



# Proposal to Amend Approval Regulations for Korean Power Businesses

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## Key Takeaways

On March 29, 2023, the Ministry of Trade, Industry and Energy (MOTIE) issued an administrative notice proposing to amend the relevant rules as follows:

- imposing a stricter criteria for the granting of a power generation business licence;
- determining the period for preparation of the business and approving construction plans; and
- improving the standards relating to wind data measurements.

MOTIE will receive comments from the public until April 28, 2023 and the amendments will be finalised afterwards.

## Detailed proposals

The following is a snapshot of some of the proposed amendments.

### 1. Stricter approval criteria

Existing	Proposed Amendment
Funding to be at least 10% equity	Funding to be at least 20% equity
N/A	The applicant's paid-in capital must be at least 1.5% of the total project cost
N/A	The initial development expenditure and funding plan must be reasonable and substantiated.

	* The initial development expenditure refers to the development expenditure incurred before the start of construction under Article 61 of the Electric Utility Act.
The developer must have at least a B credit rating	The applicant must have at least a B credit rating
The developer (or the largest shareholder when a separate company is established) must be an entity capable of operating the power generation business an ongoing basis and in a stable manner.	The applicant and its largest shareholder must be entities capable of operating the power generation business an ongoing basis and in a stable manner.

## 2. Business preparation period and approving construction plans

Currently, a renewable energy power generation business is granted a “preparation period” which begins from the date the electricity generation business licence is obtained to the date when the operator reports commencement of business under Article 9(4) of the Electric Utility Act. The construction plan approval period is from the date on which the electricity generation business licence is obtained to the date of commencement of construction under Article 61(1) of the Electric Utility Act. There is no prescribed period under the relevant regulations for a construction plan is to be approved. The business preparation period, in practice, is extended without limit, unless there are special circumstances.

However, there has been widespread criticism about developers simply obtaining the relevant licences etc. and not having the capability to develop a renewable energy business. Many have been dubbed “licence hawkers”. The proposed amendments seek to introduce certain milestones by which the business is to progress and to introduce a prescribed period for the approval of construction plans.

Existing	Proposed Amendment
<p>MOTIE may grant an operator of an electric utility business, a period for preparation of the business and approval of the construction plan within the following limits:</p> <ul style="list-style-type: none"> <li>• Solar: the preparation period is 3 years, except for solar power projects that are eligible for a small-scale environmental impact assessment, the preparation period is 18 months.</li> <li>• Wind: the preparation period is 4 years</li> <li>• Fuel cell: the preparation period is 4 years</li> </ul>	<p>MOTIE may grant an operator of an electric utility business, a period for preparation of the business and approval of the construction plan within the following limits</p> <ul style="list-style-type: none"> <li>• Solar: the preparation period is unchanged. The construction plan approval period is 2 years</li> <li>• Wind: the preparation period is 6 years for onshore and 8 years for offshore. The construction plan approval period is 4 years for onshore and 5 years for offshore</li> <li>• Fuel cell: the preparation period is unchanged. The construction plan approval period is 2 years</li> </ul>

The proposed amendment provides that the construction plan approval period can be extended only when the environment impact assessment is completed, and the business preparation period can be extended only when all

permits to start construction have been obtained or it can be clearly evidenced that such permits can be obtained.

### 3. Improving wind data measurement standards

With the explosion of wind power projects, the installation of LiDARs has proliferated which has led to an increase in the number of disputes between developers with respect to the “effective area” and who has priority.

Issues include:

(a) when does priority of an effective area start if an amendment to an existing installation permit is made? Does priority start from the date of amendment or from the date the installation permit has been issued?

(b) which has priority in the event of overlap between expanded effective areas?

(c) in relation to a small LiDAR with respect to which an installation permit is not required, when does priority start?

In the case of question (a) above, the proposed amendments make it clear that priority starts from the date the installation permit is originally granted. In relation to question (b) above, under the proposed amendments an expanded effective area will no longer be granted. Unfortunately, the proposed amendments do not provide any guidance with respect to question (c).

As noted from the outset, comments from the public are to be obtained by MOTIE until April 28, 2023. Whether there are any revisions to the proposed amendments remains to be seen. The proposed amendments should continue to be monitored.

**If you have any questions or need help with the above, please feel free to contact us. Our dedicated Project & Energy Group is recognised as a top ranking team in various international publications such as Chambers & Partners. It is the only Korean law firm that provides a one-stop service that can assist project and energy clients with regulatory advice, project finance, construction and operation and M&A.**

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