

# Updates to solar FIT decommissioning fee regulations

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## End of mandatory public comment period

On 25 February 2020 the Ministry of Economy, Trade and Industry (METI) approved a bill contemplating a regulation pursuant to which the Japanese authorities would be able to withhold a portion of payments under a power purchase agreement. The withheld payments would be placed in a reserve to cover decommissioning costs (for further details please see "[Solar FIT decommissioning fee](#)"). The withholding would start 10 years prior to the expiration of the applicable feed-in tariff (FIT) term. The bill was enacted on 5 June 2020 at the Upper House plenary session of the National Diet. While the final decommissioning regulations have not yet been published, a detailed outline of the regulations was published for public comment (Decommissioning Regulations Outline) until 9 March 2021. Although a partial answer to the public's comments was published on 24 March 2021, it did not include the government's answers to the Decommissioning Regulations Outline, the answers to which will be published later.

Although the detailed regulations have not been finalised, the METI's general practice is to not amend the terms of regulations published for public comment. The METI will instead propose responses to the public's comments to guide them on the details of the regulations. As such, the finalised regulations are unlikely to change from those in the Decommissioning Regulations Outline. The METI will likely publish the finalised regulations in 2021, given the upcoming effective date of 1 April 2022.

## Outline of FIT decommissioning fee regulations

The METI notes that business operators should not discretionarily obtain the primary source of funding for decommissioning solar power plants. Rather, an external source of funds must be secured by withholding a certain amount of the guaranteed FIT payment to business operators by off-takers. According to the Decommissioning Regulations Outline, the amount per kilowatt hour (kWh) that is required to be withheld is likely to be in line with the table below.

Year	FIT price per kWh	Reserve amount per kWh
2012	Y40	Y1.62
2013	Y36	Y1.40
2014	Y32	Y1.28
2015	Y29 or Y27	Y1.25
2016	Y24	Y1.09
2017	Y21 (for projects that are not subject to the bidding process)	Yo.99
2018	Y18 (for projects that are not subject to the bidding process)	Yo.80
2019	Y14 (for projects that are not subject to the bidding process)	Yo.66

However, if a project is deemed sufficiently capable of reliable, long-term generation and able to secure its own funding, it may be exempt from this new decommissioning fee regime. The decommissioning regulations contemplated under the Decommissioning Regulations Outline propose that a project with project financing in place may qualify for an exemption from the withholding of the FIT price by the applicable Japanese authority if the project is required under its financing documents to reserve at least the same amount as is required under the Decommissioning Regulations Outline. In order to qualify for this exemption, there are two options

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available. In summary:

- a project must have executed a financing agreement with a financial institution and must not use the amounts in the private decommissioning reserve for anything other than decommissioning costs; or
- a project must have secured the financing from its publicly listed parent or a publicly listed subsidiary which has reserved the necessary funds for decommissioning.

### **Comment**

Given that the decommissioning reserve will be mandatory and the significance of project financing for qualifying for the exemption from the fee regime, both developers and project financing lenders should carefully consider their financing arrangement. In particular, in order to be exempted from the decommissioning regulations, developers and project financing lenders should consider including as part of their financing structure:

- a qualifying decommissioning reserve account;
- an obligation to set aside the required reserve amount; and
- a restriction on using the private decommissioning reserve for anything other than decommissioning costs.

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