

## client alert

PROJECTS (FINANCE & INFRASTRUCTURE) | ALGERIA |

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### CHANGES TO THE RENEWABLE ENERGY SECTOR IN ALGERIA

For some fifteen years now, the oil industry has been improving the budgetary balance of Algeria, and has enabled the country to make significant investments.

Nevertheless, the fall in oil and gas prices these past three years has highlighted the need for Algeria to make changes to its energy policy. Algeria's signing and ratification of the Paris Agreement on climate change shows the country's desire to commit to an energy transition, which must go hand-in-hand with an economic transition.

#### **NATIONAL PROGRAMME FOR THE DEVELOPMENT OF RENEWABLE ENERGIES**

The National Programme for the Development of Renewable Energies, adopted in 2011, was reviewed in 2015 with the aim of achieving production of 22,000 MW dedicated to domestic consumption by 2030, of which over 4,000 MW are to be accomplished by 2020.

This Programme provides for the implementation of a broad range of technological industries, including photovoltaic and wind, which will be the main sources of renewable energy with 13,575 MW and 5,010 MW respectively. The remainder shall be spread between thermo-solar, biomass, cogeneration and geothermal.

In the coming months, the first part of this Programme should lead to a national and international tender for the production of 4,050 MW global capacity, divided into three batches of 1,350 MW each in solar power. These three projects would be located in sites in the south of Algeria, and in the high-plateaux region.

This call for tenders should have been launched in the spring of 2017, but will most likely take place in autumn 2017 considering the recent government reshuffle.

With a view to this procedure, executive decree no. 17-98 dated 26 February 2017, setting the investor tender procedure, was published in the official journal of 5 March 2017 ("**Decree 17-98**").

More recently, executive decree no. 17-166 of 22 May 2017 modified the conditions for obtaining premiums as regards costs for the diversification of electricity production, i.e. guaranteed purchase prices ("**Decree 17-166**").

## MAIN POINTS OF THE TENDER PROCEDURE

### 1. Two types of procedures

Decree 17-98 provides for two types of procedures:

- **The investor tender procedure**

Launched on the initiative of the Energy Minister for pre-determined amounts of renewable energy. The Energy Minister processes the tender procedure.

**It should be noted that investors taking part in such a tender depends on their conducting an industrial project (see point 2 below for further details).**

- **The competitive bidding procedure**

Launched on the initiative of the Electricity and Gas Regulation Commission (“CREG”) for offers to provide renewable energies corresponding to a pre-determined minimal power.

The way these two procedures (investor tender and competitive bidding) work together could be clarified.

The tender procedure pertaining to the first part of the Programme on 4,050 MW should fall under the investor tender procedure, detailed below.

### 2. Bid offer: three main components

Bids submitted in response to an investor tender offer must include, as mandatory:

- **An energy component**

The energy component includes a technical offer and a financial and commercial offer (which will indicate the sale price for each kWh produced, as well as the conditions for reviewing this price).

It should be noted that:

- Electricity production sites are designated by the Energy Minister, on proposal by the Electricity and Gas Regulation Commission.
- The construction of facilities to transmit the energy produced and connect the facilities to the grid shall be at the expense of the investor.

- **An industrial component**

The industrial component must include:

- **An offer to complete an industrial project:**
  - ✓ Decree 17-98 defines the industrial project as an investment in the manufacturing of equipment used in the production of electricity from renewable energy sources and/or the provision of services, according to the conditions provided for in the call for tenders.
  - ✓ The bidder is allowed to not invest in the industrial project and choose one or more third investors that will realise the industrial project and submit a separate bid to this end.
  - ✓ Based on a joint decision by the Energy Minister and the Industry Minister, the tender offer can be limited to an energy component and not include any industrial component.
- **A financial and commercial offer** (including in particular the price of equipment and components manufactured, as well as conditions for review).

- **The economic assessment model**

The compliant offers are classified according to the price of sale of kWh using the economic assessment model. The final selection of the bidder shall be based on the lowest kWh sale price.

The CREG delivers to each accepted bidder the origin guarantee certificate and the authorisation to operate in compliance with the regulations in force.

## **ELEMENTS FAVOURABLE TO INVESTORS**

### **1. More flexible financing possibilities**

It is interesting to note that the obligation to resort to the local financing of investments (excluding the constitution of companies' capital) has been relaxed, since Article 55 of the Finance Law for 2016 now authorises the use of outside financing that is essential to the conduct of strategic investments by Algerian companies, subject to approval on a case-by-case basis by the Government.

Considering the political desire to promote the energy transition in Algeria, projects in the field of renewable energies should be considered as "strategic" and thus be able to benefit from outside financing.

Accordingly, the African Development Bank (ADB) and the French Development Agency (AFD) are considering taking part in financing the Algerian energy transition.

### **2. Guaranteed purchase prices**

Decree 17-166 specifies in particular:

- The concept of guaranteed purchase price as the kWh price of sale, derived from the tender offer;
- The electricity producer retained as part of the tender benefits from the guaranteed purchase price resulting from such tender procedure, after obtaining the authorisations required by regulations in force;
- The purchase price is guaranteed for the entire term of the PPA resulting from the tender procedure.
- The removal of the possibility to readjust the guaranteed purchase price after the first five years.

### **3. A more favourable investment code**

The recent investment code of 3 August 2016 provides for a number of guarantees that benefit foreign investors, regardless of their nationality, including the guarantee to repatriate in foreign currency their investment proceeds, and the acceptance of international arbitration. For further information, please see our newsletters on the new investment code dated [26 April 2017](#) and [26 August 2016](#).

Additionally, Algeria has entered into bilateral investment protection agreements with a number of countries, including France and Germany, which offer a certain number of guarantees.

## POINTS FOR ATTENTION

### 1. Partnership with local state-owned companies

Decree 17-98 specifies that the Energy Minister identifies one or more state-owned companies that must jointly (or in “partnership”) be involved in creating and operating electricity generation facilities from renewable sources.

The state-owned companies concerned will likely be SONATRACH, SONELGAZ or their subsidiaries (e.g. CEEG, *Compagnie de l'Engineering de l'Electricité et du Gaz*).

Conversely, as regards the industrial project, a partnership with local state-owned companies seems optional.

The concept of “partnership”, as defined by Decree 17-98, supposes an equity investment in a new company or an existing company, which triggers the application of the well-known “51/49” rule when a foreign investor is involved.

In this regard, it should be recalled that the participation of a foreign investor in the share capital of any company cannot exceed 49%, regardless of the shareholding conditions (creation of a new company or subscription or acquisition of shares in an existing company).

Nonetheless, it is important to note that the foreign investor may be entrusted with the executive management of the company, hold a majority within its administration and management bodies, and various contract-based mechanisms are in place to mitigate the effects of the minority in shareholders’ assemblies.

Additionally, entering into a joint venture with a majority holding state-owned company would result in an economic state-owned company, the consequences of which as regards liability for its executives should not be overlooked and be examined closely.

### 2. Strong presence of the Offtaker

The PPA, whose duration shall not exceed 25 years, shall be entered into with the system operator, i.e. SONELGAZ (or a subsidiary such as CEEG, *Compagnie de l'Engineering de l'Electricité et du Gaz*). This same Offtaker shall also be considered as an equity partner in the project.

### 3. Creation of a new Ministry for the Environment and Renewable Energies

A Ministry for the Environment and Renewable Energies was created during a recent government reshuffle. The integration of such Ministry in the current system applicable to renewable energies remains to be seen, with an expected modification of Decree 17-98.

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