WATSON FARLEY & WILLIAMS

Following our Investing in Green Energy: Spotlight on Greece event on Thursday 12 October 2023, please find below an overview of what was covered. For reference, here are the agenda and speaker details if you would like to discuss the topic further.

With thanks to London Energy & Infrastructure Senior Associate Suki Rees for preparing this overview.

INTRODUCTION TO THE MARKET

Virginia Murray

Market plans

- Greece currently has a total installed capacity of 11.5 GW of green energy projects (excluding large hydro), just under half the national total with conventional generation currently at 12 GW capacity.
- The national push towards meeting Greece’s ambitious renewable targets of 80% by 2030 is partly to replace the use of lignite (brown coal).
- Lignite energy production will be phased out by 2028 (extended from an original deadline of 2023 due to the recent global energy crisis which resulted in the reopening of a number of plants) – no mean feat as lignite currently accounts for over 25% of conventional generation.

Grid scarcity

- There is a shortage of grid connections on the mainland: there has been significant investment, but much of this has been allocated to connecting Greece's island network to the mainland grid.
- As of June 2023, there were 36 GW of pending applications.
- In August 2022, the Ministry of Energy tried to tackle this via a new priority system for connections based on a range of grounds rather than on a date submitted basis by creating a number of priority categories. The projects will be allocated grid connection in priority order, but this process remains slow and the "A" category projects have still not received grid offers.
- As a result, it is not yet possible to accurately foresee when a project will receive a grid offer.
- Due to the high number of borders, interconnectors are also being upgraded – figures for July 2023 show that Greece was a net importer from its immediate neighbours and a net exporter to Italy.

Route to market

- Contracts for Difference (“CfDs”) have been allocated on an auction basis since 2017 by the Greek RES & GO Operator (DAPEEP), on the phaseout of the fixed tariff system All projects since 2016 are required to participate in the electricity market.
- Most project financed assets have CfDs, with new auctions scheduled until the end of 2024.
- Projects for which a CfD has been signed until the end of 2023 may elect to have a suspension of their CfD up to two years from the issuance of their Operation Licence, meaning short-term PPAs have increased in popularity to bridge the gap.
- We are seeing an increasing number of bilateral PPAs, but according to recent press reports only 30-40 bilateral PPAs have been signed to date, approximately equal numbers of virtual and physical. Part of the problem is the price cap of €85/MWh on the sale of renewable energy into the market, unless covered by a physical PPA with heavy industry.

A SHORT OVERVIEW OF THE LICENSING PROCESS

Maira Galani

- There have been a number of changes to the regulatory framework in recent years.

© Watson Farley & Williams 2023. All references to ‘Watson Farley & Williams’ mean Watson Farley & Williams LLP and/or its affiliated undertakings.
This constitutes attorney advertising | www.wfw.com

- The licensing process is split into Phase A (new legislation in force since 2020), the environmental licensing, and Phase B (new legislation in force since 2022)
- Phase A finishes with the issue of a 'RES Producer's Certificate', which is required for the production of electricity from RES and for the continuance of the remaining licensing process
- There is a sequence of milestones to be reached within a specified timeframe to avoid automatic revocation of the RES Producer's Certificate.
- Letters of Guarantee are also required on a per MW basis at various stages.
- Phase B completes after the connection of a project to the grid, following which its Operation Licence is granted for a 20-year period.

ACQUISITION OF RES PROJECTS IN GREECE

Matina Kanellopoulou

Corporate vehicles and acquisitions

- There are two common corporate vehicles in Greece, limited liability private companies ("IKEs") and sociétés anonymes ("SAs").
- IKEs are quicker and simpler to set up and can have a share capital of €1, whilst an SA requires a minimum share capital of €25,000 and their establishment can be more complicated.
- IKEs can be converted into SAs – a must from a project finance perspective as only SAs can issue bond loans (discussed further below).
- Acquisitions are most commonly carried out via share sales rather than asset sales – the latter requiring prior written consent of the regulator, novation of all agreements and payment of licensing fees, while the former only requires a notification to the regulator post-sale.

Main transaction documents

- SPAs are often written in English but governed by Greek law, with the terms influenced by English law agreements.
- An alternative to an SPA is a share option agreement, which is registered on the target company's corporate books. If the agreed conditions are met at a later stage, the transfer will be effected. Any other transfer purporting to be effective following registration of a share option will not be valid.
- The contents of a Greek law SPA mirror what is usually seen in English law SPAs – a few points of difference are worth noting:
    - consideration paid can be linked to any development services agreements in place, with parties to consider if consideration will be paid as development fees. Consideration is exempt from VAT, but development fees can be funded out of any financing;
    - W&I insurance is not common in the Greek market but is starting to be used;
    - there is no limitation of liability in instances of a seller's gross negligence or wilful misconduct; and
    - no reduction or extension of statute of limitations is permissible.
- Greek law SHAs are similar to English law SHAs in terms of content. Under Greek law, shareholders can't nominate more than 2/5 of the total number of directors – this is often amended via the SHA.

TRENDS IN DEBT FINANCINGS FOR GREEN ENERGY ASSETS IN GREECE

Valina Giouzelaki

Current trends in financings

- With ever more sources of finance to choose from, the liquidity in Greece an attractive prospect for investors.
- Greece uses the usual project finance structure funding into a non-recourse SPV.
- There is strong appetite from Greek banks to finance new energy projects, especially from the four main banks - Eurobank, National Bank of Greece, Alpha Bank and Piraeus Bank. There is currently no international bank presence in Greece save the EBRD.
- In the earlier years of the Greek energy market, Greek banks lent bilaterally to single projects, but syndicated debt for a portfolio of assets is now more common, as is holdco debt.
- This is structured as a Greek bond loan, the most popular structure in Greek financing, and can only be obtained by SA companies as mentioned above. They are popular as they are:

© Watson Farley & Williams 2023. All references to 'Watson Farley & Williams' mean Watson Farley & Williams LLP and/or its affiliated undertakings.
This constitutes attorney advertising | www.wfw.com

- easily transferrable;
- structured like an LMA syndicated loan with a bondholder agent holding security akin to a security trustee; and
- offer financial advantages such as no stamp duty, lower registration fees and exemption from levies.

Recovery and Resilience Fund

- The Recovery and Resilience Fund ("RFF") is an EU financing tool deployed to assist EU member states post-Covid and in preparing for the energy transition.
- The European Commission endorsed the Greek RRF in June 2021. It currently comprises of €12.7bn in loans (with a further €5bn requested), with €4.9bn marked for green transition projects.
- 500 applications have been submitted, with 200 facilities agreements signed
- It is very popular due to the favourable interest rate on an RRF's tranche of debt, which is dependent on the size of business and receipt of any other state aid.
- Amounts lent under these facilities agreements are co-funded by the RRF and select commercial banks (currently the Greek systemic banks, EBRD and a few others) in stapled tranches.
- 50% RRF, 30% commercial tranche and 20% equity are the most common percentage divisions.
- There are minimal restrictions on what RRF funds can be used for - acquisition costs are not covered but otherwise usual costs such as devex, land, equipment and opex are, provided they are incurred post-RRF application (earlier costs are to be funded by the commercial tranche).
- In terms of eligibility assessments, commercial banks carry out their usual early assessments and agree a term sheet, following which an independent valuator will do the RRF checks required. A successful valuation report will enable the commercial bank to be credit approved before long form documents are drafted.
- The Greek state has very limited involvement during the life of a loan other than provision of funds as the commercial banks represent both lenders' interests.
- Uncertainty exists as no guarantee of the availability of RRF funds is given until a facilities agreement is signed.
- There have been instances of RRF funds becoming temporarily unavailable just before financial close, leading to those expenses being funded by the commercial bank as a bridge loan and refinanced by the RRF once available.
- The availability for RRF tranches ends on 31 August 2026 (following which undrawn amounts will be cancelled).

SME Green Co-Financing Loan Scheme

- There is also a separate government-backed green co-financing loan scheme available for SMEs only.
- The maximum loan size is €8m – 40% of which is to be provided by the state and 60% by a commercial bank.
- The state tranche is interest free, with the commercial tranche partly subsidised.
- As with the RRF availability, these funds are also time-bound, with the initial drawdown needing to be made before 30 June 2025.

© Watson Farley & Williams 2023. All references to 'Watson Farley & Williams' mean Watson Farley & Williams LLP and/or its affiliated undertakings.
This constitutes attorney advertising | www.wfw.com