

LEGAL ALERT

AMENDMENTS TO THE PORTUGUESE ELECTRICITY FRAMEWORK

NEW RULES FOR ELECTRICITY GENERATION

Decree-Law no. 76/2019 was published in the Portuguese official gazette on 3 June 2019, amending Decree-Law no. 172/2006, of 23 August¹, which establishes the legal framework applicable to electricity generation, transmission, distribution and supply, as well to the logistics of supplier switching and to the markets' organization.

This amendment focuses mainly on the licensing procedures of (renewable) electricity generation projects, as there is growing interest in merchant solar projects and, as a result, insufficient grid capacity to allow the installation of all projects.

The following amendments are expected to be the most relevant:

- a) The attainment of a generation license depends on the prior reservation of grid capacity, by means of: (i) a permit issued by the relevant system operator, as per the applicant's request; (ii) an agreement entered into by and between the applicant and the relevant system operator, whereby the former undertakes to pay the costs with the grid's construction or reinforcement; or (iii) a permit issued by the relevant system operator under the terms established by the corresponding competitive procedure;
- b) Reservation of grid capacity depends on the provision of a bond by the applicant to guarantee that it obtains the relevant generation license. The amount varies according to the procedure

¹ Amended and republished by Decree-Law no. 215-B/2012, of 8 October, and subsequently amended by Law no. 7-A/2016, of 30 March, by Decree-Law no. 38/2017, of 31 March, Decree-Law no. 152-B/2017, of 11 December, by Law no. 114/2017, of 29 December, and by Decree-Law no. 76/2019, of 3 June.

and the reservation title that has been obtained. As such, if the applicant has submitted a request and has been granted a permit issued by the relevant system operator, it must provide a bond in the amount of € 10,000 per MVA. Where grid reservation has been established by an agreement between the applicant and the relevant system operator, the bond shall correspond to either 5% of the costs to be borne by the applicant or € 10,000 per MVA, whichever is higher. Where the applicant has been granted a permit by the relevant system operator in the context of a competitive procedure, the amount shall be established by the documentation of such procedure;

- c) After obtaining the grid capacity reservation permit or agreement, the applicant shall initiate the procedure to obtain the corresponding generation license, including securing the land, confirming if there are any environmental or land use constraints that need to be addressed with the relevant authorities, concluding the power plant's project;
- d) Special regime generation may benefit from a guaranteed remuneration regime, which shall be granted: (i) in the context of a competitive procedure to new power plants; or (ii) to power plants with an installed power up to 1 MW; or (iii) in case of overpowering or to generation units that are installed within a preexisting power plant and use a different primary energy source;
- e) The generation of renewable electricity by means of a power plant that uses one single generation technology and has a maximum installed capacity of 1 MW with the purpose of selling all electricity generated to the grid is subject to a previous registration and to the attainment of an operation certificate. The guaranteed remuneration scheme of such power plants is based on a competitive bidding: applicants offer discounts to the reference tariff established by the Government (similar to the remuneration scheme applicable to small scale generation with a connection capacity equal to or less than 250 kV, as set out by [Decree-Law no. 153/2014, of 20 October](#)). Alternatively, the electricity generated by such power plants may be traded under a market regime;
- f) Grid capacity reservation permits, including the agreements entered into by and between the applicant and the relevant system operator, and generation licenses cannot be transferred until the issuance of the corresponding operation license, which means that the same entity requesting the reservation permits shall be responsible for the licensing of the power plant and for guaranteeing its timely construction;
- g) The amendments to Decree-Law no. 172/2006, of 23 August (as successively amended throughout the years) shall apply to pending licensing procedures. The procedures that were

initiated without the prior reservation of grid capacity are suspended until the attainment of the generation licenses. However, requests that await grid capacity following the participation in a draw and the provision of a bond, shall be granted the relevant capacity and generation license as soon as possible;

- h) Electricity storage may be linked to the activity of electricity generation or carried out as an autonomous activity, under terms to be determined by the Government;
- i) Until the attribution of the market facilitator's license, EDP Serviço Universal, in its capacity as supplier of last resort, must purchase the electricity generated by special regime generation power plants with an injection power no higher than 1 MW operating under the general regime at a price calculated according the mathematical expression set out by Decree-Law no. 76/2019, of 3 June;
- j) Low voltage electricity distribution concessions may include street lighting systems as concessions' assets, should the grantor decide so.

Decree-Law no. 76/2019 has entered into force on 4 June 2019, except for the transitional rule that establishes the new role of the supplier of last resort as market facilitator for some power plants, which shall enter into force 45 days after its publication, and the provision that revokes the rules of Decree-Law no. 153/2014, of 20 October applicable to electricity generation through small scale units, which shall become effective within four months from the publication of Decree-Law no. 76/2019.

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