

Legal aspects of the investment process in the renewable energy sector

Summary

The aim of the dissertation is to analyse the legal regulations concerning the investment process as regards the construction of wind farms in Poland. The evolution of the legal framework of the investment process and dedicated support scheme for renewable energy sources is presented in order to assess the impact of the regulation on the successful construction of wind farms.

In order to meet the RES strategy in EU legislation, Poland should achieve a 15% share of renewable energy in its final energy consumption by 2020. The EU's energy and climate targets set the share of renewable energy in the energy mix at 27% for 2030. Wind energy plays a significant role in meeting these energy goals. Wind power installations have undergone the highest increase in installed capacity over the last decade from among all installed renewable energy sources in Poland. A growing share of renewable energy in the final energy consumption may already be observed. According to data from 31 December 2016, the installed capacity of wind turbine installations in Poland amounted to 5,807 MW. In relation to previous years, in 2005 the installed capacity of wind turbine installations amounted only to 83 MW and in 2010 – 1,180 MW.

The dissertation is composed of nine chapters and its chronology is determined primarily by the chronological stages of the investment process. The first chapter constitutes an introduction to the topic of renewable energy. The legal regulations of national and EU law determining the operation of wind power plants as well as national strategic documents are presented and analysed. The second chapter sets out the definitions of the key terms relevant to the dissertation, i.e. wind turbine, renewable energy source, renewable energy source installation and investment process. Issues related to the directions of development of renewable energy, i.e. barriers and obstacles to the development of renewable energy and the protection of investments in the field of renewable energy are also analysed in this chapter. The various stages of an investment consisting in the construction of a wind farm are presented in chapters III – VII.

Chapters III and IV focus on the preliminary stages of the construction of a wind farm relating to securing the title to the land for the investment and connecting to the grid. A properly secured title to land is one of the most important issues throughout the whole development process.

Chapter III presents the types of titles to land including ownership, perpetual usufruct, lease and tenancy, transmission and land easements and the right to develop land. Chapter IV related to the grid connection procedure under the Energy Law is divided into the following stages: (i) applying for grid connection conditions, (ii) issuing grid connection conditions by the grid company and (iii) executing a grid connection agreement.

Chapters V and VI are dedicated to environmental protection during the investment process and the spatial planning system. An environmental impact assessment, crucial to the investment process, is aimed at ensuring that the environmental impact of a planned project is taken into account before construction starts. As part of the investment process, a decision regarding environmental conditions must be obtained prior to the commencement of construction of planned projects which either (i) are likely to always have a significant effect on the environment or (ii) are likely to have a significant effect on the environment. A final and valid environmental decision is a prerequisite for applying for a construction permit. The pre – construction permitting process, which relates either to having in place a proper local zoning plan or obtaining an appropriate planning permit, is of key importance for the project, as it is a prerequisite for obtaining a construction permit.

Chapter VII is devoted to issues related to obtaining a license to generate electricity issued by the President of the Energy Regulatory Authority. Subsequently, issues related to the operational permit are also presented. All parts of the dissertation as specified in chapters III – VII also concern the legal difficulties related to each phase of the investment process. An important issue closing the investment and construction process is submitting bids at auctions for the sale of electricity from renewable energy sources and starting energy production.

The last two chapters i.e. chapter VIII and chapter IX, cover the subject matter of the course of the investment process for the construction of a wind farm. Support in the form of green certificates and mandatory purchase of energy encouraged intensive development in the RES sector in recent years. The green certificates system was abandoned under the Act on Renewable Energy Sources adopted in 2015 and is being gradually phased out. The new support mechanism for renewable energy sources entered into force on 1 July 2016, therefore the issues related to the auction procedure are analysed.

The dissertation closes with a summary of the conclusions on the currently binding regulations and suggested amendments to the regulations.