



Top Seven Legal Pitfalls In Wind Farms

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For anyone involved in developing a wind farm, getting the legal issues right from the start is crucial. Too often these issues end up causing serious delays, spiralling costs and restructuring of the wind farm. Below are seven of the key legal issues that anyone involved in a wind farm should consider from the outset.

1. Land

It is vital, at the very earliest stage, to identify the property which will be required for the wind farm and secure by it means of binding options or contracts. This can often be the slowest moving part of the process and may require negotiations with several different landowners. As well as the land required for the wind turbines, there will also be rights of way and wayleaves required for roads, cabling and substations. Adjoining landowners may have arcane grazing, sporting or turbary rights which can lead to problems. Furthermore it is important at an early stage to identify the grid route for exporting the output of the wind farm to the National Grid. Wayleaves may also be required from several different landowners for the grid route.

2. Planning

The process of obtaining planning permission for a wind farm can be long and drawn out. Developers will need expert advice as to what planning conditions are standard and what conditions might best be appealed to An Bord Pleanála in advance of incurring any expenditure on the wind farm. It is vital that binding options or agreements for the land be entered into before applying for Planning Permission. Planning Permission may also be required for the distribution grid route. If all or part of the line is over-ground Planning Permission will be required but if all of the line is under-ground Planning Permission will not be required.

3. Grid Connection

The process of applying for a grid connection offer (currently Gate 2) can be long and drawn out and the correct structuring of applications for a grid connection offer can be crucially important as this will also for part of the security required by the bank.

4. Power Purchase / Single Electricity Market (SEM)

In previous years, all that was required in a wind farm was for the developer to enter into a Power Purchase Agreement (usually for 15 years) with an electricity supplier. However, with the advent of the SEM (which will Go Live on 1 November 2007), the landscape has changed. Now, for wind farms below 10MW, developers will continue to enter into traditional power purchase arrangements. However, for wind farms of 10MW or more, generated power will have to be traded on the SEM. Each developer will have to carry out an assessment as to whether it wishes to trade on the SEM directly, or trade through an intermediary via a Contract for Differences (CfDs).

5. CER Permit / Authorisations

Wind farm developers must also remember apply for the relevant Authorisation to Construct and Authorisation to Generate from the Commission for Energy Regulation (CER). The timing of these applications to the CER is important so as not to delay other parts of the process.

6. Construction

Once all the initial issues have been dealt with, the wind farm has to be built. Turbines have to be sourced and supplied. The turbine supply market is very much a seller's market at the moment and the lead-in time for delivery of turbines can be up to two years. Operation and maintenance (O&M) contracts have to be negotiated. These are vital from a banking point of view. The developer will have to engage civil contractors to build the wind farm and possibly electrical contractors to carry out the necessary electrical connection works. All of these require complicated legal documents that should be negotiated at an early stage.

7. Financing

Most wind farm projects are banked on a project only basis, that is, the Bank has recourse only to the wind farm to secure the monies it has advanced. As a result the Bank will want every "i" dotted and "t" crossed to ensure that the wind farm and all ancillary contracts can be assigned to it in the event of the Developer defaulting on his loan. A properly advised developer will negotiate the banking contracts as much as any other commercial contract. There are many areas to be negotiated, from the developer's access to the wind farm revenues, through to the control of insurance proceeds should something go wrong. Also, dealing properly with all the issues above can mean that the entire financing process goes faster and smoother. Banks will invariably want to be satisfied with the entire legal package before lending into a wind farm development.

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