



## **RENEWABLE ENERGY SECTOR REFORM IN MOROCCO – HOW WILL IT IMPACT THE MARKET?**

The Moroccan Government has undertaken a wide-ranging reform of the legal framework governing the renewable energy sector, including a new regime for self-generation. This includes a thorough revision of law 13-09, which for the last thirteen years has provided the regulatory framework for the production and sale of electricity from renewable energy sources in the context of private projects. Although law 13-09 was a success, there has been an increasing need to improve this law in order to adapt it to the new needs of the State and the private and industrial operators. In this briefing we analyse the key legal issues and what the new framework will mean for businesses in the renewable energy sector.

The legal framework governing the renewable energy sector in Morocco has undergone significant reform following the publication of (i) law no. 40-19 amending law no. 13-09 on renewable energy and law no. 48-15 on the regulation of the electricity sector and the establishment of the National Electricity Regulation Agency (ANRE) enacted by Dahir no. 1-23-20 dated 10 February 2023 and (ii) law no. 82-21 on self-generation of electricity enacted by Dahir no. 1-23-21 dated 10 February 2023 (together the **Reform**).

The Reform refers to a number of implementing regulations. These regulations will have to be adopted quickly in order to ensure the effective implementation of this much awaited Reform.

Specifically, the Reform provides that the implementing regulations must be published within a maximum period of four years from the date of publication of the Reform in the Official Gazette (27 February 2023).

### **WHAT DOES THE REFORM COVER?**

#### **1. Reform of Law 13-09 on renewable energy**

The purpose of the Reform is to address certain difficulties that were faced by renewable energy operators and which resulted in the freezing of new authorizations under Law 13-09:

### **National grid carrying capacity**

There is currently in excess capacity in the Moroccan national electricity grid, as a result of which the Moroccan Ministry of Energy has stopped granting authorizations pursuant to Law 13-09 to prevent grid overload.

One of the main innovations introduced by the Reform is the introduction of a national grid carrying capacity (*capacité d'accueil*) defined as the maximum quantity of installed capacity from renewable energy sources that the national grid can accommodate without facing management constraints. This carrying capacity is calculated by the national electricity transport grid operator and is then published by the National Electricity Regulation Agency (ANRE) before 31 January of each year.

The annual publication of grid carrying capacity will give more visibility to operators in considering whether or not to submit a request for authorization pursuant to Law 13-09.

### **Payment of system services fees**

The Reform has also introduced the notion of system services (*services système*), which is defined as all services that enable the national electricity grid operator to maintain frequency, voltage and exchanges with neighbouring countries, as well as to manage the intermittency of renewable energy sources associated with very high voltage, high voltage, medium voltage and low voltage electricity grids.

Under the Reform, all renewable energy operators using the national electricity grid are required to pay a tariff to use the electricity grid. This tariff is determined by the National Electricity Regulation Agency (ANRE) and must include the system services fees.

### **Mechanism to sell electricity to distribution network operators**

The Reform has introduced an option for distribution network operators to acquire up to 40% of the total electricity produced annually by renewable energy electricity generation facilities which is supplied to customers within the jurisdiction of the relevant distribution network operator. The terms and conditions of these acquisitions will be set out in implementing regulation.

### **National preference requirement**

The Reform has introduced an obligation on each renewable energy operator to apply the principle of national preference in its supply, construction and service contracts. Further details of this requirement will be provided in implementing regulation.

### **Change of control**

The Reform provides that any transfer of shares that may lead to the change of control of a company which has been granted an authorisation to construct a renewable energy electricity production installation, is subject to a prior authorisation from the Ministry of Energy Transition and Sustainable Development in accordance with the procedure to be set out in implementing regulation. The Ministry of Energy Transition and Sustainable Development must issue its decision within two months of notification. In case of refusal, the decision must be accompanied by a detailed justification.

Surprisingly and contrary to what was provided in the draft reform, the notion of "control" is no longer defined. In the absence of a definition, the notion of "control" should be interpreted within the meaning of article 144 of Law 17 -95 relating to public limited companies.

If a change of control occurs without prior approval, the Ministry of Energy Transition and Sustainable Development has the power to withdraw the authorisation to construct the plant.

The change of control requirement appears to be limited to operators holding a completion authorisation and does not seem to apply to holders of an operation authorisation.

### **Certificate of origin**

The Reform will allow renewable energy operators to obtain a certificate of origin evidencing that the electricity produced by the operator is from renewable energy sources. The procedure and the entity responsible for issuing this certificate will be set out in implementing regulation.

### **Launching of projects by the Administration**

While initially 13-09 projects were launched exclusively by private developers, the Reform now allows the Administration, via the Ministry of Energy Transition and Sustainable Development, to grant an authorisation to build installations for the production of renewable energy following a call for projects, under specifications (*cahier des charges*) to be set out in further regulations.

The Reform does not specify the relevant authority which will be in charge of launching calls for projects, other than referring to the "Administration", which is understood for these purposes to be the Ministry of Energy Transition and Sustainable Development.

### **Storage**

The Reform will allow renewable energy operators to construct energy storage facilities and benefit from storage services. The conditions for the construction of these storage facilities and for benefiting from storage services will be set out further in implementing regulation.

### **Export of energy**

The Reform provides several clarifications regarding the export of renewable energy. The export of renewable energy is subject to (i) a technical opinion from the national electricity transport grid operator and (ii) the approval of the Administration.

Renewable energy will be exported via cross-border interconnections with neighbouring countries through the national electricity transport grid, in accordance with the agreements governing interconnections entered into between the relevant States.

Exports will be governed by an agreement defining the technical and economic conditions of access to the electrical interconnections, in particular the rate of losses to be applied, the transit tariffs and the system services.

### **Projects with existing authorisations**

Renewable energy electricity production installations that have previously been authorised by the Administration pursuant to Law 13-09 will not be subject to the provisions of the Reform except for the provisions relating to:

- the certificate of origin;
- the ability of the Administration to control the progress of the construction works and to withdraw the authorisation in the case of a delay in construction;
- change of control;

- the Administration's power to request from the holder of an operation authorisation all data and information relating to operation;
- the sale of renewable energy and the terms of accessing the electricity grid;
- the possibility for the renewable energy operators to sell electricity to distribution network operators;
- the export of energy; and
- the penalties in case of breach of the provisions of the Reform by the renewable energy operators.

### **Maintenance of solar development areas**

Under the initial legal framework, projects producing wind or solar energy for which the maximum cumulative capacity is greater than 2 MW must be located in areas specified by order of the Ministry of Energy Transition and Sustainable Development.

An order was published on 9 September 2011 specifying the areas reserved for the development of wind energy projects. Until July 2022, no order had been published to specify the areas for the development of solar energy projects and the draft law up until that time suggested that this requirement would be removed for solar energy projects.

However, the Reform did not remove the requirement and on 29 July 2022, an order was published specifying the areas reserved for the development of solar energy projects. The mapping of energy project development zones remains therefore applicable both for wind and solar energy projects.

This measure has been long-awaited by operators hoping to develop solar projects, particularly those of medium voltage, for which no authorisation could be given in the absence of an order specifying the areas for the development of solar projects. Until then, only wind projects had been developed under the framework of Law 13-09, all of which were for very high and high voltage.

The possibility to develop medium voltage solar projects will create new opportunities and help to accelerate Morocco's journey towards energy transition.

## **2. A new legal framework for self-generation of electricity**

Prior to the enactment of the Reform, Moroccan law did not have a specific legal framework governing the self-generation of electricity. The law governing the National Office of Electricity and Drinking Water (ONEE) merely provided for the possibility, for natural or legal persons, to produce electricity for self-consumption purposes, subject to obtaining a prior authorisation from the Ministry of Energy Transition and Sustainable Development and entering into an agreement with ONEE for grid access and the purchase by ONEE of the excess energy.

This regime applied only if the proposed installed capacity of the production facilities was less than 50MW or above 300MW. Therefore, no rule applied to production facilities between 50MW and 300MW.

Law 82-21 now establishes, for the first time, a comprehensive legal framework dedicated to self-generation of electricity. This new legal framework will have a positive impact on the development of seawater desalination projects that have a self-generation component and will reduce the carbon footprint in the industrial sector.

It will also greatly facilitate Morocco's National Green Hydrogen Offer that is currently being prepared, and which is expected to cover the whole value chain and ecosystem, as the new regime creates a clear legal framework for the development of electrolysis powered by renewable energy.

The main aspects of the Reform are:

### **Introduction of new self-generation regimes**

Law 82-21 provides for new requirements for self-generation depending on the capacity of the installation and whether or not the production site or the end-use sites are connected to the grid. The details of the new requirements can be summarised as follows:

<b>Off-grid self-generation projects</b>	
<b>Capacity</b>	<b>Requirement</b>
<b>All capacities</b>	Prior declaration before the Moroccan Ministry of Energy Transition and Sustainable Development
<b>Self-generation projects connected to the electricity grid</b>	
<b>Capacity</b>	<b>Requirement</b>
<b>Below a threshold to be determined by implementing regulation</b>	Prior declaration before the distribution network operator
<b>Equal to or exceeding a threshold to be determined by implementing regulation and below 5MW</b>	Prior connection approval from the distribution network operator
<b>Equal to or exceeding 5MW</b>	Prior authorisation from the Moroccan Ministry of Energy Transition and Sustainable Development, after requesting the technical opinion of the national electricity transport grid operator and, if the application relates to an installation connected to the medium-voltage network, the technical opinion of the relevant distribution network operator

### **Framework for accessing the electricity grid**

Law 82-21 provides for a legal framework to access the electricity grid and to transport the electricity produced from the production site to the end-use site. In this regard, the capacity of the installation must be equal to or exceeding 5MW and the prior approval of the national electricity grid operator or, as the case may be, the distribution network operator must be obtained.

### **Obligation to pay the system services fees**

As is the case for 13-09 projects, self-generators who are connected to the electricity grid must pay system service fees to the national electricity grid operator. The system service fees are due if the production site or the end-use site are connected to the electricity grid. The amount of the system service fees will be set by the National Electricity Regulation Agency (ANRE).

## Possibility to sell the excess energy

As for Law 13-09, Law 82-21 gives self-generators the option to sell excess energy to the national electricity grid operator, currently, ONEE, within up to a maximum of 20% of the annual production of the self-generation facility. The purchase price will be fixed by the National Electricity Regulation Agency (ANRE).

## Certificate of origin

As for Law 13-09 projects, Law 82-21 will allow the self-generator to obtain a certificate of origin proving that the electricity produced by the self-generator is from renewable energy sources. The procedure and the entity responsible for issuing this certificate will be set out in implementing regulation.

## Storage

As for Law 13-09 projects, Law 82-21 will allow the self-generator to construct energy storage facilities and benefit from storage services. The conditions for the construction of the energy storage facilities and for benefiting from storage services will be determined by implementing regulation.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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