

French 3GW tender

The aim of this legal update is to provide a brief overview of the recent French tender relating to offshore wind facilities for the first five areas identified by the French government (“**3GW tender**”).

1. Background

Following the Grenelle Environment Forum⁽¹⁾, the strategy of developing renewable energy in France (released on November 17, 2008) plans to increase the annual production of oil equivalent (Mtoe) renewable energy to 20 million tons. By 2020, the share of renewable energies must represent at least 23% of the total energy consumption of France. This objective is enshrined in the planning law relating to the implementation of the Grenelle Environment (No. 2009-967 of August 3, 2009).

In the maritime field, the plan provides that 6GW will be produced by offshore wind by 2020. In September 2010, a study which started in early 2009 identified the first areas suitable for the installation of offshore wind facilities. To achieve the development objectives for offshore wind⁽²⁾, on July 5, 2011 the French Department of Ecology published the first 3GW tender covering offshore wind facilities divided into five lots. The second 3GW tender would be launched in April 2012, with the same construction timeline.

2. The French 3GW tender

The 3GW tender is subject to a French specific tender procedure relating to electricity generation facilities in accordance with Law No. 2000-108 of February 10, 2000 and Decree No. 2002-1434 of December 4, 2002 and Directive 2009/72/EC of July 13 2009 concerning common rules for the internal market in electricity.

The French competent ministers in charge of this tender are the Minister of Ecology and the Minister of Economy. The Commission for Energy Regulation (“**CRE**”), as the public entity responsible for overseeing the liberalization of the French energy sector, is responsible for the

implementation of the procedure for tendering based on specifications defined by ministers. The CRE responds to any questions of candidates. It receives, entertains and notes the applications. Finally, it provides a reasoned opinion on the choice of the successful candidate. The final decision rests with Ministers.

The tender covers the construction and operation of five offshore wind turbines generating electricity in France. Each of these five facilities is recognised as a lot of the tender. For each of these lots, the requirements that must be met by applicants are set by the specifications of the tender, issued on July 11, 2011.

Each lot is characterized by a geographical area, particular conditions of connection, a minimum and maximum power to set and specific conditions of establishment:

Lot 1 - Tréport:	maximum power 750 MW/600 MW minimum power
Lot 2 - Fecamp:	maximum power 500 MW/480 MW minimum power
Lot 3 - Courseulles-sur-mer:	maximum power 500 MW/420 MW minimum power
Lot 4 - Saint-Brieuc:	maximum power 500 MW/480 MW minimum power
Lot 5 - Saint-Nazaire:	maximum power 750 MW/420 MW minimum power

A candidate is entitled to submit tender bids for one or several lots. The offers of the candidates will be evaluated on three criteria: price (40%), industrial organization (40%) and their consideration of the environment and existing activities (20%). The assessment process is detailed in the tender specifications.

Successful candidates will have the right to contract with EDF and/or local distribution companies (qualified as the “buyer” in accordance with Article L.311-12 of the French Energy Code) for the purchase of electricity, under the conditions set by the tender. The selling price is indicated by the applicant in its tender bids.

3. Calendar

Candidates may submit their application to the CRE until **January 11, 2012, 2:00 PM**.

Successful applicants will be announced in April 2012.

Each successful applicant for one or several lots will then carry out administrative procedures to obtain all necessary approvals, including those relating to the use of public maritime and environmental conservation.

These procedures would take about three years from April 2012 to April 2015 (obtaining all necessary approvals is not guaranteed to the successful applicants). On this basis, the construction of offshore wind energy facilities will not begin before April 2015 and the operation of the site as of 2017, at the soonest.

If you have any questions or would like further information on the above, please contact:

Matthieu de Varax

Partner, Paris

Tel: +33 1 53 53 43 43

J Paul Forrester

Partner, Chicago

Tel: +1 312 701 7366

Anoly Saypharath

Associate, Paris

Tel: +33 1 53 53 43 43

- (1) The Grenelle Environment Forum is an open multi-party debate in France that brings together representatives of national and local governments and organizations (industry, labor, professional associations, non-governmental organizations) on an equal footing, with the goal of defining the key points of public policy on ecological and sustainable development issues for the coming years.
- (2) These goals are specified in the ministerial order of December 15, 2009 on the multi-annual investment power generation.

Mayer Brown is a global legal services organization advising many of the world's largest companies, including a significant portion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest banks. Our legal services include banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; US Supreme Court and appellate matters; employment and benefits; environmental; financial services regulatory & enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

OFFICE LOCATIONS AMERICAS: Charlotte, Chicago, Houston, Los Angeles, New York, Palo Alto, Washington DC
ASIA: Bangkok, Beijing, Guangzhou, Hanoi, Ho Chi Minh City, Hong Kong, Shanghai
EUROPE: Berlin, Brussels, Cologne, Frankfurt, London, Paris
TAUIL & CHEQUER ADOGADOS in association with Mayer Brown LLP: São Paulo, Rio de Janeiro
ALLIANCE LAW FIRM: Spain (Ramón & Cajal)

Please visit our web site for comprehensive contact information for all Mayer Brown offices. www.mayerbrown.com

Mayer Brown is a global legal services organization comprising legal practices that are separate entities (the Mayer Brown Practices). The Mayer Brown Practices are: Mayer Brown LLP, a limited liability partnership established in the United States; Mayer Brown International LLP, a limited liability partnership (regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown JSM, a Hong Kong partnership, and its associated entities in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. "Mayer Brown" and the Mayer Brown logo are the trademarks of the individual Mayer Brown Practices in their respective jurisdictions.

© 2011. The Mayer Brown Practices. All rights reserved.