



Amendment to Approval Regulations for Korean Power Businesses

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Our newsletter of April 13, 2023 ([Shin & Kim newsletter – April 13](#)) foreshadowed certain draft amendments to the relevant rules for Korean power businesses released by the Ministry of Trade, Industry and Energy (MOTIE) on March 29, 2023 (the “**Draft Amendment**”).

To recap, the Draft Amendment proposed among other things (i) the imposition of a stricter criteria for the granting of a power generation business licence, and (ii) grounds for the extension of the periods for business preparation and construction plan approval.

The Draft Amendment was amended in part and finalised on August 1, 2023 (the “**Final Amendment**”). The Final Amendment is effective as of such date.

Key Takeways

The Final Amendment has amended some of the matters set out in the Draft Amendment.

1. Stricter approval criteria

Draft Amendment	Final Amendment
Funding to be at least 20% equity	Funding to be at least 15% equity
The applicant’s paid-in-capital must be at least 1.5% of the total project cost	The applicant’s paid-in-capital must be at least 1.0% of the total project cost

Whilst there has been some relaxing of the criteria for those seeking to obtain a power generation business licence, MOTIE has confirmed only those with substantive financial capacity will be granted the relevant licence.

2. Extension of periods for business preparation and construction plan approval

The Final Amendment has included another ground for extending the periods for business preparation and construction plan approval.

If an electricity generation business entity enters into a long-term contract with a new renewable energy supplier, the periods for business preparation and construction plan approval may be extended. It appears that this will apply to long-term supply contracts for REC, PPAs with KEPCO, Direct PPAs, and third party PPAs.

It is unclear what is considered “long term” and whether “long-term contracts” which may be terminated in certain circumstances, such as failure to raise relevant funding or obtaining the relevant licences within a certain period, will be deemed “long term contracts” for the purposes of the Final Amendment. In practice, as it is difficult to execute a long-term contract for REC or power supply prior to the terms of any financing have been finalised or commencement of construction, the application of the extension period provision set out in the Final Amendment should be monitored.

The specific details are set out in MOTIE’s notice accessible via [MOTIE Final Notice \(Korean\)](#). It is available only in Korean.

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.

[\[Korean version\]](#) 발전사업세부허가기준 고시 개정

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