

Energy & Natural Resources - Portugal

Changes to legal framework for increasing capacity of wind farms

Contributed by **Morais Leitão, Galvão Teles, Soares da Silva & Associados**

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Having set out the rules for licensing the increased capacity of wind farms, Decree-Law 94/2014⁽¹⁾ determined that several aspects of this new legal framework required further development by ministerial order. Ministerial Order 102/2015⁽²⁾ set out more detailed rules regarding the licensing procedure and requirements applicable to increasing the capacity of wind farms.

Decree-Law 94/2014 – which repealed Decree-Law 225/2007 and Decree-Law 51/2010 – introduced a new legal framework for increasing the installed capacity of existing wind farms by up to 20% of their original capacity through the construction of new wind turbines. Further, the new decree-law allows wind farms which have an input capacity that is greater than their allowance – pursuant to their generation licence – to input additional energy to the grid, subject to certain requirements. The government intends to foster what it considers a versatile alternative to the licensing of new power plants with this approach, maximising the use of wind energy and minimising the environmental impact.

One of the measures introduced by the recently approved ministerial order is to allow for a wind farm's increased capacity to be owned and operationally managed by a different legal entity from the owner of the existing wind farm, with the aim of facilitating the financing of these projects. However, the legal entity must be directly or indirectly owned by the owner of the original wind farm or must be directly or indirectly owned by the same parent company. If this relationship ceases to exist and the increased capacity is not integrated into the original wind farm, it is considered a serious violation of legal duty and constitutes grounds for the revocation of the respective generation licence.

For increased capacity projects licensed under the new decree-law or additional energy injected into the grid, the law establishes the right for generators to receive a fixed, non-updatable feed-in tariff of €60 per megawatt-hour. The feed-in tariff will apply until the original wind farm's tariff reaches the respective threshold. The increased capacity wind farm must have specific metering equipment which allows for the independent billing and invoicing of the electricity generated.

The requirements and documentation necessary for licensing the supply of additional power and increasing the capacity of wind farms, and the authorisation for legal separation, are set out under Schedule I of Ministerial Order 102/2015.

However, the legally separate increased capacity of wind farms is subject to the Portuguese Directorate of Energy and Geology being presented with an agreement entered into by the owner of the original wind farm, the owner of the increased capacity wind farm and – where the former does not directly own the latter – the parent company that governs:

- the use and sharing of common infrastructure;
- the operation of wind turbines and electricity input to the grid;
- the sharing of information; and
- communication with the relevant authorities (ie, the licensing authority and network operators).

Upon the issuance of the generation licence for the increased capacity wind farm and the authorisation for the legal separation of the wind farm, if applicable, the owner will have two years – or three, if environmental impact assessment procedures are applicable – to complete construction of the new wind turbines.

For further information on this topic please contact [Catarina Brito Ferreira](#) or [Martim Vaz da Silva](#) at [Morais Leitão Galvão Teles Soares da Silva & Associados](#) by telephone (+351 21 381 74 57) or email (cbferreira@mlgts.pt or mvsilva@mlgts.pt). The [Morais Leitão Galvão Teles Soares da Silva & Associados](#) website can be accessed at www.mlgts.pt.

Endnotes

(1) Dated June 24 2014.

(2) Dated April 7 2015.

Authors

Catarina Brito Ferreira



Martim Vaz da Silva



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