

Developing wind power projects in Poland



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Introduction

The purpose of this brochure is to give an overview of selected aspects related to the development of wind power projects in Poland. Due to its general nature, it is highly advisable to obtain more specific legal advice before commencing any renewable energy project in Poland. Should you, as a potential investor, have any questions, please do not hesitate to contact our legal experts at Clifford Chance's Warsaw office.

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Wind energy market in Poland

According to the Global Wind Energy Council, Poland is one of the most attractive wind energy markets in Europe due to its excellent wind speed conditions in large areas of the country (between 5.5 and 7.0 m/s at a height of 50 metres).

In Poland, there are currently more than 20 wind farms (with approximately 470 turbines) in operation. Most of them are located either in north or central Poland, although more and more investors are willing to consider other locations. The most active players in the Polish wind farm sector are EDP, Iberdrola, RWE, and other big energy entities.

As far as the total wind farm installed capacity in Poland is concerned, there has been a considerable growth over the last years. The Energy Regulatory Office ("ERO") has announced that at the beginning of March 2011 the total wind farm installed capacity exceeded 1350 MW. By way of comparison, in 2001 the installed capacity was approximately 18 MW, in 2005 - 84 MW and at the end of 2009 approximately 725 MW.

Depending on the source, it is estimated that the cumulative capacity will increase to somewhere between 6000 and 13000 MW in 2020. According to the most optimistic forecast provided by the Polish Wind Energy Association, the expected installed capacity in 2020 will comprise 1.5 GW and 13 GW in offshore and onshore wind farms, respectively. Although way behind other European countries, Poland has development potential that should not be ignored.

Demand for renewable energy projects in the European context

One of the main stimuli for new investments in the wind energy market originate in the mandatory national targets for the overall share of renewable energy sources ("**RES**") in the gross final consumption of energy imposed by EU legislation. Pursuant to Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources ("**Directive 2009/28**"), which amended and subsequently repealed Directives 2001/77/EC and 2003/30/EC, Poland should reach a 15% share of electric energy from renewable energy sources in the total gross consumption of electric energy by 2020. The official forecast published by the Minister of Economy in January 2010 shows that the indicative objectives for 2011 will be exceeded by approximately 0.84%.

The direct support of the EU for renewable energy projects, including wind energy investments, should not be underestimated. For instance, as a result of the co-operation between the European Wind Industry, the Member States and the European Commission, the European Wind Initiative ("**EWI**") was launched in June 2010. Its main aim is to enhance wind power research and development over the next decade to

ensure that Europe's competitiveness in these respects remains unparalleled.

Development prospects

The development of RES, embracing wind energy, is one of the top priorities listed in the "Energy policy of Poland up to 2030" ("**Energy Policy**") adopted by the Council of Ministers in November 2009. The Energy Policy covers a wide spectrum of issues, including energy security, environmental protection and energy efficiency. The following measures, aimed at promoting RES in general, affect the development of the wind energy market in Poland: (i) maintaining green certificates as the support mechanism for power producers, (ii) maintaining the rule of green power being exempted from excise tax, and (iii) maintaining direct financial support stemming from both the European and environmental protection funds (which are financed from compensation payments and penalties).

It is worth pointing out that the Energy Policy also mentions the need to create suitable conditions for the development of offshore wind farms. It is roughly estimated that the very first farms of this kind in Poland could be constructed in 2015. The construction of such farms is in line with the EU strategy for the Baltic Sea region being implemented under the South Baltic Cross-border Co-operation Programme in 2007-2013.

In light of the current conditions and development plans concerning RES, there is little doubt that Poland is a very attractive place for green energy related investments. Given the country's climate and landscape, wind offers the largest potential for the generation of renewable energy.

As there exist numerous regulations essential to the development and operation of renewable energy investments in Poland, it is highly advisable for investors to familiarize themselves not only with the legal framework applicable to wind power projects, but also with other associated aspects, namely environmental and real estate issues as well as financing.

The legal framework for wind power projects

Overview

The Energy Law of 10 April 1997 ("**Energy Law**") contains a number of rules aimed at supporting the development and operation of RES. The rules pertain to aspects such as connection to the power grid, the dispatch, transmission and sale of electric energy generated by power plants using RES, as well as the issuance and trade in certificates of origin for renewable energy (the "**Certificates**").

In order to ensure compliance with Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 on measures concerning safeguarding security of electricity supply and infrastructure investment ("**Directive 2005/89**"), and two recent essential amendments to Energy Law: the Act amending the Energy Law and Certain Other Acts (the "**Amendment Act 2010**"), in force since 11 March 2010 and recent Act of 15 July 2011 on Amendments to Energy Law and Other Laws (the "**Amendment Act 2011**"). As the legislative authorities intended to curb speculative action in respect of reserving interconnection power for wind farms in the energy system, some of the amended provisions concern the process of interconnecting new sources to the grid.

If you require a detailed account of the changes brought by the Amendment Act 2010, a separate brochure prepared by legal experts at Clifford Chance's Warsaw office can be provided at your request.

Rules of connection to the grid

Interconnection fee

In principle, entities wishing to be connected have to pay a connection fee estimated on the basis of the actual costs of connection. As an exception to that rule, until 31 December 2010 only half of the fee for connection to the grid in the case of RES with a capacity exceeding 5 MW had to be paid. Since 1 January 2011, this favourable rule no longer exists.

It remains uncertain under Polish law which party should bear the costs of so-called "deep" connection to the grid. Transmission grid and distribution grid operators are entitled to refuse connection when there are no (i) economic or (ii) technical conditions making such connection viable, therefore some investors decide to invest in the reinforcement of an operator's grid in order to avoid such refusal. Unfortunately, the Amendment Act 2010 fails to clarify whether the wind farm investors can be made to participate in the costs of grid development. According to the European Commission, however, wind farm investors should be exempt from contributing to the costs of modernizing and developing grids.

Advance towards the interconnection fee

One of the most significant changes introduced by the Amendment Act 2010 is the requirement to pay an advance towards the interconnection fee. The advance should be paid within fourteen days of the date the application for the interconnection conditions is filed, otherwise the application will not be examined at all. Since the Energy Law does not require a grid enterprise to demand payment of an advance in the appropriate amount from an entity that wishes to be interconnected, such advance should be paid on the latter's initiative.

An entity applying for the conditions of interconnection of an energy source to a power grid with a nominal voltage greater than 1 kV is obliged to pay an advance of PLN 30 per kW of interconnection capacity. The amount of the advance may not exceed the expected interconnection fee or be more than PLN 3,000,000. The requirement to pay an advance towards the interconnection fee may prove quite a burden for some investors. Although the Amendment Act 2010 specifies cases in which a grid enterprise is obliged to refund an advance, it does not envisage the possibility of refunding it if, for instance, the entity to be interconnected ultimately withdraws (e.g. for economic reasons) from the wind farm project. Secondly, the Amendment Act 2010 covers cash payments as the only acceptable form of an advance. Consequently, depending on the size of the project, a considerable sum of cash may be required for the advance. This may prove an inconvenience for some investors.

Requirement to provide documents on zoning

The Amendment Act 2010 introduced the obligation to attach an excerpt from the local master plan or, alternatively, a planning permit for the real property when applying for interconnection conditions. This requirement may prolong the procedure of interconnecting new sources of energy to the grid.

Grid impact assessment

The Amendment Act 2010 has shifted the burden of preparing a grid impact assessment of the installations to be interconnected from the entity applying for interconnection to the grid enterprise. Such assessment is required in the case of energy sources exceeding 2 MW or if the end recipient's equipment with a total installed capacity exceeding 5 MW is to be interconnected to a grid with a nominal voltage greater than 1 kV.

Rules facilitating the sale of energy

Polish law does not recognize the mechanism of a feed-in tariff. In light of the current provisions of the Energy Law, the income of the wind power producer originates from two sources, namely the sale of electric energy and the sale of the proprietary rights under the Certificates.

Sale of electric energy

The Energy Law imposes on a seller by operation of law the obligation to purchase all electric energy generated from RES interconnected to the grid located within that seller's areas of operation. Sellers by operation of law are entities licensed to trade in electric energy and provide so-called comprehensive services (i.e. both sales and distribution) to household customers who do not choose their suppliers in accordance with the Third Party Access rule.

The mandatory purchase of electric energy produced from renewable sources is carried out at a certain predetermined price. The selling price is referred to in the Energy Law as the average price of electric energy in the preceding year on the competitive market. This reference price is calculated and published by the President of the ERO on an annual basis. The average price on the competitive market in 2010 was 195,32 PLN/MWh. Unfortunately, Energy Law does not provide a transparent mechanism on the basis of which such price should be determined.

Sale of Certificates

In order to promote renewable energy generation, the Energy Law implemented a mechanism for the mandatory acquisition of Certificates. The relevant provisions state that, among others, each energy producer and energy trading company that supplies electric energy to end users is obliged to acquire and subsequently submit an application to the President of the ERO for the so-called "cancellation" of a number of Certificates corresponding to a certain quantity of renewable energy calculated on the basis of sales to end users. Those green power producers who sell energy to end users, but do not acquire the appropriate number of Certificates will be fined by the President of the ERO.

The Certificates must be purchased in a quantity determined pursuant to the Ordinance of the Minister of Economy of 14 August 2008, which specifies the minimum percentage of the total annual sales of energy from RES to end users separately for each year (determined on the basis of all the Certificates submitted annually for cancellation). The percentages are as follows: 7.0% in 2008, 8.7% in 2009, 10.4% in 2010, 10.4% in 2011, 10.4% in 2012, 10.9% in 2013, 11.4% in 2014, 11.9% in 2015, 12.4% in 2016 and 12.9% in 2017.

The targets for 2008-2012 were set at the same level as the targets outlined in the previous Ordinance of the Minister of Economy, which expired in February 2008. As the target for 2010 is very ambitious and in practice may be enforced with some delay, it will remain unchanged for the next two years (until 2012, inclusive). A constant increase of 0.5 % per annum is expected in the following five years to reach a level of 12.9 % in 2017.

The national targets will still be insufficient to meet the indicative EU targets adopted in Directive 2009/28. Poland, along with other EU Member States, was bound to implement regulations that would facilitate the accomplishment of the Directive's objectives by 5 December 2010 – however, such regulations have not been yet¹ enacted.

It can be expected that new instruments regulating the renewable energy sector will be adopted within the Polish legal

framework in the very near future. Under the new project² of the Ordinance, the obligation to purchase and redeem Certificates has been extended until 2020, with minimum percentage of the total annual sales of energy from RES to end users of 13.4 % in 2008, 13.9 % in 2009 and 14.4 % in 2020. It should also be stressed that, in comparison to current regulations, from 2015 the draft increases the volume of Certificates to be purchased and redeemed by the obliged entities.

Issuance of and trade in Certificates

Certificates confirm that a renewable energy producer produced a certain quantity of renewable energy over a certain period of time. The Certificates are issued by the President of the ERO on the application of an energy producer and on the basis of data provided to the President by transmission or distribution system operators of grids to which the given renewable energy producer is interconnected.

A producer is allowed to sell the proprietary rights under the Certificates after registering in the register kept by a commodity exchange. The Certificates' market price is affected by the mechanism of a mandatory "compensation payment". An entity is obliged to make a compensation payment if it fails to purchase or make a cancellation application to the President of the ERO in respect of the required number of Certificates for the given year. The compensation payment is currently set at PLN at 274,92 per MWh (with PLN 267,95 per MWh in 2010 and PLN 258.89 per MWh in 2009)³.

Dispatch of wind energy producers

The Energy Law contains specific rules relating to the distribution and transmission of electric energy originating from RES. Under the Energy Law, the grid operator must give transmission/distribution priority to green power.

Special balancing rules

The Ordinance of the Minister of Economy of 4 May 2007 outlines the regulations governing the functioning of electricity systems. It introduced two basic rules which should be followed by the Polish Transmission System Operator ("TSO") whilst creating balancing rules with respect to wind farms. Firstly, the TSO enables the creation of schedule units either for sources or groups of sources of electric energy that use wind power and handles the settlement of non-balanced electric energy supplied and collected from the system for all those units. Secondly, the central trade balancing mechanism within the scope of balancing sources of electric energy that use wind power allows an adjustment to the planned quantity of electric energy supplied to the grid, no later than two hours before the hourly period of its production.

¹ As of 25 July 2011.

² The project of new Ordinance shall be soon notified to European Commission, officially published in Polish Journal of Laws and shall enter into force.

³ The project of new Ordinance shall be soon notified to European Commission, officially published in Polish Journal of Laws and shall enter into force.

Under the new balancing rules applicable from 1 January 2009, the TSO balances energy production sources producing electrical energy from wind turbines differently when compared with other producers, especially with regard to the scheduling of the operations of these power plants. All other Balancing Market participants are required to provide detailed production schedules to the relevant system operator at least 24 hours before the actual delivery of electric energy. The Instructions for the Transmission Grid Operation and Maintenance allow wind energy producers to provide relevant data (the planned production of electricity) at hour h-1 and these amounts are taken into account in Balancing Market settlements.

EU state aid rules

Comprehensive information on EU state aid rules can be found in the Commission Staff Working Document "*The support of electricity from renewable energy sources*" of 23 January 2008 or can be provided by our legal experts at your request.

Act on Renewable Energy Sources

Polish Ministry of Economy is currently working on Act on Renewable Energy Sources (the "**New RES Law**"). The project has not been yet presented. The representatives of the Ministry of Economy confirm that, under the New RES Law, the green certificates system is to be retained, however with significant modifications which aim to adjust the amount of support to the profitability of particular type of RES (e.g. photovoltaics is to be treated more favourably than wind energy). Firstly, new correcting factors dependent on, e.g. the profitability of a particular renewable energy technology, are to be introduced. More profitable RES are to obtain only part of a certificate, e.g. 0.7 of a certificate for each generated MWh, while less profitable RES are to be authorised to obtain more than one certificate for each MWh. Secondly, the value of certificates will decrease during the exploitation period of a given facility. (Certificates will not remain at the same value permanently.) Moreover, a differentiation between new and already operating RES is to be introduced. It should also be stressed, that according to the press releases the new system will also affect the facilities which are already in operation.

Different aspects of developing wind power projects in Poland

Environmental issues

Environmental impact assessment ("**EIA**") procedure plays a very important role in wind project development in Poland. This is because almost 30% of Polish land is covered by various forms of nature protection. The Natura 2000 network is currently a significant source of problems for developers.

Environmental Impact Assessment

Overview

Poland's EIA regime is based on Directive 85/337/EEC on the

assessment of the effects of certain public and private projects on the environment (as amended) with due regard to the Habitats and Birds Directives.

The EIA regulations distinguish between List I projects for which an EIA is mandatory (e.g. oil refineries and power plants), List II projects where a screening process is applied to determine whether an EIA is required (e.g. smaller conventional power plants) and projects that are likely to significantly affect Natura 2000 sites, yet are not covered by either of the Lists.

In principle, all wind farm projects are subject to a mandatory EIA. Wind farms with a capacity exceeding 100 MW as well as offshore wind farms are set out in List I. Wind farms exceeding a height of 30 m are List II projects, for which an EIA may be required depending on the decision of the appropriate environmental authorities. Wind farms other than the List I and List II projects, which are likely to significantly affect Natura 2000 areas are also subject to a mandatory EIA.

In addition, certain grid infrastructure developments are classified as undertakings likely to significantly affect the environment. Electric energy power stations as well as overhead energy lines of a voltage not less than 220 kV and of a length not shorter than 15 km are set out in List I. Electric energy power stations and overhead energy lines of a voltage not lower than 110 kV are stated in List II.

Permit requirements

An EIA must be conducted and a resulting EIA permit issued before a planned project can be implemented. The end result of the EIA process is an EIA permit ("decision on environmental conditions"), which is valid for four years. The key element of the EIA procedure is a report on the environmental impact of the planned project (the "**EIA report**") (the EIA report is mandatory for all List I projects, while for List II the projects EIA report may be required depending on the decision of the appropriate environmental authorities). Before the EIA permit is issued it must be agreed on by certain environmental and sanitation authorities.

Where an EIA is required, it is undertaken as a separate regulatory procedure before applying for a zoning decision and a building permit. The EIA permit must be enclosed with any application for a project permit.

Pursuant to the newest amendment to the Polish EIA regulations, which entered into force in July 2010, transfer of an EIA permit to a third party is permitted subject to obtaining a separate administrative decision. This rule will facilitate a change of entities responsible for the project during the construction process, if needed.

The public and NGOs have the right to participate in the EIA process. NGOs have a unique legal standing and the right of appeal to administrative courts without requiring the consent of any other party to the EIA process.

Environmental NGOs and pressure groups are active in Poland. NGOs have played a very important role in a number of significant projects, such as Via Baltica (a proposed motorway upgrade between Helsinki and Warsaw). Greenpeace, WWF, Zieloni 2004 and CEE Bankwatch co-operate in their efforts with local pressure and interest groups and have jointly established a national network of environmental movements that has proved to be very effective.

The authority that issues the EIA permit depends on the type of project, but for most projects, it is the local municipal authority (the mayor). The regional director of environmental protection is usually the competent authority for EIAs concerning roads, railways, pipelines, gas lines and artificial water reservoirs. The regional director of environmental protection is also competent for projects implemented in maritime areas.

Non-compliance

A planned project cannot be implemented without a valid EIA permit - if one is required. If the terms of a permit are breached, a project may not be allowed to begin operation.

Additional EIA procedure

According to the Act on access to environmental information, public participation in environmental protection and environmental impact assessment (which entered into force on 15 November 2008), some of the List I and List II projects for which an EIA report is required, as well as projects likely to substantially affect Natura 2000 areas, may be subject to additional EIA proceedings at the building permit stage. The Act also strengthened the role of NGOs in the EIA process.

Natura 2000 issues

Polish legislation applicable to Natura 2000 areas is based on the so-called Habitats Directive adopted in 1992, as well as the so-called Birds Directive adopted in 1979. The Birds Directive required the establishment of Special Protection Areas for birds, whilst the Habitats Directive required that Special Areas of Conservation be designated for other species, and for habitats.

During the process of setting up Poland's network of Natura 2000 areas, parallel to the official list of Natura 2000 areas, Polish NGOs submitted to the European Commission a so-called Shadow List of areas, which is much longer than the official one. The European Commission recognized the Shadow List and asked the Polish Government to designate the areas "candidate status" until the final decision of the Commission is made.

Although following the adoption of a list of 453 new Nature 2000 areas by the Council of Ministers in October 2009, the Poland's network of Natura 2000 areas has been announced as finally completed, recently NGOs have created a list of new areas which in their opinion should be approved as Natura 2000 areas (so-called Shadow List 2010).

The network of Nature 2000 areas in its current form covers approximately 21% of the territory of Poland.

Real estate issues

Securing title to land

Securing legal title to land is crucial for the construction of any RES, including wind farms. A real property may be transferred on the following grounds: (i) ownership title, (ii) lease agreement, (iii) perpetual usufruct, (iv) transmission easement, and (v) real estate easement. The most common ones are discussed below.

Ownership title

Ownership title is the strongest title that can be held under Polish law. Generally, an EU investor is free to acquire ownership title to plots of land where wind turbines are to be located (except for the agricultural land). A non-EU investor must first obtain a permit from the Minister of Internal Affairs and Administration. Ownership title enables an investor to satisfy a bank's requirements as to the security interest (i.e. mortgage) to be established over its land. However, this is a rather expensive solution and may be quite burdensome in the case of agricultural land because the Agricultural Property Agency has the right of first refusal.

Lease (tenancy) agreement

An investor may decide to enter into a tenancy agreement for a fixed term (up to 30 years). The landlord is usually paid fixed annual rent per turbine or a sum based on the percentage of the investor's income from the sale of green energy. Although a tenancy agreement can be drafted in a bankable way, it does not provide a bank with any security interest related protection. A bank may either rely on its recourse to the assets of the investor's shareholders or seek the landowner's consent to the establishment of a mortgage on the land it is leasing, which is rather unlikely.

It must be emphasized that there are certain, potentially problematic, legal issues surrounding the permitted term of a tenancy agreement. It is crucial to minimize this risk by adopting an appropriate legal structure at the earliest stage possible. Alternatively, depending on particular circumstances, a dual SPV structure may be a suitable option: one company holds the ownership title to the land and the other company leases the land from the first one and becomes a party to the project documents.

Transmission easements

Since August 2008, title to land under a grid infrastructure development may be secured on the basis of transmission easements. In such a case, real property may be encumbered in favour of a business entity owning or intending to construct facilities for the supply and/or removal of liquid, steam, gas or electric energy.

Generally, easements are established by way of an agreement between the owners or perpetual usufructuaries of the land, either for consideration or gratuitously. Under a transmission easement, an investor acquires the right to use an encumbered property, within a specified scope, in accordance with the designation of the facilities for the supply and/or removal of liquid, steam, gas or electric energy. If the owner of the real property and the business entity are unable to reach an agreement regarding the establishment of a transmission easement, either one may apply to a court for a transmission easement to be granted in return for appropriate remuneration.

In certain cases, the land under a grid infrastructure may be secured in administrative proceedings by limiting the ownership right of the landowner.

Zoning and building law requirements

Not only wind conditions and environmental issues, but also the characteristics of the local master plan will be taken into account when a suitable location for a wind farm project is being determined.

The local master plan rarely expressly allows the development of a wind farm project, especially in the case of the land designated in the plan solely for agricultural purposes, which is not uncommon. Consequently, in order to pursue a project, it is usually necessary to apply to the local authorities for an amendment to the local master plan. Investors should be aware that this can be a time-consuming process that may last even a couple of years.

Since local master plans usually cover urbanised areas only, there might not be a local master plan for the area where the wind farm project is to be located. If no local master plan in force, the development of the project will hinge on obtaining a zoning decision issued in the form of an administrative decision. Two types of zoning decisions can be distinguished: a "regular" zoning decision, and a "permit for the location of a public purpose development". The latter may only be issued in the case of developments which have the status of public purpose investments. However, the most recent administrative court rulings indicate that the development of a wind power project should not be regarded as a public purpose investment under Polish law.

An investor may apply for a building permit once an environmental permit has been granted and the local master plan stipulates the investment. At this stage, the title to the land in question should already be secured and the project design documents in place. The building permit, which is transferable, can provide for the phasing of the development. It must be borne in mind that a building permit expires if construction works have not been commenced within three years of the final decision.

Construction process

Once the final and binding building permit has been obtained, the construction process may commence. In practice, at least two separate building permits could be required - one for wind

turbines (including access roads) and a separate one for the interconnection of the wind farm. A building permit usually imposes on an investor a set of additional obligations, such as the appointment of a building works inspector. The investor will also be required to obtain an occupancy following the completion of the construction works, which can prove a time-consuming process. In practice, the Energy Law envisages the possibility of obtaining a licence to produce electric energy commercially only once the occupancy permit has been issued and become final.

Most of the major construction works regarding wind power developments in Poland are carried out on the basis of EPC/turnkey contracts. In this light, the FIDIC's Silver Book is particularly popular for project finance type investments. Any standard agreement should only be used as a starting point for negotiations. Such negotiations can be lengthy and may require a lot of project-specific attention.

Financing of wind projects

What differentiates a renewable energy project, including the construction of a wind farm, from a traditional non-renewable energy investment is that in the case of the former there is a relatively higher initial cost per unit of energy produced. However, the operating costs of a renewable energy project at later stages is relatively lower.

A combination of various financing methods is usually required for renewable energy projects. Under Polish law, the forms commonly used include:

- equity of the sponsors (often in the form of subordinated;
- loans);
- corporate lending;
- bank lending;
- leasing;
- bond issuance;
- various grants and subsidies.

Obtaining financing for wind farm projects falls within the category of project finance transactions. In such transactions, all debts are incurred by project companies and secured on their assets. The sponsors usually seek to limit the banks' recourse to them. It is, however, quite common for the sponsors to provide some limited credit support in the construction phase of the financing. Afterwards, it is sometimes possible that once the financing converts into long-term investment financing, the shares in the project company are the only recourse available to the sponsors.

Subsidies

In order to encourage the development of renewable power generation projects, both the EU and the Polish Government introduced a number of support mechanisms. Funds from such sources may constitute a significant share in the whole financing, yet one must be aware of the fact that the competition for external funding can be fierce. Examples of subsidies include: the Operational Programme Infrastructure and Environment, the Seventh Framework Programme of the European Community for research, technological development and demonstration activities, the National Fund for Environmental Protection and Water Management or the ECOFUND (debt-for-environment swap).

The Infrastructure and Environment Operational Programme

The aim of the Infrastructure and Environment Operational Programme ("IEOP") is the implementation of 15 priority axes. Under Priority No. 9, undertaking no. 9.4, namely "energy production from RES" ("Undertaking 9.4") should be particularly emphasized. The main goal of Undertaking 9.4 is to increase electricity production from RES by means of financial support for investments aimed at the construction of renewable power generation units.

The Institute for Fuels and Renewable Energy is responsible for the implementation of Priority No. 9 in Poland. The minimum value of an investment eligible for financial aid under Undertaking 9.4 is PLN 20 million. The maximum subsidy amount, granted in the form of non-returnable aid, is PLN 40 million. In order to obtain the subsidy, the beneficiary must cover at least 25% of the overall costs from its own resources. It is estimated that the total budget for this undertaking, originating mainly from the EU Cohesion Fund, will exceed EUR 470 million in 2007-2013. As a result of very strong interest, the Minister of Regional Development has recently decided to increase the allocation of the financial resources available under undertaking no. 9.4. There is a possibility of a further increase of resources in the near future.

Green Investment Scheme

The Green Investment Scheme ("GIS") implements the mechanism that enables the allocation of financial resources gained from the sales of Assigned Amount Units ("AAU"), under Article 17 of the Kyoto Protocol, to the National Fund for Environmental Protection and Water Management. The Fund aims to financially support projects that are designed to minimize the adverse effects of climate change.

Form of security interests

Wind farm projects financed using project finance techniques are typically secured on the assets of the project company and may include: (i) security assignment of rights under certain project contracts (among others, agreements with contractors) and assignment of off-take agreements, (ii) registered, financial or ordinary pledges over assets, including bank accounts of the project company, (iii) mortgage on the project property and real estate (or other security interest in respect of the rights to use the land); (iv) security over certificates of origin of the energy produced by the wind farm; and (v) the project company's submission to execution. In addition, the financing banks will obtain registered and/or financial pledges over shares in the project company. This will normally give the lenders the right to appropriate the shares if the project company defaults. Moreover, shareholder loans granted to project companies are usually subordinated to senior loans under subordination agreements.

Financing wind farms using project finance often involves quasi security credit enhancement tools - direct agreements. However, the right to appropriate shares and to take over control of the project company is generally regarded as a more viable option under Polish law.

This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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