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Renewable Energy M&A in Japan: Key Land-Related Issues and Practical Risk Mitigation

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I. Introduction¹

M&A activity in Japan's energy sector has been on a steady rise. In the first half of 2024 alone, there were 49 M&A transactions involving electric power and gas companies as either sellers or buyers — a 26% increase compared to the same period in the previous year.²

In terms of transaction scale, large-scale deals have also emerged as part of Japan's ongoing transition toward decarbonization. In 2022, ENEOS Corporation acquired all shares of Japan Renewable Energy Corporation for approximately JPY 200 billion,³ and in 2023, JERA Co., Inc., through a subsidiary, acquired Belgium's offshore wind power company, Parkwind NV, for about JPY 220 billion.⁴

¹ This communication is provided as a service to our clients and friends and is for informational purposes only. It is not intended to create an attorney-client relationship or constitute an advertisement, a solicitation, or professional advice as to any particular situation.

² "M&A Activity in Japan's Power and Gas Sector Hits Record High — Renewables Take the Lead," *The Nikkei*, Morning Edition, September 3, 2024. Available at: <https://www.nikkei.com/article/DGKKZO83188180S4A900C2DTA000/>

³ "Notice Regarding Acquisition of Shares in Japan Renewable Energy Corporation by Our Subsidiary (Resulting in a Change in Scope of Consolidated Subsidiaries)," ENEOS Holdings, Inc., October 11, 2021, available at: https://www.hd.eneos.co.jp/newsrelease/upload_pdf/20211011_01_01_0960492.pdf

⁴ "Acquisition of Belgium-Based Offshore Wind Power Developer Parkwind," JERA Co., Inc., March 22, 2023, available at: https://www.jera.co.jp/news/information/20230322_1109

In M&A transactions involving renewable energy generation projects, legal due diligence typically covers a wide range of areas. These include:

- Real estate rights (e.g., securing land use rights for project sites);
- Project agreements, such as EPC (Engineering, Procurement and Construction) and O&M (Operation and Maintenance) contracts;
- The FIT/FIP certifications under Japan's Act on Special Measures Concerning Promotion of Utilization of Renewable Energy Sources (commonly referred to as the "Renewable Energy Special Measures Act");
- Existing finance agreements with lenders;
- Licenses and permits required for project operation; and
- Disputes or contingent liabilities affecting the project.

In particular, the real estate assets used for power generation form the core foundation of any energy project, making real estate due diligence one of the most critical aspects of M&A in this sector. If defects or uncertainties are discovered in the land use rights during the Legal DD process, they can directly affect the viability of the power generation business itself, potentially constituting a "red flag" that influences pricing, risk allocation, or even the decision to proceed with the transaction. Even after closing, issues frequently arise concerning the duration and renewal of land use rights, the consistency of such rights with FIT/FIP certifications, and the existence of encumbrances such as security interests or easements. These issues can escalate into post-closing disputes if not properly reviewed and addressed during the DD process or reflected in the transaction documents.

This article focuses on a project involving the transfer of shares (or equity interests) in a solar power generation company operating under Japan's FIT/FIP schemes, and explains (1) the key real estate-related items to be examined during Legal Due Diligence in renewable energy M&A and (2) how identified issues can be practically addressed under the Share Purchase Agreement (SPA).⁵

II. Land Use Rights for Power Generation Projects

1. Forms of Land Rights

⁵ Please note that this article is not intended as legal advice for any specific transaction.

The matters requiring review and the corresponding contractual responses will vary depending on factors such as the type of project (solar, wind, geothermal, biomass, etc.), project scale, transaction structure, and the negotiating positions of the parties.

The first step in legal due diligence is to review land use agreements, memoranda, and relevant land registry records to confirm the legal form of the land rights underlying the project site. In Japan, the principal types of land rights that may support a power generation project are as follows:

1. Ownership (*Shoyuken*) – a full ownership right under Article 206 of the Civil Code, granting the holder complete control over the land;⁶
2. Surface rights (*Chijōken*) – a real property right under Article 265, allowing the holder to own or use structures (e.g., power generation facilities) on another's land;
3. Leasehold rights (*Chinshakugen*) – a contractual right under Article 601, permitting the lessee to use the land for a specified purpose and term;
4. Easements (*Chiekiken*) – rights of way or rights to install transmission lines under Article 280, typically granted to ensure project access; and
5. Occupancy permits (*Senyo Kyoka*) – administrative permissions, such as road occupancy permits or authorizations to use public land, which are often required for power lines or access routes.

2. Perfection – Enforceability Against Third Parties

(a) Real property rights (in rem rights or *bukken*)

Among the land rights discussed in section 1, ownership, surface rights, and easements are classified as real property rights (in rem rights or *bukken*) under the Japanese Civil Code. Under Article 177 of the Civil Code, the perfection (i.e., enforceability against third parties) of such rights requires registration with the real property registry pursuant to the Real Property Registration Act. Holders of these rights generally possess a statutory right to demand registration from the grantor of the right (for example, the landowner in the case of a surface right). Accordingly, when the project land is held under one of these registered real property rights, Legal DD should verify that the required registration has been duly completed and that the record accurately reflects the intended rights.

If registration has not yet been completed at the time of signing the SPA, it is generally advisable to (i) include in the SPA a seller's covenant to promptly file the registration after signing and (ii) make the completion (or at least application) of such registration, evidenced

⁶ Where the target company has received a silent partnership (*tokumei kumiai*) investment under Commercial Code Art. 535 and the target itself holds title to the land, the structure may constitute a "Specified Joint Real Estate Enterprise" under the Act on Specified Joint Real Estate Ventures, Art. 2(4). As operating such a business without the requisite authorization could violate the Act, careful legal analysis is required.

by satisfactory documentation, a condition precedent to closing.

(b) Contractual Rights – Leaseholds (*Chinshakuken*)

In the case of leasehold rights under Article 601 of the Civil Code, registration is also required for the lease to be enforceable against third parties, unless the lease is subject to the Land and House Lease Act (which provides certain statutory protections to lessees).

Accordingly, when the land use right is based on a leasehold, Legal DD should first confirm whether the lease has been duly registered.

However, unlike real property rights (*bukken*), a leasehold right is a personal (contractual) right—a right against a specific counterparty rather than against the property itself.

As such, the lessee has no statutory right to compel registration unless the lessor consents. In practice, it is not uncommon to find unregistered leaseholds, especially in cases where the landowner is reluctant to cooperate with registration procedures.

If the lease remains unregistered at the time of the SPA, the buyer should request that the seller obtain the lessor's cooperation to complete the registration before or shortly after closing. However, where such cooperation cannot realistically be obtained, the SPA may instead include an indemnity clause providing that the seller will compensate the buyer for any loss arising from the lack of third-party enforceability of the lease (for example, if the land is sold to a third party or leased again to another tenant).⁷

(3) Duration of Land Use Rights

Another critical point in renewable energy due diligence is whether the land use rights covering the project site extend through the intended operational period of the project.

Under Japan's Feed-in Tariff (FIT) and Feed-in Premium (FIP) schemes, the statutory power purchase period is typically 20 years. However, where the project developer intends to continue electricity sales after the FIT/FIP period (the so-called "*After-FIT*" phase), it is essential to verify that the land use rights also cover the extended operational period.

In particular, due diligence should confirm:

⁷ The appropriate response to such issues depends on the circumstances of each case, including the relationship between the buyer and seller and the nature of the landowner. For instance, where the landowner is a local government or a public entity, the absence of registration of the leasehold interest may be regarded as posing a relatively low risk.

1. The contractual duration of the land use agreement;
2. Whether the agreement contains an automatic renewal clause; and
3. The conditions for renewal, including whether the lessor's consent is required.

In standard market practice, the SPA will typically include representations and warranties by the seller that (i) the land use rights remain valid throughout the expected electricity sales period (or a specified duration) and (ii) no facts exist that would impede the renewal or continuation of such rights. If, after closing, it is discovered that a defect existed at signing or closing—such as a shorter-than-expected term or an undisclosed termination clause—the buyer may claim a breach of representation and warranty under the SPA.

Conversely, if the insufficiency of the term is identified before closing, the SPA may stipulate as a condition precedent that the seller must obtain an agreement with the lessor to extend the duration of the land use right or enter into a new agreement ensuring continuous use of the land.

(4) Early Termination Clauses and Provisions on Termination of Land Use Rights

Even where the contractual term of the land use right covers the entire expected electricity sales period, termination risk may remain if the land use agreement allows the landowner broad discretion to terminate the contract before its expiration.⁸ Where such a termination clause is included, it is advisable to require, under the SPA, that the seller procure an amendment to the land use agreement as a condition precedent to closing, thereby modifying or limiting the landowner's right of early termination.

If, however, due to practical constraints (such as timing or the relationship with the landowner), it is difficult to finalize the amendment before closing, alternative contractual protections may be adopted. These may include (i) seller's post-closing covenant obligating the seller to cooperate in good faith to secure the amendment to the land use agreement even after closing; and/or (ii) indemnity provisions under which the seller compensates the buyer for any losses incurred as a result of early termination or similar actions by the landowner.

(5) Mortgages, Easements, and Other Encumbrances

⁸ For example, some agreements contain provisions such as: "The lessor may terminate this agreement if the lessor or a third party needs to use the land for its own purposes."

(a) Mortgages and Revolving Mortgages

Mortgages or revolving mortgages (*ne-teito-ken*) are commonly created as security interests for project finance arrangements in power generation projects.

During Legal DD, it is essential to confirm the existence and status of such encumbrances through a review of land registry records and existing finance agreements. It should also be examined how these security interests will be treated post-closing—for example, whether the buyer intends to conduct a refinancing or maintain the existing loan arrangements through discussions with the current lenders.

If a refinancing is planned, the buyer will generally require the seller to release and deregister existing mortgage liens prior to or at closing. Conversely, if the financing structure is to be maintained, appropriate lender consents or novation arrangements should be coordinated in parallel with the M&A transaction.

(b) Easements

Where easements (*chiekiken*) exist, their purpose and scope (e.g., rights of passage, installation of transmission lines, or drainage) should be carefully reviewed to assess any potential impact on project operations. For instance, certain easements may restrict the placement or expansion of solar panels or other generation facilities, while others may grant third parties access rights to the project land, creating potential safety or operational risks.

As a general rule, any encumbrances that could materially interfere with project operations should be removed, and their deregistration completed as both a seller's covenant and a condition precedent to closing. However, in some cases where the encumbrance is determined to have minimal or no material impact on project operations, the parties may agree not to require its removal.

Further, encumbrances related to project financing must be addressed in conjunction with the overall financing structure of the transaction. When refinancing is contemplated, the release of existing security interests should be synchronized with the establishment of new financing arrangements to ensure a smooth transition and avoid any disruption in project ownership or operation.

(6) Landowner Consents in Connection with M&A Transactions

As noted at the outset, this article assumes an M&A transaction involving the transfer of shares (or equity interests) in the power generation company. In such cases, there is no change in the contracting entity that holds the land use rights, and therefore, landowner consent is not automatically required for the M&A itself. In other words, even though the shareholders or equity holders of the target company may change, the company itself remains the same legal entity, continuing to act as the lessee or surface rights holder under the existing land use agreement. Accordingly, the contractual party to the lease or surface rights agreement remains unchanged.⁹

However, in practice, certain lease agreements or surface rights agreements may include a Change of Control clause, providing, for example, that “If there is a material change in the shareholding structure of the lessee, the lessor’s consent must be obtained,” or “The lessor may terminate this agreement in the event of a material change in the lessee’s ownership.”

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Where such a clause exists, it is advisable that the SPA (i) include a seller’s covenant to obtain the required landowner consent (or provide notice, if applicable) prior to closing; and (ii) make the completion of such consent or notification a condition precedent to closing.

III. Discrepancies Between the Location Specified in the FIT/FIP Certification and the Land Actually Used for Power Generation

(1) Location of Power Generation Facilities in FIT/FIP Certification

Under Japan’s Feed-in Tariff (FIT) and Feed-in Premium (FIP) programs, the exact location of the power generation facilities must be clearly identified when applying for certification of the business plan.¹¹ This location information forms an integral part of the certification and serves as the basis for the government’s approval of the renewable energy project.

⁹ In the case of a business transfer, the rights themselves (such as superficies or leasehold interests) are transferred to the acquirer, and therefore the legal structure differs from that of a share transfer. For example, a superficies (real property right) may, in principle, be assigned or used as collateral without the landowner’s consent, unless otherwise restricted by the superficies agreement.

By contrast, a leasehold right (contractual right) generally requires the lessor’s consent for assignment or pledge unless the lease agreement provides otherwise, pursuant to Civil Code, Article 612(1). Accordingly, in M&A transactions involving a business transfer, the buyer must confirm whether the lessor’s consent is required and, if so, ensure that such consent is obtained prior to closing.

¹⁰ In the context of renewable energy projects, such clauses are frequently found in agreements with local governments or public entities.

¹¹ Article 9, paragraph 2, item (vi) of the Act on Special Measures Concerning Promotion of Utilization of Renewable Energy Sources, and Article 4-2 and Form No. 1 of the Enforcement Regulations of the Act on Special Measures Concerning Promotion of Utilization of Renewable Energy Sources.

For solar power generation projects, the term “location of the power generation facilities” generally refers to the area where the following are installed:

1. **Electrical equipment** – such as generators, transformers, and electricity storage systems;
2. **Prime movers** – such as photovoltaic (PV) modules; and
3. **Ancillary equipment** – including mounting structures and other related components.¹²

(2) Modification of Facility Locations (Addition or Removal of Land Parcels)

Under the FIT/FIP programs, any change to the registered location of the power generation facilities (including the addition or removal of land parcel numbers) requires the project operator to file an application for modification of certification with the Minister of Economy, Trade and Industry (METI) and to obtain its approval.¹³

Accordingly, if there is any discrepancy between the location specified in the FIT/FIP certification and the land actually used for the power generation project, the operator must obtain approval for the corresponding modification to add or remove the relevant parcel numbers. However, such modifications are not permitted without limit—they must satisfy specific regulatory conditions prescribed by METI.¹⁴ If a modification of the registered facility location is required, it is advisable for the buyer to obtain a representation and warranty in the SPA confirming that the seller’s project satisfies the applicable requirements for location modification under the FIT/FIP regulations.

IV. Conclusion

Japan’s regulatory and operational framework for renewable energy continues to evolve rapidly, and further revisions can be expected in the coming years. As discussed above,

¹² *The Installation Site of Renewable Energy Power Generation Facilities in Business Plans for Renewable Energy Power Generation* (revised April 1, 2025), Agency for Natural Resources and Energy, available at: https://www.enecho.meti.go.jp/category/saving_and_new/saiene/kaitori/dl/fit_2017/legal/nintei_seti.pdf

¹³ Article 10, paragraph 1 (main text) of the Act on Special Measures Concerning Promotion of Utilization of Renewable Energy Sources.

¹⁴ For example, in the case of adding a separate (non-contiguous) parcel of land, one of the applicable requirements is that “the additional parcel must be located at a distance that can reasonably be regarded as the same site as the originally certified parcel (limited to cases where the majority of solar panels are installed on the originally certified parcel).”

real estate-related matters often represent critical legal and commercial issues in renewable energy M&A transactions. Accordingly, it is essential to identify and assess such risks accurately during the legal due diligence stage, taking into account the latest regulatory developments and administrative practices.

Equally important is to ensure that these risks are properly allocated and mitigated under the SPA—through clearly drafted representations and warranties, conditions precedent, covenants, and indemnification clauses. This approach allows parties to manage uncertainty in a balanced and commercially rational manner.

Looking ahead, Japan’s pursuit of decarbonization and energy transition is expected to drive continued investment activity, including acquisitions, joint ventures, and portfolio optimization among renewable energy operators. For foreign investors, understanding Japan’s regulatory particularities and aligning transactional documentation with domestic practice will remain key to successful participation in this market.

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