

## 4.2 ROMANIAN RENEWABLE ENERGY LAWS

*Updated October 2016*

The main Romanian renewable energy laws and regulations in the sector of wind and photovoltaic power are:

- ✓ Law no. 50 of 1991 Regarding the Authorization of Execution of Construction Works (the “**Construction Law**”)
- ✓ Emergency Government Ordinance no. 54 of 2006 Regarding the Legal Regime of the Concession Agreements of Public Assets (“**EGO no. 54**”)
- ✓ Electricity and Natural Gas Law no. 123 of 2012 (“**Electricity and Natural Gas Law**”)
- ✓ Law no. 220 of 2008 Regarding the Establishing of the Promotion System of the Production of Energy from Renewable Energy Sources, as further amended (“**Law no. 220**”)
- ✓ Regulation on the Issuance of the Licenses and Authorisations in the Electricity Sector approved by Order no. 12 of 2015 issued by the Romanian Energy Regulatory Authority (“**License Regulation**”)
- ✓ RERA Order no. 59 of 2013 for the Approval of the Regulation Regarding the Connection of Users to Electricity Grids of Local Interest
- ✓ Government Decision no. 1232 of 2011 Regarding the Approval of the Regulation for the Issuance and Follow-Up of the Guarantee of the Origin of Electricity Produced from Renewable Energy Sources
- ✓ Order no. 4 of 2015 for the Approval of the Regulation for the Issuance of the Green Certificates (“**Order no. 4**”)
- ✓ Order no. 60 of 2015 Regarding the Approval of the Regulation Regarding the Organization and Operation of the Green Certificates Market (“**Order no. 60**”)
- ✓ Order no. 48 of 2014 Regarding the Approval of the Regulation of Accreditation of the Electricity Producers from Renewable Energy Sources for the Application of the Promotion System by Green Certificates

### I. Access to land

#### Concession/Lease/Acquisition of the Land

The land on which a wind or photovoltaic farm can be developed can be procured by concluding agreements for concession, joint-venture agreements, or sale and purchase agreements with local authorities, i.e. Local Councils, or County Councils, or with private entities, i.e. individuals or legal persons.

The land owned by a local authority, e.g. commune, city, or county authorities, may be part of the public domain, or part of the private domain of the said authority.

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## **A. Land of public domain**

In the case of the land of public domain, the local authority is entitled to decide whether it will award a concession, or will conclude a lease contract based on the provisions of the EGO no. 54.

The land which is part to the public domain cannot be sold.

### *1. Concession Agreement*

The Concession Agreement of Public Assets ("**Concession Agreement**") is the contract concluded in written form whereby a public authority, referred to as provider of the concession, acting on its own risk and responsibility, assigns for a determined period of time, to a person, hereinafter referred to as a concessionaire, the right and obligation of exploitation of a public asset in exchange for a royalty.

The Concession Agreement is concluded according to the Romanian law, for a duration which shall not exceed 49 years, starting from its signing date.

The Concession Agreement can be awarded by:

- (i) a tender; or
- (ii) direct negotiation – a procedure whereby the local authority negotiates the contractual provisions, including the royalty, with one or several parties interested in the procedure for the award of the Concession Agreement.

The bidder has the obligation to prepare the offer according to the provisions of the tender documentation.

The local authority has the obligation to award the Concession Agreement by a tender procedure attended by at least three bidders. If two successive tender rounds are attended by less than three bidders, the local authority has the right to initiate direct negotiations with the interested party or parties.

The Concession Agreement must be approved by a decision of the relevant local authority.

### *2. Joint-Venture Agreement*

There are no express tender requirements regarding the Joint-Venture Agreements. Therefore, the local authority may enter into direct negotiation with the interested party regarding such agreement.

The Joint-Venture Agreement must be approved by a Decision of the relevant local authority.

## **B. Land of the private domain**

The land which is part of the private domain of the local authority can be leased, or sold based on the decision of the respective local authority.

## **C. Land owned by private entities**

Rights over land owned by private entities can be acquired as follows:

- (i) by signing a sale-purchase agreement before a Romanian notary;
- (ii) by concluding a lease contract;

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- (iii) by concluding a joint–venture agreement; or
- (iv) by concluding any other forms of cooperation.

## **II. Permits**

The number of permits and authorizations necessary to be obtained varies subject to the location of the land where the wind farm or photovoltaic park will be developed.

### **A. Authorization of the incorporation, i.e. the registration of a special purpose vehicle (“SPV”)**

The criteria and the documentation necessary in order to obtain the authorization of registration of the SPV are regulated by the License Regulation.

The competent authority in respect of the issuance of the authorizations in the electricity sector is RERA.

The applicant must file a set of documents in respect of the issuance of the authorization of registration of the SPV unit with RERA which reviews the documentation and may request further information, or clarifications.

RERA will issue a decision in respect of granting or the refusal of granting of the authorization within 30 days from the payment of the specific tariff, and submission of the above-mentioned documentation.

The granting or the refusal to grant the authorization may be appealed before RERA within 15 days from notification in respect thereof, and further on before the Court of Appeals of Bucharest – the Administrative Litigation Section within 30 days from the receipt of the decision of RERA, or the publication of the respective decision on RERA’s website.

### **B. License for the commercial operation of electricity capacities**

Further to obtaining the authorization of incorporation of the new unit, the SPV must apply with RERA for obtaining the license for the commercial operation of the electricity resources. Such license is obtained by submitting to RERA the documentation mentioned by License Regulation.

Moreover, in order to be licensed as a producer of renewable energy, the applicant must submit to RERA the information regarding the production capacity, as well as the source of energy.

The conditions associated with the license will be provided in the Report issued by RERA regarding the respective license.

RERA will issue a decision in respect of the granting, or refusal to grant the license within 60 days from the payment of the specific tariff and annual contribution, and submission of the specific documentation.

### **C. Grid Access**

This is a process that should be initiated at an early stage of the project by contacting RERA and the transmission company to which the wind farm, or photovoltaic park will be connected.

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The capacities of production of electricity from renewable energy sources are connected to the transmission/distribution electricity grid, to the extent in which the safety of the National Energy System is not affected.

According to RERA regulations, in addition to the Construction Authorization, and the License, the wind farm, or the photovoltaic park operator:

1. must obtain the following permits:
  - (i) Location Authorization (*Aviz de amplasament*) from the transmission system operator, i.e. Transelectrica – issued according to the Methodology Regarding the Issuance of Location Authorizations approved by the RERA Order no. 25 of 2016; and
  - (ii) Technical Connection Authorization (*Aviz tehnic de racordare*)– issued according to the Regulation Regarding the Connection of Users to Electricity Grids of Local Interest, approved by the Government Decision no. 59 of 2013;
2. must obtain from RERA:

A Qualification re the Electricity Priority Production;
3. must register with Transelectrica as a balancing responsible party, or to delegate the balancing responsibility to another balancing responsible party;
4. must register with Transelectrica in order to obtain green certificates;
5. must register with OPCOM in order to sell renewable energy on the day-ahead market;
6. must register with the operator of the green certificates market, i.e. OPCOM, in order to sell green certificates.

#### **D. Construction Authorization**

According to the provisions of the Construction Law, the procedure regarding the issuance of a valid Construction Authorization consists of the following steps:

- (i) issuance of the Urbanism (zoning) Certificate;
- (ii) issuance of the opinion of the competent environment protection authority regarding the investments which are not subject to the evaluation procedures regarding the impact on the environment;
- (iii) notification of maintaining the application for a construction authorization, in case of a project for which the competent environment protection authority requires the evaluation regarding the impact on the environment;
- (iv) issuance of the permits, authorizations, and of the decision of the competent environment protection authority regarding the investments whose impact on the environment was subject to review;
- (v) drafting the technical documentation required for the authorization of the construction works;

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- (vi) filing the application together with the necessary documentation;
- (vii) issuance of the Construction Authorization.

According to the provisions of the Construction Law, the construction of the wind farm, or the photovoltaic park can proceed only after the issuance of a Construction Authorization, issued by the competent Municipality on the basis of the following documents:

- (i) Urbanism Certificate which is issued by the Municipality and covers such issues as zoning, degree of occupancy of the land, height regime, etc, and lists of the permits that must be appended to the application for the issuance of the Construction Authorization, e.g. environment, water, fire, sanitary, etc.;
- (ii) the certified copy of the proof of title over land and/or construction and, where applicable, the up to date survey plan excerpt and the up to date Property Registry excerpt, unless the law provides otherwise;
- (iii) related technical documentation;
- (iv) permits and authorizations, as provided by the Urbanism Certificate, the opinion of the environment protection competent authority and, where applicable, the related administrative decision; and
- (v) proof of payment of the fees for the issuance of Urbanism Certificate and of the Construction Authorization.

The Municipality must issue the Construction Authorization within 30 days from the filing of the application and related documentation.

## **E. Environmental Permits**

### *1. Project stage*

The following permits must be obtained at the project drafting stage:

- (i) Environmental Permit - in case such permit is expressly requested according to the Urbanism Certificate;
- (ii) Environmental Approval for the construction of the wind farm, or photovoltaic park.

The above-mentioned permit and approval are to be issued by the Territorial Environmental Protection Agency following the review of the documentation submitted by the applicant, including the technical specifications.

Depending on the activity carried out and on the number of installed turbines, and also, in case the area where the wind farm will be located is a protected natural area, the Territorial Environment Agency may request the conduct of a survey regarding the impact of such activity upon the environment.

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## 2. Operational stage

After the issuance of the environmental permit, in order for the wind farm, or photovoltaic park to become operational, the investor must obtain an Environmental Authorization which is issued by the Territorial Environmental Protection Agency.

### F. The Registry of the Guarantees of Origin (the “GO Registry”)

After obtaining the license for the commercial exploitation of electricity capacities, the producer of renewable energy must register with the GO Registry in order to obtain an account. This is a condition precedent to the obtaining of the Certificates of Guarantees of Origin (the “**GO Certificates**”) necessary for the exploitation of electricity resulting from renewable sources.

The GO Certificate is an electronic document which provides an end consumer with the proof that a given electricity quantity was produced from renewable sources.

The electronic application for the issuance of the GO Certificate for the electricity generated from renewable energy sources is mandatory. The producer must apply for the issuance of the GO Certificate within 30 days after the end of the period for which the GO Certificate is requested.

The GO Certificate is issued in electronic format for each electricity unit (MWh) of renewable energy produced and delivered in the electricity grid, and contains at least the following information:

- (i) the date of issuance, the issuing authority, and the country of origin thereof, as well as a identification number;
- (ii) the electricity source out of which the electricity was produced and the initial and the final date of the producing thereof;
- (iii) the identity, location, type and capacity of the installation where the electricity was produced;
- (iv) if, and the extent to which the installation benefitted of investments support;
- (v) if, and the extent to which the electricity company benefitted in any other way of a national support scheme and the type of support scheme;
- (vi) the date when the installation was put into operation.

Only one guarantee of origin can be issued for each electricity unit.

The GO Certificate is issued within 10 working days from the date of the filing of the complete documentation with the competent authority, and is valid for one (1) year from the date of production of electricity referred to.

### III. Green Certificates Market

According to the provisions of Law no. 220, the Green Certificates are documents which certify the production of a certain quantity of energy from renewable sources.

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Green Certificates are issued by the transmission system operator, according to the procedure approved by RERA through Order no. 4. All producers of electricity from Renewable Energy Sources (“RES”) receive a certain number of green certificates according to the quantity and source (e.g. wind, solar) of electricity they provide.

The RES electricity producers may sell the Green Certificates on the GCM, which is currently regulated by Order no. 60.

The Regulation for the Organization and Operation of the GCM approved by Order no. 60 establishes:

- (i) the manner of organization and operation of the GCM;
- (ii) the parties involved and their responsibilities in the organization and operation of the GCM;
- (iii) the manner of registration and management of the information regarding the trading of the Green Certificates;
- (iv) the information necessary for the monitoring of the operation of the GCM.

The GCM is a competitive market, separated from the electricity market, in which Green Certificates related to electricity from renewable electricity sources are traded.

GCM has two components:

- (i) the Centralized Green Certificates Market;
- (ii) the Bilateral Contracts Green Certificates Market.

The following are involved in the trading system of the Green Certificates:

- (i) the market participants trading Green Certificates: the electricity producers from electricity renewable sources and the electricity suppliers;
- (ii) the green certificates operator, as administrator of GCM: OPCOM.

The trading of the Green Certificates is not conditioned by the trading of the electricity related thereof.

During its validity period the Green Certificate may be the object of several successive transactions, and will be registered in the account of the purchaser which will use it in the end, in order to prove the fulfilment of the obligation regarding the acquisition quota of Green Certificates. The above-mentioned quota is determined each year, by March 1, by RERA. It refers to the quota of green certificates which must be acquired during a year by (1) the electricity suppliers in relation to the electricity provided to end consumers, or used by themselves, and (2) by the electricity producers in relation to the electricity produced and delivered directly to end consumers.

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