

Legal Alert

On a mission to protect the renewables

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The COVID-19 pandemic has already taken its toll in the green energy sector. Delays in deliveries and assembling of RES installation elements as well as the restrictions relating to the possibility of movement will certainly hinder the implementation of investments and fulfilment of the statutory duties on time. The Anti-Crisis Shield introduces a package of regulations aimed at protecting investors from losing support granted under the RES Act.

Obligation to sell the green energy within statutory deadline

RES producers who have won the RES auction are obliged to sell electricity for the first time within the following statutory deadlines: 24 months (solar installations), 33 months (on-shore wind installations) and 42 months (remaining RES installations, except off-shore wind farms) as of the auction closing day. If the energy producer fails to start selling the electricity within the above mentioned deadlines, they will not be allowed to benefit from RES support system and will lose the security established before the participation in RES auction.

Prolongation of statutory deadlines for first sale of electricity

The provisions of RES Act introduced by the Anti-Crisis Shield entitle auction winners to submit the application for the extension of the above mentioned deadlines by a maximum of 12 months. The consent for the deadline's prolongation is granted by the President of Energy Regulatory Office.

When you can apply for deadline's prolongation?

The application for prolongation of statutory deadline shall be submitted to the President of Energy Regulatory Office. The application shall contain an applicant's (or equipment supplier's) statement confirming that:

- delay in delivery of devices being part of RES installation or
- delay in delivery of elements necessary to construct the RES installation, or
- delay in construction of RES installation or grid connection, or
- delay in acceptance or delay in commissioning of RES installation, or
- delay in obtaining a generation license or in entering the RES installation in the relevant register

is caused by the state of epidemic threat or state of epidemic announced by way of a regulation of the Minister of Health.

We can help

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Prolongation of bank guarantee

Application submitted by entities that – before the participation in RES auctions – established a collateral in the form of a bank guarantee, shall be accompanied by updated bank guarantee. The term of updated bank guarantee shall be extended by at least the term indicated in the application.

Deadline for submitting the application

Application for extension of statutory deadline for the first sale of electricity shall be submitted to the President of Energy Regulatory Office no later than 30 days before the date of fulfilment of the obligation indicated in Article 79 sec. 3 point 8a of the RES Act (statutory deadline for the first sale of green energy).

Denial of extension of a time limit

The President of Energy Regulatory Office issues a decision on denial of extension of a time limit for the first sale of electricity if (i) the application does not perform the statutory conditions, (ii) the motion was submitted after the deadline or (iii) there was no circumstance justifying the extension. Within 7 days from the date of delivery of the decision, the electricity producer is entitled to file an appeal against the decision to the Court of Competition and Consumer Protection.

Age of the energy infrastructure

The extension of the deadline for the first sale of green energy is accompanied by an extension of the deadline indicated in the Article 74 sec. 1 of the RES Act. This provision contains the requirements as to the "age" of the devices used to generate and transform electricity. Thus, the legislator stipulated that green energy may be sold under the auction system if the devices used to generate and transform electricity were produced within 24 months (solar power plants), 33 months (wind power plants) or 42 months (other RES installations, excluding offshore wind farms) directly preceding the day of first generation of electricity in the relevant RES installation. The aforementioned application consideration in favour of the applicant results in the extension of the time-limits by the period specified in the application (up to 12 months).

The Anti-Crisis Shield 2.0. – the extension of the deadlines indicated in the connection agreements

The governmental draft of the Anti-Crisis Shield 2.0. includes provisions on the extension of the deadlines for the first delivery of electricity to the grid, set in the connection agreements. New time-limits should reflect the extended deadlines for first sale of electricity. The aim of this solution is to protect green energy generators from the possibility of premature termination of the connection agreements by the distribution system operators.

We offer support in a time of crisis

If you need legal advice on the impact of the coronavirus threat on your business, our multidisciplinary team is ready to work with you. Contact us at: **coronavirus@eversheds-sutherland.pl**

If your company operates abroad and you need legal support in a specific country, the international team of Eversheds Sutherland is ready to assist.

Our publications

Legal alerts on the epidemic's impact on business may be found on *our site in Polish*. Lots of valuable legal information about other countries can be found on the special page launched by Eversheds Sutherland *Coronavirus Legal Hub*.