



MAY 2020

# PV Plant Licensing Guide



MACEDO VITORINO & ASSOCIADOS  
Sociedade de Advogados, RL

# Contents

- 03. Foreword
- 04. Reservation of injection capacity
- 05. Environmental assessment
- 06. Production license
- 07. Connection to the grid
- 08. Construction license
- 09. Operation license
- 10. About us

# Foreword

Investment in solar projects in Portugal is expected to ramp up in the next decade as the country aims to multiply its installed capacity in the next ten years and reach a target of 31% of renewable energy consumption in 2030.

Portugal has been one of the most enthusiastic countries regarding renewable energies. The domestic primary energy production in Portugal is almost based on renewable energy sources, leading to a decrease in the country's dependence to import fossil fuels and consequently reducing the emission of greenhouse gases.

In 2018, 56% of the electricity generated was based on renewables energy sources, which represents an increase of 15% compared to 2017. These numbers show the increase in the renewable energies installed capacity of the country's. While in 2014, the installed capacity was of 11,677 MW, this figure rose to 14,059 MW in 2018, with the aim of achieving a target of 28,300 MW by the end of 2030.

With regards to solar energy, Portugal is the European country with the highest average of hours of sun exposure with approximately 3,000 sunshine hours per year.

To stimulate the growth and investment in solar energy, last year the Portuguese Government approved a significant amendment to Decree-Law no. 172/2006, of 23 August, which establishes the Portuguese legal framework of the electricity sector ("**Energy Law**").

The most important change in the Energy Law has been the request of a reservation of injection capacity in the Public Electrical Grid ("**RESP**") as the first step in the licensing procedure. This aiming to prevent producers from obtaining a production license without having previous injection capacity into the grid and to avoid speculation related to the purchase and sale of licenses.

On the other hand, the Portuguese Government launched the first Portuguese Solar Auction in June last year which was a huge success and showed how competitive the Portuguese solar market can be, as it settled the world record of €14,8/MWh and doubled the Portuguese solar energy capacity. A new solar energy is scheduled to occur on August with 700 MW of capacity concentrated only on the Algarve and Alentejo region.

Considering the expected development of photovoltaic projects in Portugal, this guide provides an overview of the relevant project licensing proceedings for the construction and operation of the power plants.

# Reservation of injection capacity

Electricity production is subject to the granting of a production and operating license. However, the first step of the proceeding starts with the award of a reservation of injection capacity title in the RESP ("**Capacity Title**"). There are three ways that promoters may apply in order to obtain the Capacity Title.

In the first one, promoters apply for the title to the Portuguese Directorate of Energy ("**DGEG**"), providing information on the substation where the power plant is to be connected, the capacity and the level of voltage.

Within 5 days upon reception of this request, DGEG notifies the grid operator to inform on the available capacity within a period of 45 days and DGEG issues a Capacity Title when there is grid capacity on a first-to-come first-served basis. The request may only be refused on grounds that there is no available capacity in RESP, or the lack of payment of the mandatory deposit from the promoter to grid operator.

The second method consists in an agreement between the relevant grid operator and the promoter to extend the grid capacity where there is a lack of it. In this case, the promoter will finance the costs arising from the construction, or reinforcement of the grid. The promoter submits an application to DGEG, which will forward it, within 5 days, to the grid operator.

After qualifying and ordering applications, the grid operator sends the promoter, within 60 days, a reasonable timetable for processing the application, including the conditions and milestones under which the capacity will be made available: (i) a complete and detailed estimate of the costs associated with the connection, and (ii) a reasonable indicative timetable for the proposed grid connection, as well as the estimated costs for carrying out the specific studies needed. After the specific studies have been carried out, the promoter may enter into an agreement with the grid operator setting out the capacity to be allocated.

The allocation of injection capacity in the RESP may also be subject to a tendering procedure. The modality of the procedure, the conditions and criteria for the allocation of reserve of injection capacity in the RESP, the remuneration scheme, the access, the duration and conditions, the deadlines for the entry into operation of the power plants and respective extensions, as well as the value of the deposit intended to ensure compliance with all the obligations of the promoter, are established in the procedure documents.

The decision to launch a tendering procedure results in the immediate cancellation of the pending applications for allocation of capacity for injection points to be included in the procedure.

# Environmental assessment

Before applying for the production license, a project may have to obtain: (i) a favorable or conditionally favorable Environmental Impact Statement (“**DIA**”), when the project is covered by the Environmental Impact Assessment framework (“**AIA**”), or (ii) a favorable Environmental Repercussions Assessment, when the project is to be established in areas of National Ecological Reserve, Natura 2000 areas or National Protected Areas Network (“**AINCA**”).

DIA is a decision about the environmental feasibility of a project after the relevant Environmental Impact Study (“**EIA**”) is conducted by the promoter. Plants with a power of 50MW or more, as well as those with a power over 20MW if located in sensitive areas, are subject to EIA.

The promoter shall submit the EIA to the competent Portuguese Environmental Agency (“**APA**”) that will issue the DIA after a period of public consultation of 30 days. A non-favorable DIA decision terminates the relevant AIA procedure.

In case the project is in a sensitive area, the project will be subject to the AINCA procedure. The AINCA assessment will be carried out by relevant regional development coordinating committee (“**CCDR**”) based on an Environmental Repercussions Study (“**EINCA**”) submitted by the Promoter.

The CCDR has 10 days after receiving the EINCA to verify its compliance. In the event of non-conformity, the CCDR shall request the submission of additional elements, setting a time limit for this purpose, which may not exceed 50 days, with the subsequent deadlines of the procedure being suspended for the relevant period. In the absence or insufficient submission of the additional elements, the AINCA procedure is terminated and the CCDR must notify the DGEG and the promoter thereof.

In case the EINCA is in conformity, CCDR notifies DGEG of the procedure and starts a period of public consultation of 20 days and consultation to external authorities and entities that according to the law must issue opinions in a period of 20 days.

After the above deadline is met, CCDR shall draw up the report of the public consultation within 10 days. The decision on the AINCA shall be taken by CCDR within additional 20 days from the drafting of the public consultation report or from the external authorities and entities’ opinions, whichever occurs first.

If the project is not legally subject to DIA or AINCA, the need for an environmental assessment will be subject to a case-by-case review to be carried out by DGEG and APA.

# Production license

The procedure for the granting the production license starts with the promoter submitting a request to DGEG accompanied by several documents, including but not limited to: (i) Capacity Title, (ii) proof of the right to use the land where the plant is to be established, (iii) project description, (iv) term of responsibility regarding to the electrical facilities of the project, and (v) favorable DIA, or AINCA, if applicable.

If DGEG does not reject the application, it shall issue a document for the payment of the production license fee and start consultations with other interested authorities. Within 30 days, DGEG shall give a decision on the application for a production license. In the event of a favorable or unfavorable decision subject to conditions, the production license shall be deemed to have been granted.

Once the production license has been awarded, the promoter must start operating the power plant within a maximum period of two years for plants subject to the special remuneration scheme, or within a maximum period of three years for plants subject to the general remuneration scheme.

Pursuant request by the promoter, and under exceptional circumstances, the deadlines referred to above may be extended by order of the member of the Government responsible for the energy area.

With the granting of the production license the promoter is bound to comply with several obligations, which include providing a deposit to DGEG in the amount of 2% of the expected investment. The deposit shall be: (i) triggered by the DGEG in case promoter does not start operating the plant within the period set in the production license or the extensions granted, or (ii) released on the start date of operation if it occurs within that period or its extensions.

After obtaining the production license, the promoter shall enjoy the right to:

- (a) establish and operate the power plant;
- (b) sell electricity on organized markets or through bilateral contracts and purchase electricity up to the limit of its generation capacity;
- (d) deliver the electricity produced to the entity legally responsible for acquiring electricity against payment of a guaranteed remuneration, if applicable;
- (e) deliver the electricity produced to the supplier subject to the obligation to purchase energy, or to an entity that aggregates the production, against payment of a general remuneration.

# Connection to the grid

The promoter shall start the process of connecting the power plant to the RESP *pari passu* with request for the production license. As a rule, plants with an installed power of more than 50 MVA are connected to the transmission grid, while plants with less than 50 MVA but more than 10 MVA are connected to the distribution grid.

The promoter shall request to the grid operator for connection of the power plant to the RESP. Upon reception of the request, the grid operator shall inform the promoter of the: (i) necessary infrastructures in order to secure the connection, (ii) estimate cost of the connection, (iii) construction of the infrastructures, and (iv) connection charges.

The promoter bears the costs of the construction of the necessary infrastructures for connecting the power plant to RESP, including the costs related to the occupation of the land which is necessary for the installation of said infrastructures. In addition, the promoter is also subject to the payment of a charge regarding to grid contributions, which is calculated pursuant to a formula published by the Portuguese Energy Services Regulator (ERSE).

The grid operator is entitled to: (i) inspect the construction of the connecting elements and request the performance of any tests it deems relevant, and (ii) request to the promoter to provide a guarantee, valid for a period of two years, with an amount corresponding to a maximum of 10% of costs of the infrastructures.

The construction of the connecting infrastructure can be requested directly to the grid operator, this being the rule, with the promoters agreeing in most cases with the offer provided for connecting the power plant to the grid. After construction of the infrastructures they will become part of the RESP and must be handed over to the grid operator.

Prior to the construction of the infrastructures required to connect the power plant to RESP, the grid operator shall request to DGEG an establishment license. The issuing of the establishment license is not mandatory before starting the construction of the power plant, although it is mandatory for the construction of the infrastructures that will connect the power plant to the RESP. Thus, the promoter shall deliver to the grid operator the power plant project, including all the necessary elements to give a perfect and accurate idea of the installation. After the acceptance of the project, the grid operator shall apply for the establishment license before DGEG.

After construction of the relevant infrastructures, a Grid Operation Agreement shall be entered into between the promoter and the grid operator with the purpose to establish the conditions related to the use of the grid and interconnections.

The promoter will also have to enter into an agreement for the sale of electricity with an energy supplier prior to the connection and entry into operation of the power plant.

# Construction license

Building a power plant is considered an “urbanistic operation”. As such, this operation is subject to control before its construction. The construction license is a procedure detached from the others, necessary, however, to build the infrastructure connections and obtain the operating license.

Before filing a request, the promoter may require information about the the feasibility of carrying out the construction of the project, as well as on the respective legal or regulatory conditions, namely regarding infrastructures, administrative easements and restrictions of public utility, urbanistic indexes, summits, remoteness and other conditions applicable to the claim (*pedido de informação prévia* or “PIP”).

The PIP binds the municipality to the issuance of the construction license, in the exact terms in which the PIP was granted, for a period of one year.

In order to obtain the construction license, the promoter submits online (on municipalities’ website) a request addressed to the President of the Municipality. The President of the Municipality decides on the completeness of the request and starts a period of consulting external authorities.

Within 45 days from the date of receipt of the last of the opinions, or approvals by such authorities, the Municipality decides upon the issuing of the construction license.

However, the construction works may only commence after the issue of the relevant construction permit, which must be applied by the promotor within one year of the date of the issuing of the construction license. Failing to comply with said deadline will cause the expiration of the construction license.

The issuing of the construction permit is subject to the provision of a deposit by the promoter to the Municipality in the amount of the expected costs of the works, as well as a valid insurance policy covering work accidents.

The promotor shall start the construction of the power plant within one year of the issuing of the permit, under penalty of expiration of the relevant construction license.

After completion of the construction works, the promoter must obtain the license of use of the construction, to be issued by the Municipality. The application for the license of use must be accompanied with the final blueprints, and a term of responsibility subscribed by the director of the works, in which they declare that the work is completed and that it has been executed in accordance with the architectural and speciality projects, as well as with the legal and regulatory rules that apply to it.

The license of use is granted within 10 days of receipt of the application, unless a survey to the work is decided by the President of the Municipality.



# Operation license

To start the operations of the power plant, promoter must obtain an operation license.

The request for the issuing of the operation license is addressed to DGEG and must be accompanied by the following documents:

- (a) a declaration signed by the technicians responsible for the project and for the supervision of the construction, certifying that the installation has been completed and the power plant is prepared to operate in accordance with the approved design and in compliance with the conditions laid down in the decision granting the production license, as well as, if applicable, that the changes made are in accordance with the legal and regulatory rules applicable to it;
- (b) Copy of insurance policy regarding to civil liability;
- (c) Opinion of the relevant grid operator to which the plant is connected stating that the conditions for connection and injection of energy into the grid are met; and
- (d) Favorable opinion of REN, S.A., in its capacity of global manager of the SEN (National Electrical System)

The operation license is issued by the member of the Government responsible for the energy sector, following a survey to the power plant facilities carried out by DGEG within a maximum period of 30 days after receipt of the license application. Once granted, the operation license establishes the conditions under which the plant shall operate. This license is considered part of the production license.

The operation license request may only be rejected based on the non-conformity of the facilities with the legal and regulatory conditions or with the conditions set out in the production license.

When the operation license is issued, DGEG releases the deposit provided by the promoter for the purposes of the issuing of the production license. After the issuing of the operation license, the promoter is entitled to transfer the production license (together with the operating license), subject to authorization from DGEG.

The production license and the operating license are subject to revocation, namely in the event the promoter: (i) fails to comply with its duties related to the exercise of the activity, (ii) does not maintain the civil liability insurance up to date, or (iii) make substantial changes to the power plant without complying with the relevant licensing.



IVM

ABOUT US

who we are  
and what we do

# About us

Macedo Vitorino & Associados is a leading Portuguese law firm. We advise domestic and foreign clients in a wide range of business sectors, including banking, distribution, industry, energy and TMT projects. We are known for our professional and client oriented approach.

Since the foundation of our firm in 1996 we have been involved in several high profile transactions in all of the firm's fields of practice, including banking and finance, capital markets, corporate and M&A, etc.. We have also acted on many complex disputes and restructurings.

We have strong relationships with many of the leading international firms in Europe, Asia and the Americas, which enable us to handle cross-border transactions effectively.

We are mentioned by The European Legal 500 in most of its practice rankings, including Banking and Finance, Capital Markets, Project Finance, Corporate and M&A, Tax, Telecoms and Litigation. The firm is also recognised by IFLR 1000 and Chambers and Partners for its work in project finance, corporate finance, corporate and M&A, TMT, dispute resolution and restructuring.

Our team is committed, hard working, accessible and friendly. We believe in collegiality, teamwork, trust and loyalty. Clients value our team approach, the good management of time and our focus on their business goals.

We advise:

- National and multinational companies
- Banks and other financial institutions
- Funds
- Business and scientific associations
- Foreign embassies
- Individual entrepreneurs
- Private equities
- Start-ups
- Private clients

If you want to find out more about Macedo Vitorino & Associados please visit our website at [www.macedovitorino.com](http://www.macedovitorino.com)



Rua do Alecrim 26E | 1200-018 Lisboa | Portugal  
Tel.: (351)21 324 19 00 | Fax: (351)21 324 19 29  
[www.macedovitorino.com](http://www.macedovitorino.com)