

NEWSLETTER

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Banking & Capital Markets Group

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Electricity Business License Approval Criteria - Stricter Standards to Apply

1. Background

On March 8, 2023 the South Korean Ministry of Trade, Industry, and Energy (**MOTIE**) issued a legislative notice regarding proposed amendments to the “Detailed Evaluation Standards for Development Projects” (the **Amended Evaluation Standards**). The intent of the amendments is to enhance the effectiveness of project construction and operations, as well as to minimize disputes between the developers. We expect the Amended Evaluation Standards will affect a large majority of potential investors and developers in the South Korean renewable energy market. Given the importance and potential impact of the changes, Lee & Ko has prepared a brief summary of the proposed amendments as follows.

2. Key Proposed amendments to the Detailed Evaluation Standards for Development Projects

■ Enhanced Evaluation Criteria for Electricity Business Licenses

Over the past decade, the number of Electricity Business Licenses (**EBL**) issued for renewable energy projects has significantly increased, with the number of new EBLs issued increasing by approximately 4.3 times from 2011 to 2021 (from 18 permits in 2011 to 78 permits in 2021). However, the surge in EBL applications has led to a greater number of instances of businesses with limited financial ability being granted an EBL allowing them to participate in the renewable energy market. Accordingly, this in turn has caused increased delays and uncertainty in achieving the goal of promoting new renewable energy projects in South Korea. To address this issue, MOTIE announced the enhanced amendments to the Detailed Evaluation Standards for Development Projects including the application of more stringent business standards such as financial capability and preparation periods.

In particular, to obtain an EBL under the Amended Evaluation Standards, developers (or their major shareholder if the applicant is a special purpose vehicle

(SPV)) will be required to have **a credit rating of B or higher** (issued by a credit rating agency as defined under the Use and Protection of Credit Information Act of Korea) and must submit an **“initial development expenditure and procurement plan”**. Additionally, the **minimum equity capital ratio requirements will be increased from the current requirement of at least 10% of the total project costs to 20%**, and a new **minimum paid-in capital requirement of 1.5% of the total project costs** at the time of application will apply.

Furthermore, the EBL preparation period (i.e. the period in which the relevant project is required to achieve COD under an issued EBL) for wind projects will be extended from the current 4 years to 6 years for onshore wind and 8 years for offshore. **A new “construction plan approval period” will also be introduced**, which will be 2 years for solar projects, 2 years for fuel cell projects, 4 years for onshore wind projects, and 5 years for offshore wind projects. The effect being that, if construction does not commence within the specified period, the development permit may be revoked. Moreover, **extensions of each of the above periods will only be granted when, among other things, there is clear evidence of meaningful progress of the relevant project**, such as completion of an Environmental Impact Assessment (EIA), etc.

Overall, the Amended Evaluation Standards aim to ensure that only financially capable developers with a realistic plan and funding to undertake the development project will be granted, and permitted to maintain, the required permits to participate in the South Korean renewable energy market.

■ Improvements to Wind Measurement Device Systems

Wind measurement devices (e.g. LiDAR or met-mast (which are required to be installed pursuant to a separate permit and gather wind resource data for 12 months prior to lodging an application for an EBL)) will be simplified into two categories: **offshore and onshore**, depending on their installation location. Each device will also have a redefined “effective area”. **For offshore measurement devices**, it will be limited to **the water area within a 7km radius of the relevant measurement device**. For onshore measurement devices, it will be limited to the **land area within a 2km radius of the measurement device**.

In addition, the **expiry of the permit required to install the approved measurement device will be shortened from 4 years to 3 years** and priority among potentially competing devices will be determined by the order of approval. However, if a measurement device which has priority is not installed within 6 months (for onshore devices) or within 12 months (for offshore devices) from the date of permit for the installation of the measurement device, the device will lose its priority. This new standard will **make the priority of projects clearer** and seeks to address any controversies relating to who has priority over competing project sites by providing objective standards.

3. Implication

The proposed Amended Evaluation Standards are aimed at addressing various issues identified in the audit of the "Status of Renewable Energy Projects" by the Board of Audit and Inspection of Korea. Specifically, the amendments aim to address issues such as speculative developers without sufficient financial capacity seeking to profit

from share transfers which ultimately cause project defaults or undue delay. To achieve this, the amendments introduce the enhanced criteria which bolster the financial capability requirements of EBL applicants as well as tightening up project's preparation periods to encourage more meaningful progress of projects.

On March 29, 2023, MOTIE issued a subsequent legislative notice, with additional details to the announcement previously released on March 8. It is currently expected that the Amended Evaluation Criteria will pass the relevant legislative procedures to take effect (including a notice period of 20 days, regulatory reviews by the Legal Affairs Office and the Office for Government Policy Coordination) without further modification. It is anticipated that the proposal will take effect as early as July 2023.

Previously, renewable energy development projects of a certain scale were mainly pursued by small-scale developers who establish shell SPVs, complete initial legislative permitting procedures, such as obtaining an EBL and EIA, and then seek to sell their shares in the SPV to foreign or other financial investors with greater access to capital. However, under the Amended Evaluation Standards, such an approach to renewable project developments will become less viable. Going forward, **it will become more important to involve financially capable developers from the initial stage of a project in order to secure promising renewable energy development projects and the requisite permits.**

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