

## Briefing Note

Buying a consented renewable energy project

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The trade in consented onshore renewable energy projects has been emerging, although it is fair to say that the sector is constrained by a lack of stock. Operational projects provide attractive revenue streams for investors as there is limited exposure to operational issues such as ongoing employment problems. There are also scenarios where SIPP investment may be possible.

A Vendor may choose to sell on a consented site for a number of reasons, the principal reason being that the scale of development and the associated costs and risk are simply too daunting for an individual to drive through. The price for consented wind sites is dependent on the quality of the wind and that is reflected in the value range rate for consented sites of £200,000 to £600,000 per mega watt.

There is also great demand for consented run of river hydro sites at present and while they are significantly more capital intensive, a hydro scheme attracts Enterprise Investment Scheme Relief for tax purposes and there is perhaps a wider appetite for these schemes than feed in tariff scale wind developments.

The structure of selling a consented site will be driven by tax considerations, the assignability of the project documentation and of course the vehicle in which the project is held.

Regardless of the project vehicle, detailed legal due diligence will be required on the project documentation and will cover:

- Planning consents
- Grid Connection
- Water Abstraction Licences (Hydro)
- Ground works contracts
- Plant and Engineering Contracts
- Lease and Title documents in connection with the site
- Access rights
- Agreements for turbine delivery pinch points
- Servitudes/Wayleaves for cabling
- Downstream proprietor agreements (Hydro)
- Turbine supply agreements – issues around Availability Warranties (particularly Revenue sharing arrangements with the Turbine Supplier), Power Curve Warranties, Advance Payment Guarantees, Performance Bonds, Delivery Dates
- Appointments of the professional team- covering issues such as design risk and copyright

In some instances, wind turbines have been de-rated in order to move a turbine into a particular feed in tariff scale band and additional due diligence is required in relation to that- both technical and legal. There are also issues around multiple grid connections in order to obtain multiple feed in tariff benefits and an assessment as to whether these could be disqualified and treated as one grid connection.

The key issues which might arise in relation to the different project vehicles are:

### Individuals/partnerships:

The assignability of the contracts is likely to be a key issue. Each contract will have to be assigned unless there is the possibility of introducing purchasers into a partnership and the selling partners resigning. This is relatively high risk for the incoming partners because of joint and several liability issues and there may be change of ownership and control provisions preventing this. There may also be difficult stamp duty land tax issues to deal with in connection with the property interests.

### Limited Liability Partnerships

A detailed risk analysis will be required to decide how to proceed in this scenario but there is the option of both an asset acquisition and a sale of the members' interests. The same issues arise as with partnerships where there is potentially some difficulty in assigning the contracts individually. The risk of proceeding on the basis of buying a member's interest is reduced in comparison with acquiring the interests in an ordinary partnership but there are still risks involved.

### Companies

Companies continue to provide the option of an asset sale (where each individual contract will need to be assigned) and a share sale where it is possible to leave the contracts undisturbed (subject to checking for change of ownership and control provisions).

The usual issues would apply in connection with a share purchase and the costs will be greater proceeding this way than with an asset purchase, although from the seller's perspective their tax position may mitigate this.

The process involves due diligence on the project as well as on the company itself and will extend to include the following key issues:

- Accounting information
- Tax information
- Other contracts or trading history
- Employment liabilities
- Environmental issues
- Litigation/Disputes

Depending on what the purchaser intends to do with the site, there may be an issue concerning a low base cost in the land where the land was transferred in prior to obtaining planning consent and there is potentially tax on the increase in value of the land if that is moved out of the company after the sale of the company. This is an issue that may be picked up in a Tax Deed of Indemnity.

This note is intended as a brief summary of buying a consented Renewable Energy Project. No responsibility can be taken for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

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