

RENEWABLE ENERGY IN MOROCCO: A REFORM CALLED FOR BY OPERATORS

Ten years after its enactment and after several years of application, Law 13-09 relating to renewable energy, which provides the regulatory framework for the production and sale of electricity from renewable energy sources in the context of private projects, is about to be thoroughly reformed.

CONTEXT

Morocco has, for a number of years, positioned itself as a leader in Africa and around the world in the development of renewable energy. The national energy strategy launched in 2009 is articulated around wind and solar plans for developing "IPP" (Independent Power Production) projects. These plans provide for the exclusive sale of such IPP-produced electricity to the National Office for Electricity and Drinking Water (ONEE) and the Moroccan Agency for Sustainable Energy (MASEN). The plans also establish a legislative and regulatory framework for the production and sale of electricity stemming from renewable sources of energy to private customers.

In this context, law n° 13-09 relating to renewable energy, published by dahir n° 1-10-16 of 11 February 2010, as modified and supplemented by law n° 58-15 promulgated by dahir n° 1-16-3 of 12 January 2016, has opened the sector to private initiatives by allowing the production, sale and export of renewable energy.

In the face of new technical constraints raised by the increase of intermittent renewable energies, a draft law n° 40-19 reforming law n° 13-09 relating to renewable energy was published on the website of the General Secretariat of the Government (SGG) on 6 December 2019. This draft law aims to improve the legislative and regulatory framework for the implementation, by the private sector, of renewable energy projects while ensuring the security and viability of the national electricity transport grid and the improvement and transparency of authorisation procedures.

On the occasion of the publication of this draft law on the SGG's website, we set out below the innovations brought by this reform much awaited by operators.

It should be noted that this draft law refers to a certain number of implementing regulations. These regulations will have to be adopted quickly after the enactment of the law in order to ensure the effective implementation of this much awaited reform. If these regulations are adopted quickly, this will confirm Morocco's position as a regional and world leader in the renewable energy sector.

Main changes

- Capacity of the national electricity transport grid published
- Contribution by all operators to the stability of the national electricity transport grid
- Sales to distribution network operators
- Removal of solar development areas
- Tariff for the sale of excess electricity

CAPACITY OF THE NATIONAL ELECTRICITY TRANSPORT GRID

Installations producing renewable energy will now have to be connected to the national electricity transport grid, within the limits of its carrying capacity (*capacité d'accueil*). For greater transparency vis-à-vis operators, the draft law requires that the national electricity transport grid operator (*gestionnaire du réseau électrique national de transport*) publish and update the carrying capacity.

This concept of "carrying capacity" for the national electricity transport grid is defined as the maximum quantity of installed capacity from renewable energy sources, all voltages combined, that the national electricity transport grid can accommodate without facing management constraints regarding production facilities and the functioning of the national electricity transport grid.

The carrying capacity is determined by the national electricity transport grid operator, who ensures that it is updated whenever necessary and approved by the National Electricity Regulatory Authority (ANRE).

The modalities of publication of this carrying capacity are determined by regulation.

CONTRIBUTION TO THE STABILITY OF THE GRID

The draft law introduces the concept of "system services" which consists of a set of services enabling the national electricity transport grid operator to maintain frequency, voltage and cross-border trade with neighboring countries, thanks to the means granted to the network. System services also allow the national electricity transport grid operator to manage the intermittent nature of renewable energy sources connected to very high voltage, high voltage, medium voltage and low voltage electrical networks.

All operators on the national electricity transport grid will now have to contribute to the stability of the grid by paying a tariff to use it, determined by ANRE upon proposal from the operator(s) of the concerned electrical network(s).

The national electricity transport grid operator may also temporarily suspend or reduce the electricity produced by an operator up to a threshold determined by regulation. Undelivered electricity resulting from a temporary reduction or interruption of the injection of electricity onto the grid does not give rise to any financial or in-kind compensation for the electricity producer as long as such reduction or suspension does not exceed thresholds set by regulation.

COMPLETION AUTHORISATION

Any request for a completion authorisation (*autorisation de réalisation*) (formerly called the provisional authorisation) must be accompanied by a bank guarantee to secure the completion of the project. The amount of this guarantee will be determined by decree.

A technical commission will be set up, chaired by the government authority responsible for energy, for the purpose of giving a prior approval in view of obtaining the completion authorisation.

In addition to the technical opinion of the national electricity transport grid operator, the technical opinion of the distribution network operator (*gestionnaire de réseau de distribution*) will also be required if the installation is connected to the electricity distribution network. For the specific case of hydraulic installations, the technical opinion of the hydraulic basin agency concerned and of MASEN is required.

The completion authorisation is granted within 3 months following receipt of the technical opinion from the national electricity transport grid operator. If the project is not carried out within 3 years following the notification of the completion authorisation, this authorisation lapses. For the specific case of hydraulic installations, this period is increased to 5 years.

OPERATION AUTHORISATION

Any holder of a completion authorisation must, within 3 months following completion of the construction works, request an operation authorisation (*autorisation d'exploitation*) (formerly called the final authorisation).

The operation authorisation is valid for a maximum duration of 25 years, extendable only once for the same duration.

TRANSFER – CHANGE OF CONTROL

The authorisation, whether for completion or operation, is nominative and cannot therefore be transferred to any other operator without the prior consent of the administration which shall verify that the conditions set out in the law are complied with. Failing such consent, the transfer would be null and void.

The draft law also seeks to control the shareholding of operators holding completion authorisations. Indeed, a change of control (within the meaning of article 144 of law 17 -95 relating to public limited companies) of such operators is subject to the administration's prior approval. Any change of control occurring without such prior approval would be null and void. This control seems limited to operators holding a completion authorisation and does not seem to apply to holders of an operation authorisation.

LAUNCHING OF 13-09 PROJECTS

While under the current legal framework, projects for the production of renewable energy are launched exclusively from private initiatives, the draft law now allows the administration (via the Minister of Energy, Mines and the Environment) to grant an authorisation to build installations for the production of renewable energy following a call for projects, the terms of which are set out by regulation.

The draft law does not specify the authority in charge of launching such calls for projects. This clarification will be provided by the implementing regulation.

SALE TO DISTRIBUTION NETWORK OPERATORS

Given the uncertainty raised by the current legal framework, the draft law now explicitly provides for the possibility for distribution network operators (for example Redal, Amendis or Lydec) to acquire up to 40% of the total energy

C L I F F O R D

C H A N C E

supplied from renewable energy sources to supply customers located in their area of competence, according to the terms and conditions laid down by regulation.

TARIFF FOR THE SALE OF EXCESS ELECTRICITY

Until now, the tariffs for selling, to ONEE, the excess electricity produced from renewable sources (which cannot exceed 20% of annual production) have been negotiated between ONEE and the private operators.

The draft law provides that this tariff will now be set by ANRE upon the proposal of the national electricity transport grid operator for installations connected to high voltage and very high voltage, and upon proposal of the distribution network operators for installations connected to medium and low voltage.

REMOVAL OF SOLAR DEVELOPMENT AREAS

Under the current legal framework, projects producing wind or solar energy for which maximum cumulative capacity is greater than 2 MW must be carried out in areas specified by order of the Minister of Energy, Mines and the Environment. An order was published on 9 September 2011 determining the areas reserved for the development of wind energy projects. To date, no order has been published to determine the areas for the development of solar energy projects.

The draft law removes this requirement for solar energy projects. The mapping of energy project development zones will only remain applicable for wind energy projects.

EXPORT OF ENERGY

The draft law provides a number of clarifications regarding the export of renewable energy.

The export of renewable energy is subject to a prior (i) opinion from the national electricity transport grid operator and (ii) approval of the administration.

The export of renewable energy will be carried out via cross-border interconnections with neighboring countries through the national electricity transport grid, in accordance with the agreements governing interconnections entered into between the relevant States.

Exports will be carried out through an agreement defining the technical and economic conditions of access to the electrical interconnections, in particular the rate of losses to be applied, the transit tariffs and the system services.

CONTACTS



Mustapha Mourahib
Managing Partner

T +212 520 00 86 10
E mustapha.mourahib
@cliffordchance.com



Ouns Lemseffer
Counsel

T +212 520 00 86 15
E ouns.lemseffer
@cliffordchance.com

This publication 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.

www.cliffordchance.com

© Clifford Chance 2020

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.