

Overview of the Revised Act on the Promotion of Global Warming Countermeasures and its Practical Impact

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Introduction

A “Bill for Partial Revisions to the Act on the Promotion of Global Warming Countermeasures” was approved by the House of Councilors on May 26, 2021, and the Revised Act on the Promotion of Global Warming Countermeasures (“Revised Act” or simply “Act”) was enacted and promulgated on June 2, 2021.¹

This Revised Act can be seen as part of a series of measures to reduce greenhouse gas emissions in response to the Paris Agreement, which was ratified by Japanese Government on November 8, 2016, as well as the 2050 Carbon Neutral Declaration made in the Prime Minister’s policy speech at the 203rd Extraordinary Diet Session on October 26, 2020 (“CN Declaration”).

The key points of this Revised Act are: (i) incorporating the Paris Agreement and the CN Declaration into the basic principles of the Act (Article 2-2 of the Act), (ii) introducing a Regional De-Carbonization Promotion Project planning system (Article 22-2 of the Act and thereafter), and (iii) digitalizing and disclosing information on greenhouse gas emissions (Article 29 of the Act and thereafter).

The following sections summarize each of the key points of the Act and their potential practical impact.

1. Reflecting the Targets of the Paris Agreement and the CN Declaration as Basic Principles

Article 2-2 of the Act states as its basic principles: (i) integrated promotion of environmental conservation, as well as economic and social development, (ii) realization of a de-carbonized society by 2050, and (iii) close cooperation among the national government, citizens, local government, and companies, referring to Article 2-1(a) of the Paris Agreement. This Article refers to and takes into account the targets set forth in the Paris Agreement which are to: (i) limit the rise in global average temperatures

¹ Articles cited hereinafter are from the Revised Act.

to well below 2 degrees compared to pre-industrial temperatures,² and (ii) continue efforts to limit the rise of global average temperatures to 1.5 degrees Celsius compared to pre-industrial temperatures.

<Basic Principles of the Revised Act>

1. Integrated promotion of environmental conservation, as well as economic and social development.
2. Realization of a de-carbonized society by 2050.
3. Close cooperation between the national government, citizens, local government, and companies.

These points are significant in that they create a degree of certainty that policies for the realization of a de-carbonized society by 2050, and the reduction of greenhouse gas emissions, will continue regardless of whether and how political administrations may change. This certainty will, in turn, provide predictability to initiatives undertaken by entities including companies, local governments, and citizens. It is hoped that this certainty and stability will help promote initiatives and innovation by all sectors of society by legally recognizing the targets set in the Paris Agreement and by specifying that the CN Declaration is a legal principle – even though it was previously no more than a declaration by the national government.³

2. Introduction of a Regional De-Carbonization Promotion Project Planning System

Pursuant to Article 22-2 of the Act, a certification system has been introduced for regional de-carbonization promotion project plans. This system applies to cities that have made action plans, in conjunction with local governments, in relation to certain types de-carbonization projects. As further discussed below, a person (or company) who intends to engage in a regional de-carbonization promotion project in a city that has created an "Action Plan (for Promotion Project)" may obtain all necessary licenses and permissions in one step by obtaining this certification. This should streamline an otherwise lengthy and complex procedure.

(1) Regional De-Carbonization Promotion Project

A "Regional De-Carbonization Promotion Project" under the Revised Act ("Promotion Project") means a project that:

- (i) carries out in an integrated manner:
 - (a) the establishment of facilities specified in relevant ministerial ordinances as facilities for regional de-carbonization via solar power, wind power, or other renewable energy that suits the natural and social conditions of the

² This is considered to refer to the time of the Industrial Revolution for the purposes of the Paris Agreement. See <https://www.mofa.go.jp/mofaj/files/000198007.pdf>.

³ See page 2 of "Direction of Future Institutional Measures for Further Promotion of Global Warming Countermeasures" by the Committee to Review the System to Promote Global Warming Countermeasures, established by the Ministry of Environment (December 2021) ("Review").

- region (such facilities are hereinafter referred to as “Promotion Facilities”);
and
(b) initiatives to de-carbonize the region⁴; or
(ii) concurrently carries out initiatives to:
(a) protect and conserve the environment of the region; and
(b) contribute to the sustainable development of the economy and society of the region (Article 2, Paragraph 6 of the Act).

<Regional De-Carbonization Promotion Projects> (Article 2, Paragraph 6 of the Act)

1.	(i) Establishment of Promotion Facilities	“Project that carries out [what is described on the left] in an integrated manner” and
	(ii) Initiatives to decarbonize the region	
2.	(i) Initiatives to protect and conserve the environment of the region	“Projects that concurrently carries out the initiatives [described on the left]”
	(ii) Initiatives to contribute to sustainable development of the economy and society of the region	

(2) Local Government Action Plans

Local Government Action Plans refer to compulsory plans that prefectures and cities must draw up, containing plans of action to reduce greenhouse gas emissions resulting from prefectural or city functions and projects in line with the global warming prevention plan created by the national government (Article 21, Paragraph 1 of the Act).

There have been two main types of action plans that local governments⁵ have created since before the Revised Act. One is as a plan developed under Article 21, Paragraph 1 of the Act, generally referred to as an “Action Plan of Local Governments (Functions and Projects)” (hereinafter referred to as “Action Plan (Functions and Projects).”

The second type is an Action Plan (Functions and Projects) that contains certain matters set forth in Article 21, Paragraph 3 of the Act,⁶ and are generally referred to as an “Action Plan of Local Governments (Regional Measures)” (hereinafter referred to as “Action Plan (Regional Measures)”⁷.

⁴ For example, reduction of greenhouse gas emissions resulting from social and economic activities, or other activities in the region.

⁵ According to the website of the Ministry of the Environment for the support of development and implementation of actions plans of local governments (http://www.env.go.jp/policy/local_keikaku/overview.html).

⁶ For example, (i) matters pertaining to the promotion of the use of renewable energy that benefits the natural and social conditions of the region, and (ii) matters pertaining to the promotion of activities by companies or residents in the region to reduce greenhouse gas emissions.

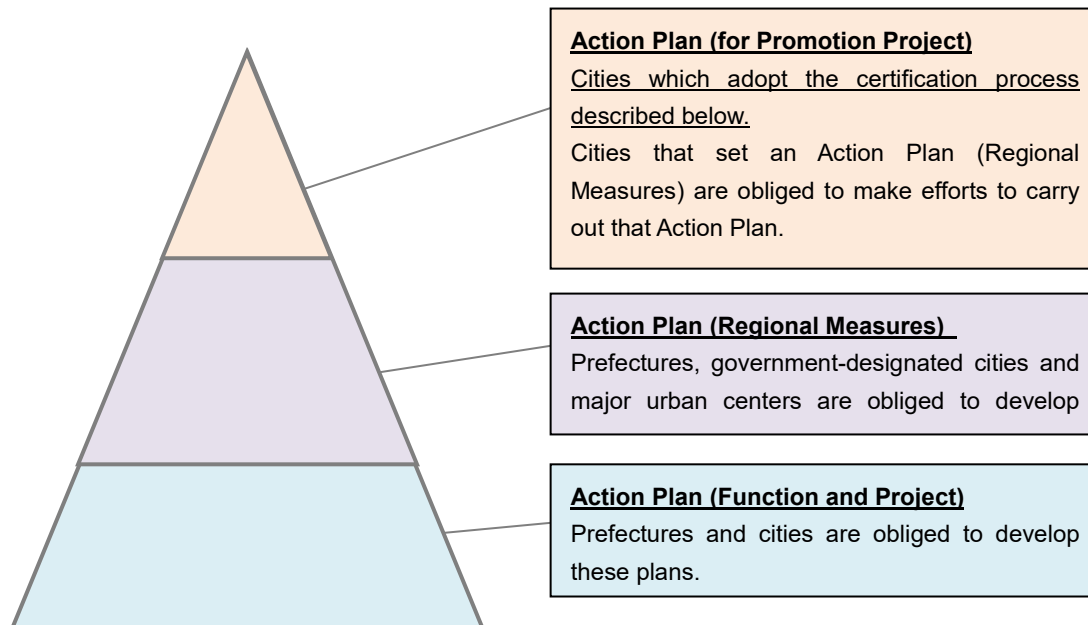
⁷ Each prefecture and city are obliged to develop an Action Plan (Functions and Projects) solely, or jointly. Furthermore, each prefecture, government-designated city, and major urban center is obliged to develop an Action Plan (Regional Measures) (Article 21, Paragraphs 1 and 3 of the Act). The status of the development of an Action Plan (Functions and

In addition to the two types of plans above, the Revised Act has imposed an obligation on cities to make an effort to publicize the matters listed below pertaining to Promotion Projects if the city develops an Action Plan (Regional Measures) that contains matters specified in Article 21, Paragraph 5 of the Act.⁸ The matters relating to the Promotion Projects below are hereinafter referred to as “Action Plans (for Promotion Project)”.

<Matters to be Contained in Action Plan (for Promotion Project)>

1. Goals of the Promotion Project.
2. Areas covered by the Promotion Project (“Promoted Area”).
3. Type and size of Promotion Facilities to be established in the Promoted Area.
4. Matters pertaining to initiatives to de-carbonize the region carried out in an integrated manner with the establishment of the Promotion Facilities.
5. Matters relating to initiatives to: (i) protect and conserve the environment of the region, and (ii) contribute to the sustainable development of the economy and society of the region that should be carried out concurrently with the establishment of the Promotion Facilities.

The following illustration summarizes the above content:



Under the Revised Act, if a prefecture or city sets an Action Plan (Regional Measures), or a city sets

Projects) and an Action Plan (Regional Measures) in each prefecture and city is shown on a website of the Ministry of Environment for the support of development and implementation of said plans.

(https://www.env.go.jp/policy/local_keikaku/sakutei.html).

⁸ Article 21, Paragraph 5 of the Act.

an Action Plan (for Promotion Project) and the prefecture or city has organized a council for the Action Plan of the local government (“Action Plan Council”), the prefecture and the city shall consult with each other regarding their respective Action Plans before they are implemented (Article 21, Paragraph 12 of the Act).

An Action Plan Council shall consist of not only the relevant prefectural and city officials, but also citizens, other interested parties in the promotion of global warming prevention in the region, and academic experts (Article 22, Paragraph 2 of the Act).

Although lack of acceptance and resistance from the local community have been regarded as issues in renewable energy businesses, establishing goals for a Promotion Project and Promoted Areas through consultation between governments and communities is expected to promote the creation of consensus within local communities and between communities and renewable energy businesses.⁹

(3) City Certification Procedures

A person (or company) who intends to undertake a Promotion Project in a city that has developed an Action Plan (for Promotion Project) may draft a plan to execute the Promotion Project (“Promotion Project Plan”) and apply to the city for certification of the Promotion Project Plan under the relevant Action Plan (for Promotion Project) (Article 22-2, Paragraph 1 of the Act).

It should be noted that if the city has established an Action Plan Council, the applicant is required to consult with the Action Plan Council in advance before applying to the city for certification of the Promotion Project Plan.

(4) Requirements for Certification

If a city confirms that a Promotion Project Plan submitted pursuant to point (3), above, meets all of the requirements below, the city shall certify the Promotion Project Plan (Article 22-2, Paragraphs 3 and 4 of the Act).

<Requirements for Certification>

- (i) The content of the Promotion Project Plan conforms to Action Plans (for Promotion Project) of the city;
- (ii) The Promotion Project described in the Promotion Project Plan is likely to be smoothly implemented with a reasonable degree of certainty;
- (iii) Other standards set forth in the relevant ministerial ordinances are complied with; and
- (iv) Consent is obtained from the relevant authorized persons listed in (5), below.

(5) Consent of Person Authorized to Grant Licenses and Permissions

If any of the licenses or permissions below are required for the purposes of the Promotion Project, a city which receives an application for certification of the Promotion Project pursuant to point (3), above, may not certify the Promotion Project unless the city obtains the consent of the person(s) authorized to

⁹ See page 7 of the Review.

grant the licenses and/or permissions (Article 22-2, Paragraph 4 of the Act).

Relevant Permission	Person Authorized to Grant License and Permission
1. Permission for excavation, or for additional excavation or power unit, in the flow path of a hot spring under the Hot Spring Law ¹⁰	Governor of prefecture
2. Permission to develop privately owned forests covered by regional forest plans ¹¹	
3. Permission to cut down protected forests ¹²	
4. Permission for cropland conversion ¹³	
5. Permission for, and notification of, development, etc. in national parks ¹⁴	Minister of the Environment
6. Permission for, and notification of, development, etc. in quasi-national parks	Governor of prefecture
7. Registration in the water ledger for use of river water for power generation ¹⁵	River administrator
8. Certification of conformity of domestic waste disposal facilities with heat recovery functions ¹⁶	Governor of prefecture
9. Notification of changes to the form or nature of land in designated areas ¹⁷	

If a person authorized to grant licenses and permissions determines that the requirements for the license and/or permission are met in the process of obtaining the consent above, that person shall consent to the city's certification of the relevant Promotion Project Plan (Article 22-2, Paragraphs 5 through 8). Once a Promotion Project Plan is certified, the Promotion Project (if conducted in accordance with the Promotion Project Plan) will be treated as if the Promotion Project had obtained all the relevant licenses and permissions (Articles 22-5, through 22-10).

While business operators were previously generally required to obtain each necessary license and/or permission individually for their renewable energy operations, the Revised Act allows them to complete that process in a comprehensive and one-stop manner via the certification procedures above. This

¹⁰ Article 3, Paragraph 1 and Article 11, Paragraph 1 of the Hot Spring Law.

¹¹ Article 10-2, Paragraph 1 of the Forest Act.

¹² Article 34, Paragraphs 1 and 2 of the Forest Act.

¹³ Article 4, Paragraph 1 and Article 5, Paragraph 1 of the Agricultural Land Act.

¹⁴ Article 20, Paragraph 3 and Article 33, Paragraph 1 of the Natural Parks Act (the same applies to (6)).

¹⁵ Article 23-2 of the River Act.

¹⁶ Article 9-2-4, Paragraph 1 and Article 15-3-3, Paragraph 1 of the Waste Disposal and Public Cleansing Act.

¹⁷ Article 15-19, Paragraph 1 of the Waste Disposal and Public Cleansing Act.

should lead to smoother procedures and less waiting time for operators.¹⁸

(6) Dispensation of Requirement to Prepare and Submit Environmental Impact Assessment Documents

It is also notable that establishment of Promotion Facilities in accordance with a Promotion Project Plan that is certified by a city government may allow an applicant to dispense with the requirement to prepare and submit preliminary environmental impact assessment documents for class-1 projects under the Environmental Impact Assessment Act. Such documents are required by statute for class-1 projects¹⁹ (Article 22-11 of the Act).

Specifically, the business operator will not need to prepare or submit a preliminary environmental impact assessment document, as described above, if the Promoted Area in the Action Plans (for Promotion Project) in the city is designated in accordance with standards set forth in the Action Plans (Regional Measures), set by the relevant prefectural government.

(7) Differences with the Renewable Energy Act for Agriculture, Forestry, and Fisheries

The creation of a similar system that allows for the one-stop acquisition of licenses and permissions necessary for renewable energy business was also provided for in the Act on the Promoting of Generation of Electricity from Renewable Energy Sources Harmonized with the Sound Development of Agriculture, Forestry, and Fisheries (“Renewable Energy Act for Agriculture, Forestry and Fisheries”).

The frameworks for deemed acquisition of certain licenses and permissions based on certification by a city of plans for a renewable energy business are essentially similar both for the Renewable Energy Act for Agriculture, Forestry and Fisheries,²⁰ and for the certification system for regional decarbonization promotion projects under the Revised Act.

Major differences between the certification systems above are that: (i) in order to make use of the system created under the Renewable Energy Act for Agriculture, Forestry and Fisheries,²¹ it is necessary for the project to include initiatives that contribute to the sound development of agriculture, forestry, and fisheries; (ii) there are certain differences in licenses and permissions that can be treated as obtained under the two systems;²² and (iii) the requirement for preparation and submission of

¹⁸ See page 7 of the Review.

¹⁹ For renewable energy power generation businesses, for instance, hydroelectric power plants with output of 30,000 kw or higher, geothermal power plants with output of 10,000 kw or higher, solar cell power plants with output of 40,000 kw or higher, and wind power plants with output of 10,000 kw or higher are classified as the class-1 projects under the Environmental Impact Assessment Act (Article 2, Paragraph 2 of the Environmental Impact Assessment Act and Schedule 1 of Article 1 of the Enforcement Order of the Environmental Impact Assessment Act). Since municipal ordinances may require procedures involving the preparation and submission of documents similar to a preliminary environmental impact assessment, separate consideration is necessary if the relevant region has such municipal ordinances in effect.

²⁰ Article 7 of the Rural Area Renewable Act and thereafter.

²¹ Article 5, Paragraph 2, Item 5 and Article 7, Paragraph 3, Item 1 of the Rural Area Renewable Energy Act.

²² Particular licenses and permissions that are deemed to have been obtained under the certification system for facility and system plans under the Rural Area Renewable Energy Act include a notification of changes to form and nature of

preliminary environmental impact assessment document is not dispensed with under the Renewable Energy Act for Agriculture, Forestry, and Fisheries system.

3. Digitalizing and Disclosing Information on Greenhouse Gas Emissions

(1) Framework to Calculate, Report, and Publish Greenhouse Gas Emissions

Business operators such as those: (i) who emit 3,000 tons or more of greenhouse gases in a year from their business activities; and (ii) who use 1,500 kiloliters or more of crude oil-equivalent energy in total in a year²³ are required to calculate greenhouse gas emissions by themselves and report those calculations for each business place of a certain size (Article 26, Paragraph 1 of the Act). Such greenhouse gas emissions will be aggregated and published for each business operator, industry, and prefecture.²⁴

The purpose of this system is to develop a foundation for business operators to autonomously calculate greenhouse gas emission themselves, and thereby to encourage said operators to understand the climate impact of their operations. It is believed that industries and citizens in general can be encouraged to take steps to mitigate their own greenhouse emissions by publishing and disclosing this information.²⁵

However, it has been pointed out that the reports are mainly submitted in a written form, which has required the national government to spend time to aggregate the information. As a result, it has thus far taken two years from the time of the report to the publication of emissions data.

Furthermore, disclosed information on greenhouse gas emissions was categorized only by business operators, industries, and prefectures. Therefore, it was necessary to go through disclosure request procedures to obtain information for specific business places. Said business-place data is currently recorded in computerized records of the Minister of the Environment and Minister of Economy, Trade and Industry (“Electronically Recorded Information”).²⁶

(2) Reports Utilizing Electronic Systems and Publication of Information on Business Places

In response to above circumstances, the Revised Act provides that future reports will be submitted electronically so that investors, local governments, consumers, and persons related to business

grassland under Article 9 of the Dairy and Beef Cattle Production Promotion Act, permission to construct and improve structures under Article 39, Paragraph 1 of the Act on the Development of Fishing Ports and Grounds, and permission for occupancy of a coastal protection zone and quarrying under Article 7, Paragraph 1 and Article 8, Paragraph 1 of the Coast Act. Particular licenses and permissions that are deemed to have been obtained under the certification system for regional de-carbonization promotion projects under the Revised Act are licenses and permissions 7 through 9, listed in 2(5) of this text.

²³ Article 5 of the Enforcement Order of the Act on the Promotion of Global Warming Countermeasures.

²⁴ Article 29, Paragraphs 3 and 4 of the pre-revision Act on the Promotion of Global Warming Countermeasures, and Article 8 of the Order on Reporting, etc. of Carbon Dioxide Equivalent Greenhouse Gas Emissions, Etc.

²⁵ Page 9 of the Review.

²⁶ Article 30 of the pre-revised Act on the Promotion of Global Warming Countermeasures.

operators²⁷ will be able to better use the reported information for their efforts to reduce the greenhouse gas emissions. This is expected to simplify aggregation work and shorten the delay from report to publication.

In addition, Electronically Recorded Information will all be published under the Revised Act, allowing users to access all information, including that relating to individual business places, without going through disclosure request procedures (Article 29 of the Act).²⁸

While disclosure request procedures have been actively utilized in the past,²⁹ these revisions will allow investors (and other interested parties) to obtain information on greenhouse gas emissions of the relevant business operator in a timelier manner, categorized by business place and at lower cost. It is expected that the efforts of business operators in relation to reduction of greenhouse gas emissions will gain more importance during evaluation of ESG investment and corporate social responsibility (CSR) in the future.

4. Effective Date

The provisions of the Revised Act relating to the introduction of Promotion Project Plans and digitalization and disclosure of information on greenhouse gas emissions are scheduled to come into effect on a date determined in a cabinet ordinance (but no later than one year from June 2, 2021). The above is also conditional on certain provisions, such as Paragraph 2 of Article 2 (related to the basic principles of the Revised Act) come into effect on June 2, 2021 which is the promulgation date.³⁰

5. Points of Attention and Future Outlook

While the Revised Act was enacted on May 26, 2021 and promulgated on June 2, 2021, there are some details that remain to be determined by relevant ministerial ordinances. These details, such as the definition of a Promotion Project, or standards to be met for certification of a Promotion Project, may still be changed. Thus, attention should be paid to discussions on these topics in relevant ministerial ordinances. In addition, attention should also be paid to efforts and practical changes made by individual business operators in response to the improvements to the system of calculating, reporting, and publication of greenhouse gas emissions.

Efforts towards the reduction of greenhouse gas emissions and the realization of a de-carbonized

²⁷ Article 4, Paragraph 1 of the Order on Reporting, etc. of Carbon Dioxide Equivalent Greenhouse Gas Emissions, Etc. will be amended before implementation.

²⁸ The Review states on page 12: "it is necessary to be aware when using information classified by business place that simple comparison of data between business places may not be useful since activities in a certain region alone may be incomplete because of company-wide adjustments, and also because (for example) large companies, especially those which have business places in more than one region, attempt to optimize production and CO2 reduction across the company.

²⁹ Page 600 of "Environmental Law" by Yoshinobu Kitamura (Koubundou, 5th edition, 2000).

³⁰ Article 1 of Supplementary Provisions of the bill for partial revisions to the Act on the Promotion of Global Warming Countermeasures enacted on May 26, 2021.

society are a current global trend. In addition, cooperation between local communities, government, and business operators for the provision of stable energy supply is also considered necessary for the sustainable development of society and the economy.

It appears that it is necessary from a practical perspective to continue to pay attention, not only to this Revised Act, but also to trends and discussions on a future legal system surrounding renewable energy and environment protection based on comprehensive relationships between each of the factors mentioned above.

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