <http://www.moj.go.jp/content/001260296.pdf> p. 4 (in Japanese).

3. See <http://www.moj.go.jp/content/001270102.pdf> (in Japanese).

4. See <https://www.kantei.go.jp/jp/singi/gaikokujinzai/kaigi/dai3/siryō2-2.pdf> (in Japanese).

5. See <http://www.moj.go.jp/content/001260296.pdf> (in Japanese).

Renewable Energy Development: Handling of Non-operating Approved Commercial Photovoltaic Power Generation Projects



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I. Introduction

The Feed-in-Tariff Scheme (the “FIT Scheme”) was introduced in July 2012 under the Act on Special Measures Concerning Procurement of Electricity from Renewable Energy Sources by Electricity Utilities (the “FIT Act”). Currently, many large-scale photovoltaic power generation projects are funded through project financing.

Under the FIT Scheme, electric utilities are obligated to purchase electricity generated using renewable energy sources at the price fixed by the national government (the “Purchase Price”) for a certain period for each type of renewable energy source. The cost of purchasing the electricity under the FIT Scheme is covered by a surcharge (*fukakin*) collected from the general consumers of electricity.

1. Non-operating Approved Projects

Renewable energy began to garner an increased share of the total energy consumption after the introduction of the FIT Scheme, however, the surcharge, which amounted to 2.4 trillion yen in fiscal year (“FY”) 2018, is 16% of the electricity rate applicable to commercial or industrial consumers. Moreover, many commercial photovoltaic power generation projects, especially those that were approved in the early years of the FIT Scheme, are not yet operational (the “Non-operating Approved Projects”) (please see the table below). Although the Purchase Price dropped to less than half its initial price due to the rapid expansion of commercial photovoltaic power generation projects approved under the FIT Scheme (i.e., from 40 yen/kWh in FY 2012 to 18 yen/kWh in FY 2018), there remain many projects that were authorized to charge the prior high Purchase Price, but have not yet started power generation. There are various reasons for this situation such as the project schedule being based on the scheduled date of grid connection by electric utilities, the failure to obtain the forestry land development approval or other necessary

approvals, or the failure to execute the necessary contracts with the landowner or leaseholder. If these Non-operating Approved Projects do operate in the future, then the burden on the public will increase. In addition, the identification and development of Non-operating Approved Projects with a high Purchase Price have become a priority for potential investors, thereby impeding the development of new photovoltaic power generation projects and the release of unused grid capacity reserved for such projects.

	In Operation	Not in Operation	Total	Non-operation Ratio
Approved in FY 2012 [¥40]	11,470,000kW	3,350,000kW	14,820,000kW	23%
Approved in FY 2013 [¥36]	13,550,000kW	12,840,000kW	26,390,000kW	49%
Approved in FY 2012 [¥40]	5,160,000kW	7,330,000kW	12,490,000kW	59%

(Source: Measures for Suppressing the Public Burden Caused by Approved Projects - Non-operating Approved Commercial Photovoltaic Power Generation Projects, December 5, 2018, Agency for Natural Resources and Energy)

2. Amendment to the FIT Scheme

The FIT Scheme will be amended to address the above problems caused by the Non-operating Approved Projects (the "Amendment"), which will mostly take effect from April 1, 2019. See Section II.3 below for the dates the provisions of the Amendment will take effect (each, an "Effective Date").¹

II. Details of the Amendment

1. Projects subject to the new scheme

When the FIT Act was amended in 2017, photovoltaic power generation projects with a generation capacity of 10kW or greater were required to commence operation within three years from their approval dates. However, this deadline did not apply to projects with grid connection agreements executed on or before July 31, 2016, thus, they were likely to remain non-operational. The new scheme under the Amendment will now cover these projects that were not subject to the said deadline.

Based on the Amendment, the new scheme will apply to a Non-operating Approved Project with a generation capacity of 10kW or greater that was approved under the FIT Scheme from 2012 to 2014, and a grid connection agreement executed on or before July 31, 2016 (the "Subject Project"), if no "Application for Commencement of Grid Connection Work to Electricity Transmission and Distribution

Utilities" (the "Application") was submitted by February 1, 2019 and then accepted by March 31, 2019 (the Application and the specific deadlines for other projects are described below).

The new scheme, however, will not apply to a large-scale project with a generation capacity of 2MW or greater if it is officially confirmed that the development work therefor has already been substantially commenced (however, the Application must still be submitted).

2. Introduction of a new requirement of filing the Application

The Amendment introduced a new requirement of filing the Application. If the Application for a Subject Project is not made prior to the relevant Effective Date, then the Purchase Price of the said project may be changed. Moreover, if the Subject Project is in a state in which electricity transmission and distribution utilities (the "Utilities") can determine the earliest-possible scheduled date of electrically connecting the power generation facilities to electric lines (the "Scheduled Grid Connection Commencement Date"), then such project is considered in the operation commencement preparation stage (the "Operation Commencement Preparation Stage"). Submission of the Application is part of the procedure for determining the Scheduled Grid Connection Commencement Date, and the applicability of the above new scheme to the Subject Project is determined based on the date of receipt by the Utilities of a complete Application.

Upon the submission of the Application, the following must be satisfied for it to be complete:

- (i) Obtainment of the right to use the land where the power generation facilities will be installed;
- (ii) Obtainment of an approval or receipt of filing for exclusion from the agricultural promotion area or conversion of the agricultural land;
- (iii) Publication of an environmental impact assessment required under the local ordinances ("Environmental Assessment") and public inspection of the related documents thereof; and
- (iv) Obtainment of a forestry land development approval.

After submitting the Application, the applicant cannot request for any change in the renewable energy power generation business plan before the commencement of operations of the power generation facilities.

3. Effective Dates, and deadlines for submission and receipt of Applications

The Effective Dates, and deadlines for submission and receipt of Applications are described below.²

	Effective Date (of the Amendment)	Submission Deadline	Acceptance Deadline
Projects with a generation capacity of 2MW or greater	October 1, 2019	End of August 2019 (tentative)	September 30, 2019
Projects subject to an Environmental Assessment	April 1, 2020	End of February 2020 (tentative)	March 31, 2020
Other projects	April 1, 2019	February 1, 2018	March 31, 2019

If the deadline is not met, then the Purchase Price that was in effect two years before the relevant project entered the Operation Commencement Preparation Stage will apply. For example, if the Application for a Subject Project is received in FY 2019, then the Purchase Price applicable in FY 2017 (21 yen/kWh) will apply.

If an Application for the Subject Project does not satisfy all of the requirements described in Section II.2 above, then it must be resubmitted, in which case, the Purchase Price will be changed based on the new submission date. However, the Application does not need to be resubmitted and the Purchase Price will remain unchanged in cases such as when after receipt of the Application, it becomes impossible to meet the original Scheduled Grid Connection Commencement Date for any reason (e.g., delay in the construction work).

4. Deadline for commencement of operations

A deadline (see the table below) for the commencement of operations will be set for the Subject Projects, including those that fail to meet the relevant deadlines for receipt of the Application.

		Deadline for the Commencement of Operations
Projects that meet their deadlines for receipt of the Application	Projects with a generation capacity of 2MW or greater	September 30, 2020
	Projects subject to an Environmental Assessment	December 31, 2020
	Other projects	March 31, 2020
Projects that fail to meet their deadlines for receipt of the Application		One year after the date of receipt of the initial Application

As to the Subject Projects that fail to meet the relevant deadlines for the commencement of operations, the Minister of Economy, Trade and Industry will decide how to treat them giving due regard to the

opinion issued by the Purchase Price Calculation Committee, which provides for the reduction of the period of purchase by electric utilities at the relevant Purchase Price by the number of months of the delay.

III. Conclusion

The treatment of Non-operating Approved Projects (i.e., projects that were already approved under the FIT Scheme but which have not yet started power generation) under the Amendment has been described above. As mentioned in Section I of this article, for many of such projects, the relevant parties have presumably been making arrangements to carry out the business by procuring the necessary funds through project financing, and thus compliance with the requirements under the Amendment is advised. Moreover, for projects with various problems, such as prolonged negotiation on the acquisition of the necessary land with the residents thereof, such problems need to be resolved to submit the Application.

In addition to the amendments discussed above, the Act of Promoting Utilization of Sea Areas in Development of Power Generation Facilities Using Maritime Renewable Energy Sources was enacted on November 30, 2018. The renewable energy legislation of Japan is thus undergoing significant changes, and interested parties are encouraged to monitor such developments.


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1. Although not covered in this article, the rules on biomass ratio changes will also be amended.
 2. The deadline for submission of the Application is one or two months prior to the relevant Effective Date.

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