

REFORM OF THE LAW ON RENEWABLE ENERGY

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Although an inadequate and fragmented regulatory framework, caused by a lack of financing, has hindered the development of the renewable energy sector in Morocco for many years, the Kingdom now has one of the most ambitious renewable energy programmes in the MENA region, with the creation of a specific clean energy strategy based on solar, wind and water power.

One of the important stages in opening up the Moroccan renewable energy sector to competition has been the introduction of Act No. 13-09 relating to renewable energy, brought into force by *Dahir/Decree* No. 1-10-16 of 26 Safar 1431 (11 February 2010) for the promotion and liberalisation of the renewable energy sector.

Act No. 58-15 (brought into force by *Dahir/Decree* No. 1-16-3 of 12 January 2016) amends and supplements Act No. 13-09 and is intended to overcome the weaknesses of Act 13-09 referred to above and to facilitate its application in order, notably, to help the sector develop, to adapt it to future technological developments and to encourage private-sector initiatives.

The main additions and changes introduced by Act No. 58-15 relate to the following:

1 – INCREASING THE INSTALLED CAPACITY THRESHOLD FOR HYDRO-ELECTRIC GENERATING PROJECTS

The exclusion from the scope of Act No. 13-09 of projects whose electrical power was above 12 MW constituted “a barrier to the utilisation of the maximum threshold offered by the morphological and hydrological characteristics of generating facilities”¹. Act No. 58-15 thus increased the installed capacity threshold for hydro-electric generating projects from 12 MW to 30 MW.

2 – ACCESS TO THE LOW VOLTAGE NETWORK

Although in 2010, Act No. 13-09 permitted direct sales to consumers via the national electricity network or the distribution network for high and extra high voltage networks, access to the medium voltage network required a subsequent decree to be brought into force. Access to the low voltage network was not provided for by this legislation.

Act No. 58-15 now gives producers of electricity generated from renewable energy sources the possibility of connecting to the urban and rural low voltage² electricity networks, with the aim of promoting the development of the small and medium-sized facilities industry, particularly the photovoltaic industry.

As regards the national medium voltage electricity network, the entry into force on 9 November 2015 of Decree No. 2-15-772 of 14 Muharram 1437 (28 October 2015) enabled the terms and conditions to be set, for plants that generate electricity from renewable energy sources, to be able to access the medium voltage network. However, this access is still awaiting a joint Order (*arrêté*) by the Minister for Energy and the Minister for the Interior, a particular aim of which will be to set out a predefined “trajectory” for a given period, comprising envelopes that set out the integration volume of the new capacities for each distribution zone, decided on the basis of the individual aspects of the State-controlled utilities providers – the *Office National de l’Electricité et de l’Eau Potable* (the National Electricity and Drinking Water Authority or **ONEE**).

3 – THE OPINION OF THE AGENCE DU BASSIN HYDRAULIQUE TO BE TAKEN INTO CONSIDERATION IN THE AUTHORISATION PROCESS

From now on, the opinion of the *Agence du Bassin Hydraulique* (the rivers and dams agency) must be taken into consideration in the interim authorisation process for the creation of electricity-generating facilities using renewable energy sources.

Before Act No. 58-15 was brought into force, the granting of authorisation was only subject to the opinion of the manager of the national network. Henceforth, the *Agence du Bassin Hydraulique*’s technical opinion must be sought.

4 – THE POSSIBILITY OF SELLING ENERGY SURPLUSES

As for facilities connected to the national High Voltage (HV) and Extra High Voltage (EHV) network, Act No. 58-15 now makes it possible to sell surpluses of electricity generated from renewable sources to the ONEE (supplementing Articles 25 and 26 of Act No. 13-09). However, the operator cannot sell “more

¹ Presentation memo relating to the draft of Act No. 58-15.

² Such access is still subject to terms and conditions set by regulations.

than 20% of annual production as surplus” and the commercial terms and conditions for the purchase of such surplus “are set by regulations”³.

Moreover, the enactment of draft Act No. 48-15 relating to the creation of an independent regulatory authority (the *Autorité Nationale de Régulation de l'Electricité* (National Electricity Regulatory Authority or **ANRE**)) should enable the electricity sector to be progressively liberalised in an organised manner and enable such progress to be supported.

In parallel with these developments, the schemes and structures for financing energy projects have also evolved.

To ensure that Moroccan energy strategy is implemented, several legal reforms have been undertaken including Act No. 86-12 on public-private partnerships (PPPs) and its implementing Decree No. 2-15-45 of 13 May 2015. This Act drew much of its inspiration from the French *Ordonnance* of 17 June 2004 on PPPs but it also adopted the British Private Finance Initiative approach.

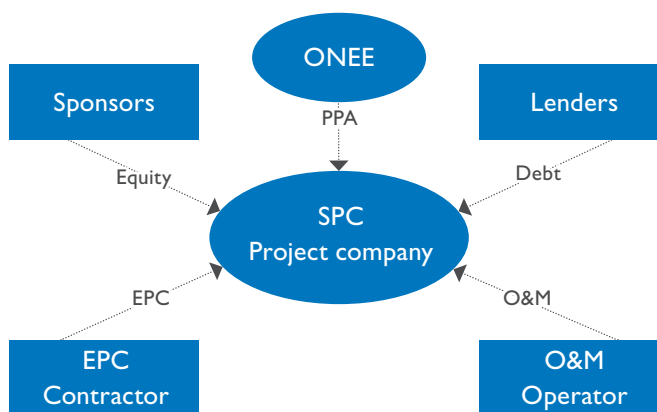
The Moroccan experience has mainly related to PPP-type development schemes.

BOT schemes have no specific legislation but are an extension of the law on PPPs. Indeed, Article 24 of the Act referred to above provides that “Assets that are created or acquired by a private-sector partner, as part of and for the performance of the public-private partnership contract, and that are required for the operation and continuity of the public service, are de jure transferred to the ownership of the public-sector person when the public-private partnership contract expires, whatever the reason for its expiry”.

The contractual structure of energy projects generally follows the classic project financing model where the project company is responsible for the development, construction, operation and maintenance of the power station, in partnership with private-

sector shareholder sponsors. As for the contractor, it enters into a construction contract (Engineering, Procurement and Construction contract or EPC) with the project company and an operator in charge of operating and maintaining the power station (Operation & Maintenance or O&M).

The diagram below describes the classic financing of energy projects (Independent Power Projects or IPPs):



In order to make investment more secure and ensure the financing of such projects, Moroccan law also provides for several instruments such as the assignment of receivables, pledges over bank accounts, shares, plant and equipment and business undertakings or the transfer of insurance policy proceeds. The law also provides for the creation of charges over real estate assets including mortgages where a right *in rem* is available at the relevant facility.

The energy projects markets in Morocco should continue to expand as the legal, institutional and financial environment surrounding these projects becomes more and more sophisticated.

³ As at the date this article was published, the commercial terms and conditions for such purchase had not yet been set.

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