

SERBIA: Energy & Natural Resources

Draft Energy Law – Changes in the status of privileged energy producers

The Serbian Ministry for Energy, Development and Environmental Protection has recently released a draft of the new Energy Law (“**Draft Energy Law**”). The draft envisages material changes to the current regulatory framework applicable to renewable energy.

Most importantly, the Draft Energy Law introduces the possibility of transferring (both temporary and final) the status of privileged producer. This should give additional comfort to the lenders. Temporary status is obtained upon issuance of construction permit for the power plant while final status of privileged producer is granted upon obtaining operational permit.

The requirements for transfer are simple – incumbent privileged producer is required to issue a court-certified statement of acceptance of the transfer. In case of transfer of temporary status of privileged producer, the transferee is also required to obtain a new construction permit and a new performance bond, both in its own name. Performance bond has to be valid for the duration of temporary status of privileged producer and has to be issued in an amount equal to 2% of investment value. The Ministry is required to render a decision on transfer within 30 days.

The Draft Energy Law provides that in case of transfer of temporary status of privileged producer, the Ministry is entitled to activate the performance bond provided by the transferor, notwithstanding the fact that the transferee is required to provide a new performance bond. An exception exists in case the transfer occurs following a corporate restructuring (merger, demerger, etc.). This solution amounts to indirect taxation of sellers of undeveloped renewable projects. The carve-out made for corporate restructurings is likely to prompt careful transaction structuring.

Responding to the requests of the industry, the drafters have sought to fix in advance a set of incentives that the privileged producers could rely on. The proposed solution, however, is not without ambiguities. On the one hand, the Draft Energy Law states in Article 61 that privileged producer is entitled to make an election between a set of incentives applicable on the date when the decision on granting the status of temporary privileged producer becomes final and no longer challengeable in judicial review proceedings and a set of incentives existing on the date of the submission of a request for the signing of a power purchase agreement. On the other hand, Article 65 of the Draft Energy Law states that privileged producer is entitled to a set of incentives existing as of the date of the acquisition of temporary status of privileged producer or, if temporary status was not sought, on the date of the acquisition of final status of privileged producer. The two provisions would obviously need to be streamlined during the drafting process.

Belgrade

Dobračina 38
11 000 Belgrade, Serbia
Tel: (+381 11) 3284 212
Fax: (+381 11) 3284 213
E-mail: office@bdklegal.com

Podgorica

Bulevar Džordža Vašingtona 51
81 000 Podgorica, Montenegro
Tel: (+382 20) 230 396
Fax: (+382 20) 230 396
E-mail: office.cg@bdklegal.com

Banja Luka

Gundulićeva 6, 78 000 Banja Luka
Republika Srpska, Bosnia & Hercegovina
Tel: (+387 51) 250 641
Fax: (+387 51) 250 642
E-mail: office.banjaluka@bdklegal.com

Another important novelty pertains to the duration of temporary status of privileged producer, which is, with respect to renewable projects other than solar, proposed to be extended to three years, compared to two plus one year period under the current legislation. For solar plants, temporary status can be enjoyed for a period of one plus one year. According to the Draft Energy Law, the relevant period starts running from the date on which the decision on acquisition of temporary status becomes final and no longer challengeable in judicial review proceedings. Under the present law, the relevant period is counted from the date of the first instance decision granting the temporary status.

The Draft Energy Law sets forth only a general regulatory framework for the renewable energy industry. The Government and the Ministry are supposed to adopt various bylaws for further elaboration and implementation of the law, within one year from the adoption of the law. The adoption of the new energy legislation will have to wait for the constitution of the new parliament following the elections scheduled for 16 March 2014.

Belgrade

Dobračina 38
11 000 Belgrade, Serbia
Tel: (+381 11) 3284 212
Fax: (+381 11) 3284 213
E-mail: office@bdklegal.com

Podgorica

Bulevar Džordža Vašingtona 51
81 000 Podgorica, Montenegro
Tel: (+382 20) 230 396
Fax: (+382 20) 230 396
E-mail: office.cg@bdklegal.com

Banja Luka

Gundulićeva 6, 78 000 Banja Luka
Republika Srpska, Bosnia & Hercegovina
Tel: (+387 51) 250 641
Fax: (+387 51) 250 642
E-mail: office.banjaluka@bdklegal.com