

## Due Diligence of renewable energy projects in Ukraine

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### 1. Current status and development of renewable energy

The Ukrainian energy system remains in a difficult situation. Constant attacks and damage to energy infrastructure have resulted in additional costs for electricity producers.

For instance, in January-May 2025, DTEK Energy invested approximately UAH 3.2 billion in the repair and restoration of thermal power plants that suffered serious damage as a result of Russia's massive missile attacks.

Moreover, programmes for the development and restoration of energy infrastructure through the attraction of funds are ongoing. In 2024, Ukraine's largest banks signed a memorandum on the restoration of energy infrastructure.

During the first year under the memorandum, nearly UAH 25 billion was allocated to finance energy projects, comprising 705 MW of generation and 320 MW of storage systems.

It should be noted that the situation with the electricity deficit, which has been significant since the beginning of the attacks on energy facilities, has improved considerably in 2025. This is due to many factors, including changes in approaches to restoring and distributing transmission capacity, increased import possibilities, and infrastructure restoration in light of current risks.

Renewable energy facilities also face the aforementioned challenges. Furthermore, many power stations in the south-eastern regions have been damaged or are located in occupied territories. According to estimates by the Ministry of Energy, up to 75% of renewable energy facilities have been damaged during the war.

Despite everything, projects to build renewable energy power stations continue to be implemented. By the beginning of 2025, the total installed capacity of renewable energy sources (RES) had reached 9,655.9 MW. The share of electricity from renewable sources accounted for 8.1%, with 56% coming from solar energy and 33% from wind energy.

Note that as of early 2024, the installed capacity of RES facilities was 8,773 MW.

In other words, 2024 was a year of active development of renewable energy and the installation of new capacities. In addition, separate regulations on energy

storage systems were adopted.

Currently, there are two main ways to start the construction of renewable energy projects, particularly solar power plants:

1. Building a project from scratch: selecting a site, developing land documentation and obtaining land, developing the necessary documentation and preparing the project, etc.

This method takes much longer and requires the involvement of experts. However, it is potentially considerably cheaper and offers the opportunity to select a site specifically for the planned project.

2. Purchasing a project at a certain stage of completion. Such projects are usually sold through the sale and purchase of corporate rights of the companies that own them.

This option is much faster and, in most cases, allows construction to begin immediately after the sale and purchase agreement has been finalised.

However, when purchasing someone else's project, it is necessary to carefully check both the company and the project itself, as the implementation of such a project may subsequently prove impossible or significantly more expensive than originally planned.

## 2. Due Diligence

Due Diligence in Ukraine is a rather complex process. Of course, the scale, timeframe and complexity depend on the specific transaction, but in general, the algorithm is standard: preparation for Due Diligence, its conduct and the formalisation of the findings.

The primary task during preparation for Due Diligence is to determine the purpose of the audit. It may include both risk assessment and verification of the project's readiness for its implementation, as well as assessing the opportunities and risks for the parent company or group of companies after acquiring the asset.

Also, during preparation for Due Diligence, experts help the customer to formulate a request and determine priorities. A clear definition of tasks not only simplifies the audit but also reduces the time required to conduct Due Diligence.

Due Diligence for alternative energy facilities is distinguished by the need to verify not only the safety of purchasing corporate rights of the enterprise but also to check the enterprise and all documents for compliance with the established requirements and the possibility of obtaining a licence.

At the same time, the verification should be carried out based on the client's ultimate goal: supplying electricity to the grid and trading on the market, obtaining a green tariff, installing generating capacities for own needs, etc.

In general, during Due Diligence, the following categories of issues are analysed:

- Corporate issues
- Land issues
- Technical and licensing documentation issues
- Financial, operational, accounting and general legal issues

## 2.1. Corporate issues

During the verification, the rights and obligations of the participant(s) of the Ukrainian enterprise are established, as well as their powers to carry out the transaction for the sale of corporate rights, compliance with the requirements of legislation by the enterprise and participants, etc.

Ukrainian legislation establishes certain rules for the disposal of corporate rights, as well as conditions that must be met. For instance, if the seller sells only a part of its corporate rights (rather than 100% of all shares), the consent of other participants who have a pre-emptive right to purchase the share is required. If the share is alienated by a married individual, the consent of the spouse is also required (in the absence of a prenuptial agreement regulating such issues).

It should be borne in mind that only a share that has been fully paid up can be alienated, so it is necessary to check the procedure for forming and paying up the authorised capital of a Ukrainian company.

It is also necessary to check the history of relations between the participants, in particular whether the withdrawal of former participants has been fully completed and whether there are (or may be) disputes regarding the withdrawal of a participant or the acceptance of inheritance (share).

It is also necessary to ensure that the participants and/or the head of the enterprise have fulfilled all the requirements of the law regarding the registration and/or updating of the enterprise's constituent documents and information about it.

For example, all limited liability companies had to bring their constituent documents in line with the Law of Ukraine "On Limited and Additional Liability Companies". However, in practice, some companies (especially those that do not conduct business activities and are looking for a buyer) have not registered the relevant changes in their founding documents. This carries the risk of delays in the execution of a corporate rights sale and purchase agreement.

Sometimes Ukrainian companies do not comply with the requirements to disclose their ownership structure and update information about the ultimate beneficial owners.

Therefore, not only the company itself is checked, but also its corporate rights owned by the participants, possible encumbrances on such rights and the ability of the participants to dispose of the rights in full.

It is also necessary to analyse whether the agreement on the sale of corporate rights will require approval by the relevant authorities. In particular, under certain circumstances, an agreement on the sale and purchase of corporate rights may need to be approved by the Antimonopoly Committee of Ukraine.

Accordingly, as a result of Due Diligence, conclusions will be drawn about the problems and risks of acquiring corporate rights of the enterprise, and recommendations will be provided for eliminating the identified problems.

## 2.2. Land issues

Land issues are one of the reasons why investors prefer to purchase ready-to-build projects rather than develop their own projects from scratch. This is because land allocation usually requires a lot of time and the preparation of a large number of documents.

To build a renewable energy facility in Ukraine, a land plot must meet several basic criteria:

- it must be owned or leased long term by the project owner;
- it must be designated for "energy land" use;
- it must not be located in an area protected by law, such as a forest, water or historical area.

Even if all the documents confirming the above criteria are in place, it is still important to check the grounds for obtaining these documents. For instance, if the land lease agreement was signed in violation of the procedure, this could serve as grounds for declaring the agreement invalid in the future, with all the legal consequences that follow. This also applies to the allocation of land plots in violation of the relevant protected areas or in the event of a change in the purpose of the land plot.

There have been cases when changes in the purpose of a land plot took place despite the fact that the law contains a direct prohibition on such a change. Or, for example, when a Ukrainian enterprise obtained all the necessary permits and documents, but the intended purpose of the land plot did not meet the requirements of Ukrainian legislation. In most cases, the land plot is allocated not as a single lot, but as several adjacent ones.

It should be noted that the rules for allocating land plots may differ for the placement of auxiliary structures and facilities (e.g. power lines or substations). For instance, land for power line supports may be allocated under an easement.

Therefore, during verification, not only the land plots necessary for the direct construction of the facilities should be analysed, but also the possibility and complexity of installing other auxiliary structures.

It is also necessary to pay attention to the fulfilment of the land user's obligations, in particular financial obligations, as well as the amount of these obligations.

Furthermore, during Due Diligence, the land user's fulfilment of obligations to update information about the land plot should be verified. For instance, the landowner may have outdated documents, and the information about the land plot in the land cadastre may not correspond to reality.

It is also necessary to take into account the additional capacity of projects: for completed or partially completed projects, the availability of vacant (additional)

land with all the necessary attributes, on which additional construction can be carried out, is considered an additional advantage.

### 2.3. Technical and permitting documentation

When analysing the documentation for a project, the following should be verified:

1. The availability of all documents necessary for further construction and commissioning. It should be noted that various additional documents may be required for different renewable energy projects. Also, some documents may be missing, but obtaining them will not be an issue for the new owner. Therefore, conclusions are made not only based on the availability or lack of documents, but also in terms of risk assessment and necessity. Sometimes, even if old documents are available, it may be better for the new owner to obtain or develop new ones.
2. The order in which these documents were obtained should comply with the established procedure. For example, commissioning cannot take place before a building permit has been issued. This example is not very common, but it can occur in certain cases.
3. Compliance of documents with current legislation. In practice, there are cases where the preliminary contract for the sale of electricity was signed not with the Guaranteed Buyer but with the previous enterprise (the state-owned enterprise Energorynok). Or there are documents that were not required at the time of the development of the documentation, but are mandatory under current legislation. During such an audit, the possibility and complexity of obtaining documents by the new owner is also assessed.
4. Correspondence of documents to technical capabilities. There are cases when, on the face of it, the documents are in order, but during the verification of technical capabilities, it turns out that the actual transmission of the planned capacity is physically impossible. Then it is necessary to either reduce the capacity or build a new substation and line at the owner's expense, which will accordingly affect the overall cost of the project.

It is also worth paying attention to the project location. For instance, the following factors may affect the project cost:

- the distance to the connection point and the connection cost;
- the geographical features of the area and level of accessibility by road, which may complicate or make it impossible to deliver equipment or heavy machinery for construction;
- the availability of raw materials and the supplier's willingness to sell them (in the case of biogas/biomass production), etc.

When purchasing completed or partially completed projects, it is also necessary to take into account the order and date of commissioning, as this determines the amount of the "green" tariff in Ukraine.

Some projects also come with extra capacities. For example, a project might be sold with all the paperwork, but the land plot underneath it is twice as big as needed for the project. On the one hand, this creates an opportunity to build a more powerful power plant, but on the other, it is necessary to check whether it is

possible to implement such a project or create an additional project.

On 9 February 2025, a law came into force which, among other things, allows the connection of generation from different sources at a single point (cable pooling), optimising the use of network infrastructure. Previously, the cable pooling mechanism had not been regulated.

#### **2.4. Other issues**

For the most part, the verification is carried out in accordance with the general rules of Due Diligence; however, for an inactive enterprise, it is worth checking:

- the proper formalisation and maintenance of labour relations at the enterprise;
- the absence of agreements and obligations that carry significant risks;
- the absence of credit obligations and other debts;
- the absence of disputes, including court disputes, and the absence of enforcement proceedings;
- the absence of seizures, encumbrances, and pledges;
- correct accounting;
- proper registration and accounting of the Ukrainian enterprise's assets;
- timely and complete submission of reports;
- absence of debts to the budget, etc.

Problems in any of the above areas pose the risk of negative consequences for investors, ranging from fines to loss of control over Ukrainian assets. Therefore, a comprehensive and professional audit of an alternative energy project can significantly save the investor time and money, as well as protect them from many potential risks in the future.