

Amendment to Korean renewable energy laws

Amendments to the Electric Utility Act will take effect as of 1 October 2020. Further details will be available in September 2020 under the amended sub-regulations after further public debate.

Key takeaways

- For solar power, wind-power and fuel-cell generation projects that require an environmental impact assessment or short form EIA, local residents concerns over environmental contamination and compensation will need to be obtained prior to an application being made for the relevant electricity-generation licence.
- Except in limited circumstances, the relevant governmental authority may not approve a business transfer of a solar power generation business including a change in the largest shareholder in a project company developing or operating a solar power generation business having a minimum 20,000kW capacity until such business has commenced operation.
- The process for small-scale solar power generation businesses (3,000kW or less) seeking to obtain the relevant licences and permits will be simplified.

1. Heightened importance of local residents' opinions

Solar power, wind-power and fuel-cell electricity-generation businesses are required to have completed an EIA (e.g. if the capacity is of at least 100mW) or assessment short form EIA (e.g. if it is in a conservation management land area of at least 5000 m²) under the Environmental Impact Assessment Act.

Upon the amendments becoming effective, there will be a requirement that certain matters such as the name, location, area, etc. of the proposed renewable project be made public by publishing a notice in a daily newspaper that is circulated primarily in a region in which the relevant project is to be located. Depending on the type of EIA that is required, such prior notice will need to be made within seven or 14 days before the application for the relevant licence. Having published this notice, the opinions of the residents must be submitted to the relevant governmental authority at the time of the application.

The amendment effectively places the onus on the developer of a renewable project to liaise with local residents prior to an application for an electricity generation licence being made.

2. Complications to change the largest shareholder in a solar power generation company

There has been a practice in many cases in Korea of developers selling a proposed solar power project before it has commenced operation. Once the amendments become effective, except in limited circumstances, the relevant governmental authority may not authorise a business transfer of a solar power generation business including a change in the largest shareholder of a project company that develops or operates a solar power generation business with 20,000kW capacity or more before such business has commenced operation.

The sale and purchase of a solar power generation business prior to its commencement will be prohibited in principle, unless the following apply.

1. Where it is difficult to continue operating the solar power generation business due to an application for bankruptcy filed by the operator or similar, or the death of the operator; or
2. Where the solar power generation business operator becomes unable to continue operating its business due to a natural disaster, fire or similar.

Whilst the amendments aim to limit speculative development in solar power projects, the amendments do have overreaching application that could hinder transactions that are necessary to ensure the continuation and funding of the project.

3. Business suspension for failing to comply with restoration order

Operators of solar power or wind power facilities in mountainous areas will be required to have such facilities inspected by the Ministry of Trade, Industry and Energy (MOTIE), before they may trade electricity. After the inspection, MOTIE may issue an order that restoration work of the mountainous area be carried out. If such order is issued the operator must attend to the restoration before trading electricity. If the operator fails to comply with such an order, MOTIE may order that the business be suspended until the restoration has been completed. MOTIE has the power to stay the business suspension order in certain limited circumstances, such as natural disasters or the need to stabilise power supply.

4. Deadline for declaring commencement of business clarified

Currently, an electricity business operator is required to declare the commencement of their business immediately to MOTIE. However, some operators have waited weeks, even months before making such a declaration.

Under the amendments, an electricity business operator is required to declare the commencement of its business within 30 days of the initial electricity trading date.

5. Simplification of the licence and permit procedures for small-scale solar power projects

One of the more administratively burdensome procedures that a small-scale solar power business operator faces are the various permits required to conduct development activities. The amendments allow a combination of permits to be issued under the National Land Planning and Utilization Act and a total of 20 other laws and enforcement decrees, including conversion of farmland into commercial use land under the Farmland Act for the development of a small-scale solar power business (3,000kW or less) when granting an electricity business permit.

Should you have any queries in relation to the proposed amendments, please feel free to reach out to us.

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