

## TROUBLE IN THE LAND OF THE RISING SUN

It has not been easy for Japan and its people. The entire country with its about 127 million inhabitants has been agitated since three reactors of the Fukushima Dai-ichi nuclear power plant melted down and contaminated large parts of the country and the ocean with radioactive material in March 2011, thus rendering entire regions permanently uninhabitable. The energy world is also facing enormous challenges like phasing out nuclear power and promoting the further development of renewable energy. However, old boy networks and an energy industry that has not been unbundled yet jeopardise these objectives, which also puts at risk investments by German companies in particular in the photovoltaic sector. Unless policymakers give in, arbitration proceedings on the basis of the Energy Charter Treaty will be inevitable in this context.



(c) BBH

After the Fukushima catastrophe, all nuclear reactors in Japan were shut down. One of the wealthiest and most influential IT businessmen in Japan, [Masayoshi Son](#), provided millions to establish a foundation for the promotion of renewable energies in Japan ([Japan Renewable Energies Federation](#), JREF). This foundation immediately helped introduce feed-in tariffs for renewable energies in Japan (which were laid down in the Renewable Energy Act, RENA). The people were deeply affected by the nuclear disaster and established an unusually strong protest movement against nuclear power in Japan.

Yet there are major obstacles to overcome. TEPCO, the operator of the Fukushima power plant and the political leaders of the country, in particular the current government, are facing much criticism in the world after Fukushima, not only in Japan but also at international level. Unlike in Chernobyl, the handling of the exclusion zones seems to be everything but strict. On the one hand there are the regular employees in charge of the clean-up, who are only allowed to be working up to the maximum permissible exposure level. On the other hand, according to press reports, unofficial workers are brought to Fukushima by Yakuza, the Japanese mafia. These are homeless and unskilled workers who do not undergo medical examinations. They are, according to reports, often not even equipped with dosimeters or protective material and disappear without a trace once their work is done. As early as in 2013, the German newspaper [Handelsblatt](#) also warned that it was totally unclear where the contaminated material was disposed of in the course of the clean-up. "In many cases ... (radioactive waste) is perhaps illegally discharged. This is because Japan's underworld, the Yakuza gangs, have infiltrated the decontamination business. In January 2013, the police arrested a member of Sumiyoshi Kai, the second

largest Yakuza gang, who used to recruit illegal workers for decontamination projects in Date". The illegal disposal of waste as well as recruiting workers for the construction industry and for dangerous jobs appear to be the gangs' core business activities.

There are, however, also good results to be reported. Since more than 600 days, there has not been any blackout, even though none of the over 50 nuclear power plants were connected to the grid. Nevertheless, the Japanese government and electricity distributors seem to be backpadding already: According to the will of nuclear power plant operators and the government as well as the competent ministry METI, ten power plants are to be reactivated unless a court decides otherwise.

The fact that energy supply companies hardly show willingness to unbundle their activities and that investments, in particular in photovoltaic (PV) and wind energy, are treated discriminatory does not give rise to much optimism. Investments in PV installations are especially uncertain as METI allows the grid operator to decouple these installations without any sense and almost no justification. Furthermore, the grid operators are not obliged to pay any compensation for doing so. The current state of law already provides for the possibility of scaling down large PV projects for up to 30 days per year (which corresponds to approx. 8.2% of the annual production time) to 360 hours per year. Most of the vertically-integrated electricity suppliers, which are grid owners at the same time, may exceed this limit. Going by a peak-power calculation of approx. 1200 peak hours per year in Japan, the revised regulation corresponds to an annual restriction of at least 30%. Based on 360 peak hours which may be subject to restrictions, this results in the above-stated restraint for which no compensation has to be paid.

In the context of numerous talks in Tokyo at the beginning of March 2015, we have sternly warned the ministry METI as well as other parties involved and informed the German embassy of this issue. Should the projected decoupling of PV installations to up to 360 hours per year and installation be realised, the question arises whether this constitutes an abuse of a dominant position on the side of the vertically integrated companies. Moreover, foreign investors in PV – and wind energy alike – in Japan would be virtually prompted to lodge a case for compensation pursuant to [Art. 10 of the Energy Charter Treaty](#) on grounds of infringements of investment protection with one of the arbitration tribunals. In the conversations we had, reference was made to the restricting regulation under [sec. 15 EEG](#), to the clear grid stabilisation requirements and the obligation to pay the installation operator a compensation for damage originating from the restriction of installations. This was met with great surprise but not taken seriously.

Chancellor Merkel hopefully touched upon this deficiency during her latest state visit to Japan. Otherwise, arbitration tribunals would be the last resort for German and other foreign investors, and Japan would have lost its credibility in terms of an energy system in transition for a long time.

Your contacts: [Dr Dörte Fouquet](#)/[Dr Martin Altrock](#)