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OCTOBER 2023 | ENERGY | SOLAR PHOTOVOLTAIC PLANTS IN PORTUGAL

LICENSING GUIDE

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FOREWORD

With around 3,000 hours of sunshine per year, Portugal stands as the European country with the highest average hours of sun exposure, and it has harnessed this advantage to emerge as one of the most progressive and enthusiastic nations in the promotion of renewable energy.

Portugal's domestic primary energy production relies predominantly on renewable energy sources, thereby diminishing the country's dependence on imported fossil, consequently reducing the emission of greenhouse gases. In 2022, 56,9% of the electricity generated was based on renewable sources, and this is expected to rise steeply in the coming decade.

In its most recent version, released on 30 June 2023, the Portuguese National Plan for Energy and Climate for the period 2023-2030 (“**PNEC 2030**”), sets ambitious goals for a substantial rise in renewable energy generation, notably by committing to 85% of electricity production based on renewable sources by the end of 2030.

Regarding solar energy, it is expected by the end of 2030 an increase in solar capacity by 20.4 GW with (a) centralized solar production to reach 14.9 GW, and (b) decentralized solar production to reach 5.5. GW.

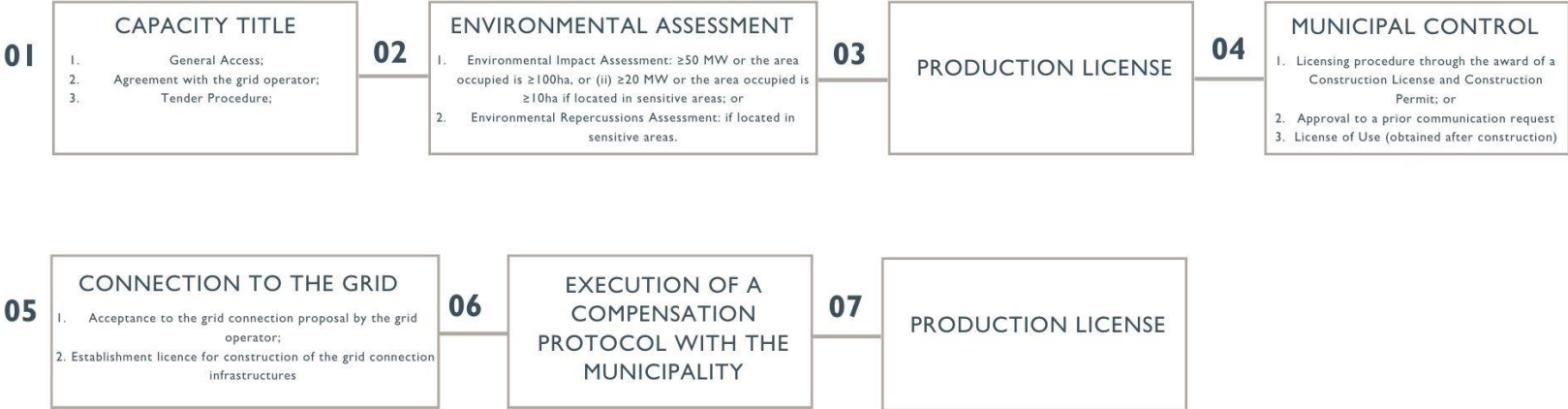
These figures come close to quadrupling the current installed capacity with centralized solar production currently standing at 1.5 GW and decentralized production at 1.1 GW. These numbers appear even more impressive when compared at a scale of 1 to 5 to the Spanish PNIEC, which aims for a total solar energy production capacity of 76 GW.

The ground rules and current organization of the Portuguese National Electrical System are established in Decree-Law No. 15/2022, of 14 January (“**Energy Law**”), setting forth the legal framework applicable to the activities of generation, storage, transmission, distribution and supply of electricity.

Overall, the road to market of a 1MW+ renewable energy generation must go through the following steps: (i) a grid capacity, (ii) environmental clearance, (iii) a production license, (iv) the approval of the Municipality for construction of the power plant, (v) securing connection to the public grid, (vi) execution of compensation protocol with the Municipality, and (vi) an operation license.

The guide provides a snapshot of the main steps to fully license a solar power plant with 1MW+ of installed capacity.

ROADMAP TO LICENSING



GRID CAPACITY TITLE

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 to obtain the Capacity Title: (i) General Access, (ii) Agreement with the grid operator, or (iii) Competitive Auction

In the General Access, promoters request directly the Capacity Title to the Portuguese Directorate of Energy (“**DGEG**”), subject on DGEG’s publication of the available capacity in the grid, by providing the output capacity and the connection substation and voltage level.

Within 5 days upon reception of the request, DGEG notifies the grid operator to inform on the available capacity within a period of 45 days and DGEG issues the Capacity Title when there is grid capacity on a first-come first-served basis. The request may only be refused on grounds that there is no available capacity in the specific substation or if the request exceeds the available capacity.

The capacity available in this modality should have been published by DGEG by July 15, 2022, but, up to this date, it has not yet occurred, meaning that this method of obtaining the Capacity Title is currently not feasible.

The second method consists in an agreement between the relevant grid operator and the promoter to extend the grid capacity, on which the promoter finances the expansion of the grid capacity.

The Secretary of State for Energy shall establish the capacity to be allocated in the RESP in this modality until January 15 of each year and the promoters must apply until March 15th, of each year.

The grid operators release a ranked list of the projects (based on technical and safety criteria) by August 10th, of the same year and within 10 days after the release of the final list, the grid operators send to the promoters the budget for carrying out the grid reinforcement studies and the relevant payment deadline.

Until April 30 of the following year, the grid operators send to the promoters (i) the grid studies, (ii) the costs of reinforcement of the grid and (iii) availability deadline for completion of the works, and (iv) draft of the agreement to be entered with the promoter.

The promoter has 30 days to accept the execution of the agreement. If accepted, the agreement must be executed by the end of November, or the request will expire.

GRID CAPACITY TITLE (II)

This modality is also currently unavailable due to a procedure launched by the Government in 2020 called “*Termos de Referência*”, which established a set of criteria for ordering prior submitted requests. DGEG published the final rankings of eligible projects for agreements with the TSO (78 projects) and DSO (53) on 2021, subsequently amending the list in July 2023 to give priority to projects that already conducted an environmental assessment.

The first tranche of projects with a total capacity of 3,6 GW is currently being handled by the TSO (3,2 GW) and the DSO (350 MW), and as far as is publicly known, the draft of the grid reinforcement agreements has been sent to the promoters.

The Government has already confirmed that the second tranche will enclose a capacity of 5 GW for projects on the TSO list (up to the 23rd position) and 1 GW for projects on the DSO list (covering all eligible projects).

A third tranche of projects with the remaining capacity is expected to start being handled by the TSO in 2024.

The grid connection reinforcements necessary for connecting the projects to the RESP are expected to be concluded in 2028, 2029 and 2030.

The allocation of injection capacity in the RESP may also be subject to a tendering procedure.

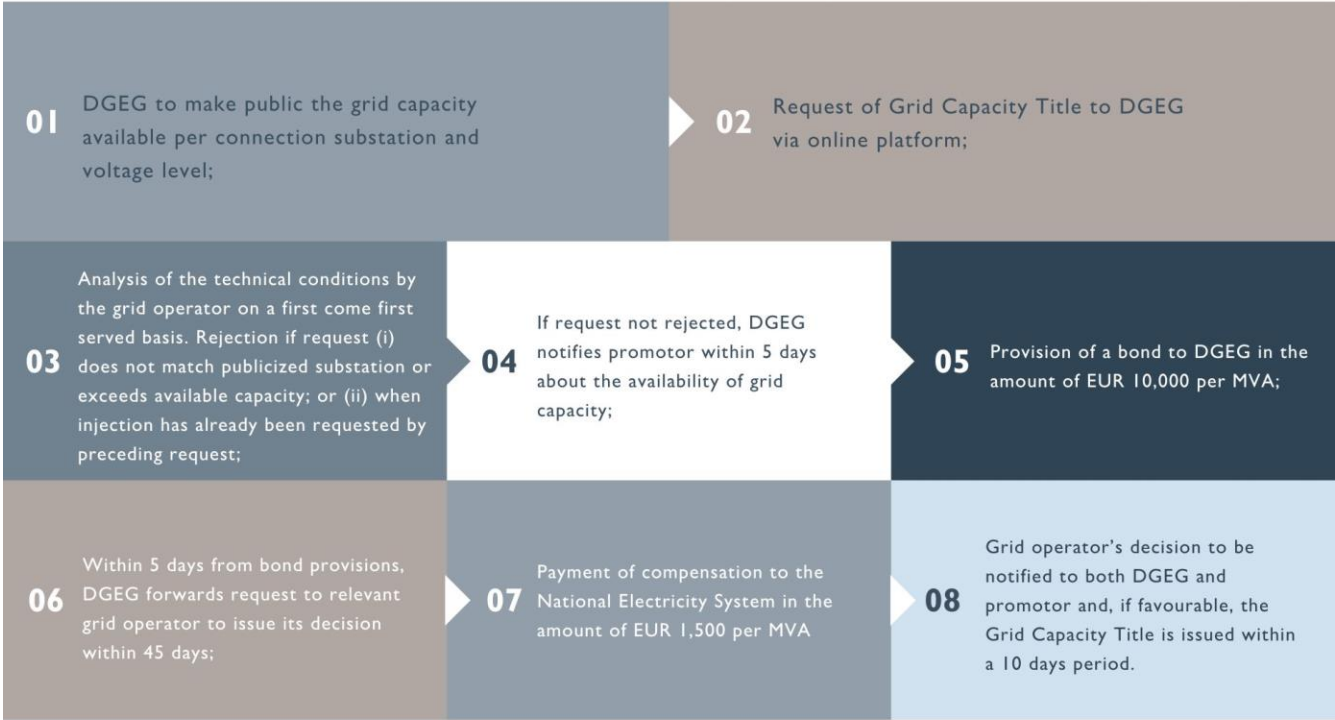
The modality of the procedure, the conditions and criteria for the allocation of reserve of injection capacity in the RESP, the remuneration scheme, the access, the duration and conditions, the deadlines for the commencement of operation and respective extensions are set in the tender documents.

The decision to launch a tendering procedure results in the immediate cancelation of the pending applications for allocation of capacity for injection points to be included in the procedure, unless the promoter has already paid for the grid studies.

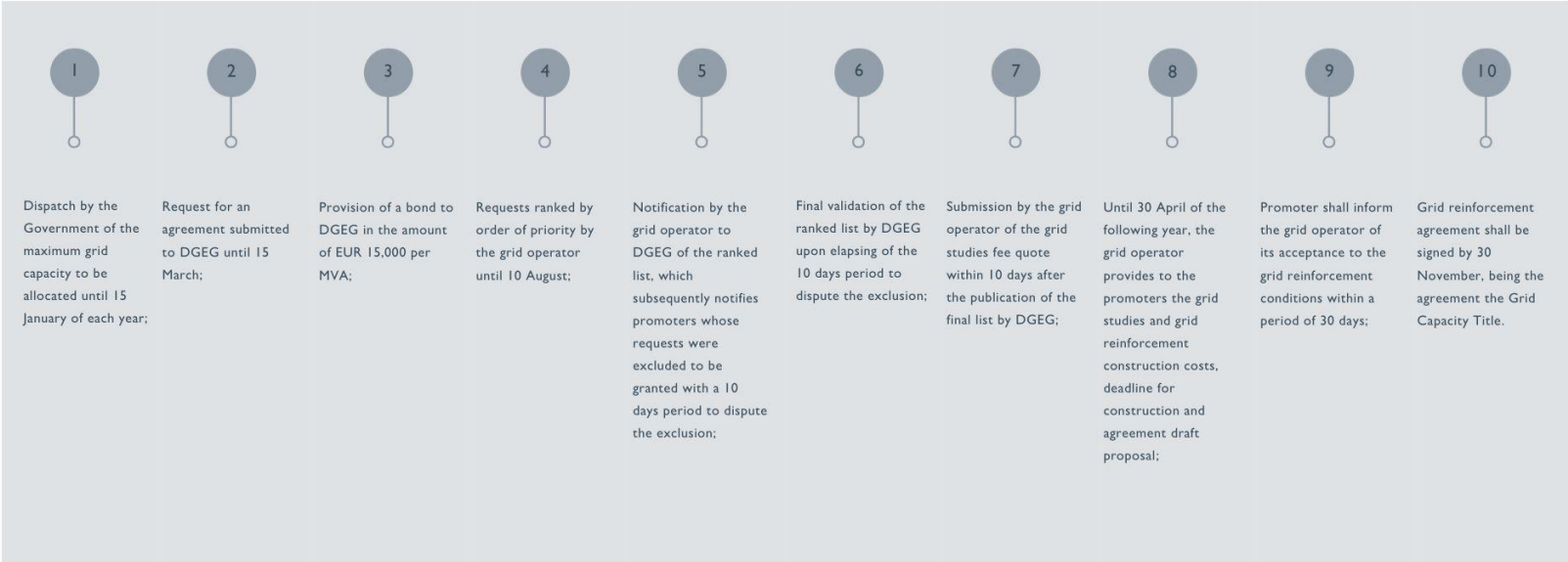
The application for obtaining a Capacity Title is subject to the delivery of deposit by the promoter, as follows:

- In the General Access: EUR 10,000.00 per MVA of injection capacity;
- In the agreement with the grid operator: EUR 15,000.00 per MVA of injection capacity;

GRID CAPACITY TITLE – GENERAL ACCESS

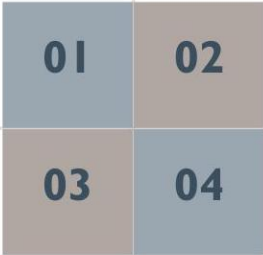


GRID CAPACITY TITLE – AGREEMENT WITH THE GRID OPERATOR



GRID CAPACITY TITLE – TENDER PROCEDURE

<p>PUBLICATION</p> <p>The member of the Government responsible for the energy sector may determine the performance of a competitive procedure to be held attribution of an injection capacity reserve title in RESP.</p>	<p>REGULATION</p> <p>The parts of the procedure specifically define (i) the object of the procedure and the modality adopted, (ii) the conditions and criteria for attributing the injection capacity reserve in RESP (iii) the requirements for the qualification of interested parties, (iv) the accepted remuneration models, (v) the maintenance conditions, (vi) deadlines for entry into operation, and (vii) the value of the security deposit.</p>
<p>EXPIRY</p> <p>The decision to carry out a competitive procedure determines the immediate expiry of requests for allocation of injection capacity reservation in RESP in the general access modality referring to the injection points to be included in the procedure and which are pending at that date, returning the security deposit. provided within 10 days of the opening of the procedure.</p>	<p>LIMIT</p> <p>The competitive procedure cannot cover injection points in RESP that have been the subject of an agreement with RESP's operator or, when the agreement has not been signed, the payment of the budget for carrying out the network studies has already occurred, returning to the other situations, the security deposit provided within 10 days from the opening of the procedure.</p>



ENVIROMENTAL ASSESSMENT

Before applying for the production license, a project may have to obtain: (i) a favourable or conditionally favourable Environmental Impact Statement (*Declaração de Impacte Ambiental* – “**DIA**”), when the project is covered by the Environmental Impact Assessment (*Avaliação de Impacte Ambiental* - “**AIA**”), or (ii) a favourable or conditionally favourable Environmental Repercussions Assessment (*Declaração de Incidências Ambientais* – “**DINCA**”), when the project is to be established in areas of National Ecological Reserve, Natura 2000 areas or National Protected Areas Network.

DIA is a decision about the environmental feasibility of a project after an environmental impact study is conducted by the promoter. Any project (i) with a generating capacity ≥ 50 MW or the area occupied by panels and inverters is ≥ 100 ha, (ii) or, in case it is installed in sensitive areas, has a generating capacity ≥ 20 MW or the area occupied by panels and inverters is ≥ 10 ha is subject to AIA. Furthermore, the projects that do not reach those thresholds are subject to a case-by-case assessment of their potential impact on the environment, based on their location, size or nature, and may be subject to AIA by decision of the Portuguese Environmental Agency (*Agência Portuguesa do Ambiente* – “**APA**”) or of the DGEG

Promoters shall submit the environmental study to APA that will issue the DIA after a period of public consultation of 30 days. A non-favourable DIA decision terminates the relevant AIA procedure.

The project will be subject to DINCA in case it is located in a sensitive area being carried out by the Commission for the Coordination of Regional Development (*Comissão de Coordenação e Desenvolvimento Regional* – “**CCDR**”) based on an environmental repercussions study submitted by the promoter. The DINCA is a simplified process, with the same purpose of AIA but with lighter requirements.

When a project is not subject to AIA or AINCA, the only environmental requirement that shall be stressed out is a favourable opinion of the competent CCDR regarding the location of the project to be requested within the context of the Municipal Licensing, without prejudice to other entities that may be required to issue an opinion within such licensing procedure.

In case the lands where the project is to be installed fall within the National Ecological Reserve or are in areas crossed by water lines, the regulations regarding these two constraints should be taken into consideration.

PRODUCTION LICENSE

Renewable power plants with an installed capacity over 1MW must obtain a production license to start the development and operation of the project. The procedure starts with the promoter submitting a request to DGEG for the award of the production license within a 1-year period from the award of the Capacity Title, if the project is subject to AIA, otherwise this deadline is reduced to 6-months.

Upon request of the promoter, the deadlines established in the previous paragraph may be extended – one time - for a maximum of 1-year period upon issuance of a DGEG's order. This second deadline can be extended for an indefinite period of time by order of the member of the Government responsible for the energy sector, upon request duly grounded by the promoter.

The application to obtain a production license must be accompanied with a set of documents, including: (i) Capacity Title, (ii) land right, (iii) project description and technical documentation in connection with the power plant facility, and (iv) favourable environmental opinions, if applicable.

DGEG shall start the consultation with external entities (particularly grid operator) regarding the installation of the project. Within a period of 30

days after the deadline of 20 days for the external entities to issue their opinion, DGEG shall decide upon the award of the production license.

The award of the production license is subject to the provision of a deposit to DGEG, in the amount of EUR 10,000 per MVA of injection capacity, with a maximum limit of EUR 10,000,000.00 for a period of 30 months or until the entry into operation of the power plant (whichever occurs later), under penalty of expiry of the procedure.

The production license grants to the promoter, amongst other, the right to (i) install the power plant, (ii) sell the generated energy in organized markets or bilateral agreements, or to the last resort supplier in case the project benefits from a guaranteed remuneration scheme.

The production license may be assigned, but subject to the previous consent of DGEG, and may only be approved if the legal requirements for its award are met by the assignee and (i) if the share of electricity generation capacity held by the assignee in MIBEL on December 31 of the previous year does not exceed 40%, and (b) if the assignee display technical and financial economic capacity and experience to ensure completion of the project).

CONNECTION TO THE GRID

The promoter bears the costs of the construction of the necessary infrastructures for connecting the renewable energy project to RESP, including the costs related to the occupation of the land which is necessary for the installation of said infrastructures. As a rule, renewable energy project with an installed capacity of more than 50 MVA are connected to the transmission grid, while plants with less than 50 MVA are connected to the distribution grid.

The grid connection offer is valid for a period of 180 days on which the promoter must accept them or request its modification in case it does not agree with the conditions submitted. Otherwise, such connection conditions expires, and new technical conditions must be requested. Once the promoter has accepted the grid connection offer, the promoter may start the procedure to construct the necessary connection infrastructures.

The costs and charges for the licensing process and construction of the connection facilities that will connect the relevant renewable energy project to the grid are the responsibility of the promoter and, as general rule, subject to technical validation of the project by relevant grid operator since after their construction the connection facilities shall be included into the concession of the grid operator.

Pursuant to the Electrical Installation License Regulation approved by Decree-Law 26852, of July 30, 1936, as a rule electrical facilities that connect renewable energy projects to the grid are subject to obtain an establishment license to be awarded by DGEG. 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 connection facilities that will connect the power plant to the public grid.

The request of the establishment license shall be performed by the grid operator after conduction a technical validation of the connection project submitted by the promoter. The promoter is also responsible for securing the necessary land rights and/or easements for the construction and operation of the connection facilities and for compensation due to affected landowners.

The promoter shall assign the connection facilities to the relevant grid operator after its construction as it shall remain under the concession of the latter. Upon the assignment, the promoter shall provide a guarantee to secure any construction or manufacturing defects corresponding to a maximum of 10% of the value of the relevant facilities, valid for a period of 2 years for the electrical works and 5 years for the civil works.

MUNICIPAL CONTROL

According to legal framework concerning urban planning and building, construction enacted by Decree-law no. 555/99, of December 16, building a power plant is considered an “urbanistic operation”, and thus subject to:

- A licensing procedure through the obtainment of a construction license and construction permit, being the permit a condition for the construction license to be effective and for the start of the works
- The approval to a prior communication request which, if properly instructed and approved by the Municipality grants the right to immediately start the construction works.

Before construction, it is possible to ask the municipality, on a preliminary basis, information about the feasibility of certain urban planning operation, including legal and regulatory constraints. A favourable preliminary information binds the competent entities on the decision to make on a potential construction request for a period of 1 (one) year.

To obtain the construction license, the promoter submits online (on the 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.

In any case, 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 the said deadline will cause the expiration of the construction license.

The prior communication request consists of a declaration that, provided it is properly instructed, allows the interested party to proceed immediately with certain urban planning operations after payment of the fees due, dispensing with the practice of any permissive acts.

Based on reasonable grounds, the construction deadline may be extended for a further period not exceeding half of its initial term.

After completion of the construction works, the license of use for the project shall be obtained attesting that the works are completed and have been executed in accordance with the relevant construction procedure, as well as with applicable law and regulations.

COMPENSATION TO MUNICIPALITIES

Holders of renewable power plants with an allocated connection power greater than 50 MVA are obliged to transfer, on a one-off basis and free of charge, to the municipality or the municipalities where the power plant is located:

- A self-consumption production unit (UPAC) with an installed power equal to 0.3% of the connected power of the power plant;
- A storage facility for installation in municipal buildings or collective use equipment;
- Electric vehicle charging stations for public use with an equivalent capacity.

The municipality may request instead a compensation in the amount of EUR 1,500.00/MVA of connection power in case it already owns the above infrastructures.

Municipalities are not allowed to request any other or higher concessions or compensation.

The holder of the power plants installs the infrastructures in the location indicated and provided by the beneficiary municipalities and after the award of the production license.

Compensation are subject to a protocol to be entered into between the holder of the power plant and the municipality or municipalities where the power plant is located in the period between the award of the production license and the operation license.

Execution of the protocol constitutes a condition for the award of the operation license. In case the municipality refuses to sign the protocol, the owner of the power plant may substitute the transfer of the UPAC by compensation.

For power plants with an allocated power greater than 1 MVA and less than or equal to 50 MVA, a one-off payment of EUR 1,500.00/MVA of connection power shall be made.

OPERATION LICENSE

Renewable power plants may only start operating after obtaining the operation license.

The request for obtaining the operation license is addressed to DGEG and must be accompanied by a set of documents, including (i) a statement signed by the technicians responsible for the project certifying that the project has been completed in accordance with the applicable legal and regulatory rules, (ii) copy of insurance policy covering the civil liability of the project, and (iii) opinion from the grid operator stating that the project meets the conditions to connect to the grid.

By issuing the operation license, DGEG certifies that the project was built in accordance with the requirements and specifications set out in the production license and the applicable regulations and confirms that it is able to supply power into the grid, thus granting the right for the project to enter into operation.

The award of the operation license 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.

Promoters must start operating the power plant within a maximum period

of one year from the award of the production license, with a possible further extension of another one year or for an indefinite period of time by order of the member of the Government responsible for the energy sector, upon duly grounded request.

Pursuant to Decree-Law no. 30-A/2022 of 18 April 2022 that established exceptional measures aimed at streamlining procedures to accelerate the entry into operation of renewable energy generation projects and that will remain valid for a period of 2 years, promoter may start operation of the power plant before obtaining the operation license, provided that the grid operator has served notice informing that the conditions for connection and injection of energy into the grid have been met. In this case, within the following 3 years, the promoter must apply for the award of the operation license, under penalty of termination of the production license.

The production license and operation 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 renewable power plant without complying with the relevant licensing procedure.

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ABOUT US

WHO WE ARE & WHAT WE DO

ABOUT US

MACEDO VITORINO is a leading Portuguese law firm. We advise domestic and foreign clients in a wide range of business sectors, including banking, distribution, industry, energy, TMT and projects. We are known for our professional and client oriented approach to complex and difficult matters.

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