



17.06.2016

RES in Serbia: New Secondary Legislation Package Adopted

The long-awaited package of secondary legislation regarding renewables ("**Secondary Legislation**") was finally adopted by the Government of Serbia on 13 June 2016.

The Secondary Legislation consists of the following decrees:

- The Decree on the Conditions and Procedure of the Acquisition, Duration and Termination of the Status of a Privileged Power Producer ("PPP"), Temporary Privileged Power Producer ("TPPP") and Power Producer from Renewable Energy Sources ("**Decree on PPP Status**");
- The Decree on Incentive Measures for Electricity Generation from Renewable Energy Sources and from High-Efficiency Cogeneration of Heat and Power ("**Incentives Decree**"); and
- The Decree on Power Purchase with a Standard Model Agreement ("**PPA**") and Appendix to a Model Agreement.

The Secondary Legislation was adopted with an almost six-month delay from the statutory deadline set under the Serbian Energy Act. Drafts of the Secondary Legislation, however, were published by the Serbian Ministry of Mining and Energy ("**Ministry**") in September 2015 and were followed by the discussion period during which the Ministry received feedback on the drafts from interested parties.

The intent behind the new Secondary Legislation is to create more favourable investment conditions in RES, to improve bankability of local RES projects and, thus, to bring the Serbian legal framework in line with the EU Third Energy Package.

With the improvements introduced, the Secondary Legislation definitely presents a step in the right direction for creating a more favourable climate for developing/financing RES projects.

Decree on PPP status

Key provisions of the Decree on Privileged Producer Status include:

- **Capped capacities for wind and solar power plants:** maximum capacities for TPPP and PPP statuses for wind and solar power plants remain capped at:
 - ▶ 500 MW for wind;
 - ▶ 2 MW for rooftop solar up to 30 kW;
 - ▶ 2 MW for rooftop solar between 30 kW-500 kW;
 - ▶ 6 MW for ground-mounted solar up to 500 kW; and
- **Duration of TPPP status:**
 - ▶ the TPPP status (status acquired upon obtaining the construction permit after which the PPA may be concluded) is valid for the period of three years (for solar – one year) during which the project must be completed. The TPPP status may be extended under specific conditions such as *force majeure*.



Miloš Laković
Partner

T: +381 11 3202 617
E: m.lakovic@schoenherr.rs



Aleksandra Petrović
Associate

T: +381 11 3202 617
E: a.petrovic@schoenherr.rs



Incentives Decree

One of the key introductions to the Incentives Decree is the inclusion of the 'maximum annual effective operation time' for all types of plants, which is capped and included in the calculation of the incentive purchase price.

Other key provisions of the Incentives Decree include:

[Schoenherr launched comprehensive Anti-Corruption Guide for CEE](#)

- **The incentive period:**
 - ▶ the incentive period remains 12 years, and starts from the acquisition of the PPP status;
- **FiT:**
 - ▶ feed in tariffs ("**FiT**") are indexed according to Eurozone inflation;
 - ▶ excess electricity produced over the 'maximum produced electricity' (which corresponds to the established 'maximum effective operation time') will be purchased at 35 % of the corresponding FiT;
 - ▶ electricity produced during TPPP status (commissioning phase) will be purchased at 50 % of the corresponding FiT; and
- **Subsequent changes in law:**
 - ▶ changes in legislation which ultimately lead to an increase in producer's expenses, shall result in the corresponding increase of FiT. The increase of FiT is conditional upon the Ministry's/Government's consent obtainable upon demonstrating the negative effect of such change to the producer's financial position.

PPA

As anticipated, the new draft PPA Model is primarily directed at overcoming bankability issues.

Some of the new key features of the PPA Model are:

- **No preliminary PPA:**
 - ▶ the possibility to conclude the PPA immediately upon obtaining TPPP status (no more controversial preliminary PPA);
- **Transfer of PPA:**

a new template for the step-in agreement between the lenders, producer and the off-taker has been envisaged. However, the possibility to execute such agreement is reserved only for projects exceeding 30MW;
- **International arbitration:**
 - ▶ a dispute resolution mechanism introduces two possibilities for international arbitration: 1) under International Chamber of Commerce rules - seat in Paris, and 2) under the rules of Vienna International Arbitral Centre - seat in Vienna;
 - ▶ international arbitration may be invoked if the producer is in direct or



indirect ownership of a foreign entity, or if the project is financed by a foreign financial institution; and

- **Change in law**

- ▶ an off-taker is obliged to change the price of electricity based on new FiT pursuant to the abovementioned change-in-law rules.

Key deviations from drafts of Secondary Legislation

The Secondary Legislation contains improvements when compared to the drafts published in September 2016.

These include:

- **Decree on PPP status**

- ▶ in the case of the termination of TPPP or PPP status of the producer, lenders or their agents may introduce a new privileged producer within three months as of the termination of such status. This right is reserved only for projects over 30MW;

- **Incentives Decree**

- ▶ removal of the limitation that the increase of FiT (due to changes in law) will not be recognised if unjustifiable and if this will jeopardise the interests of the public;
- ▶ 'change in law' now excludes non-discriminatory, across-the-board, legislation that applies to all legal entities in Serbia (for instance a universal increase in corporate income tax);

- **PPA**

- ▶ direct transfer of the PPA from a defaulting borrower/producer to a new entity is regulated more effectively through a separate step-in agreement concluded between the producer, off-taker and the lenders (reserved only for projects over 30MW);
- ▶ international arbitration may be invoked if the producer is financed by a foreign financial institution (not only if (ultimate) shareholders are foreign entities); and
- ▶ a producer may now terminate the PPA if the off-taker is in delay of settling any payments due, instead of being in delay with three consecutive payments.