

# Legal Alert

5 December 2022 | [www.skslegal.pl](http://www.skslegal.pl)

## Valorisation of the maximum price and other changes in offshore projects

### Current status of the legislative work

On 1 December 2022, the Polish Parliament passed a [law on special protection of certain consumers of gas fuels in 2023 due to the gas market situation \(„Amendment”\)](#), which amends, i.a. the Act of 17 December 2020 on the promotion of electricity generation in offshore wind farms (“Offshore Act”).

The envisaged changes included in the Amendment are the Legislator's response to the market demands and are to ensure, in particular, the profitability of the offshore wind farms (“OWF”) execution in the first phase of support, for which the originally established maximum price does not correspond to the costs of OWF execution, increased by the loss of the purchasing power of money and exchange rate fluctuations of the Polish zloty. The solutions envisaged in the Amendment concerning the Offshore Act are to ensure the guarantee of the value of public aid granted to OWF investors while the amendments to other provisions are to improve the process of granting the necessary permits.

### Amendments to the Offshore Act

#### Valorisation of the maximum price from 2022

The maximum price which is the basis for the settlement of the right to cover the negative balance for phase I projects is set out in the Regulation of the Minister of Climate and Environment of 30 March 2021<sup>1</sup> and is 319.6 PLN/MWhr. In the consensus opinion of the investors, due to the dynamic increase in market prices (raw materials, freight, materials), this amount was not sufficient for the financial closure of the OWF projects.

Although the Offshore Act currently provides for a valorisation mechanism, the valorisation was to take place only from the year following the year of the issuance of the decision referred to in Section 18 of the Offshore Act (if such a decision is issued in 2022, such valorisation would take place in 2023) of the year (excluding 2022).

The Amendment introduces significant changes in this respect. It provides for the annual valorisation of the maximum price by the average **annual index of prices of total consumer goods and services from the previous calendar year, specified in the announcement of the President of the Central Statistical Office, starting from 2022** for projects implemented in the first phase of support.

#### Possibility of changing the method of settling aid payments

The Amendment also provides for the possibility of changing the settlement of the right to cover the negative balance by means of the generator's application for the distribution of this price. This will include an indication of the percentages determining which part of the maximum price, which is the basis for covering the negative balance, should be paid in relation to zlotys and which in relation to euros (considering that the part of the maximum price, which is the basis for calculating the negative balance, will be indexed by the quotient of the average euro exchange rate from the month of energy generation by the quotient of: (a) the average euro exchange rate for the month of energy generation, and (b) the euro exchange rate set by the Minister responsible for climate matters. The expected exchange euro rate, according to the justification, is PLN 4.45).

The exercise of the right to share the maximum price will be optional. The application may be submitted to the President of the Energy Regulatory Office once.

<sup>1</sup> Regulation of the Minister of Climate and Environment of 30 March 2021 on the maximum price for electricity generated at an offshore wind farm and introduced into the grid in PLN per 1 MWh, which is the basis for the settlement of the right to cover the negative balance.

## Amendments to other provisions

### Prolongation of OLL effective dates

The Amendment prolongs the period for which the Offshore Localisation Licence (“OLL”) and permits relating to parts of the OWF power derivation assembly (offshore cables) can be issued. Currently, these permits can be issued for the period necessary for the erection or use of these developments, not exceeding 35 years. **The proposed amendment provides for an extension of the term of these permits to 30 years from the date on which the use of the OWF (or marine cables, as appropriate) commenced).**

According to the interim provisions to the Amendment, this change will also cover the currently valid permits and will extend their validity period by the aforementioned period. The extension of the validity period of the OLL is particularly important for the investors having the OLL granted in the first phase of the support (from 2012), as it will eliminate the risk of shortening the exploitation period of the OWF as a result of delays related to the obtaining of proper permits and concessions.

### Clarification of existing provisions

Because, in Poland, the offshore wind energy sector is at the development stage, many existing legal provisions, especially in terms of required permits and powers of public authorities, leave doubts as to their application to OWF.

These uncertainties included the question of whether a water consent or notification is required for part of the OWF power derivation unit (offshore cables) and which architectural and construction supervision authorities are competent for OWF projects.

The Amendment resolves these issues by indicating:

1. no requirement to obtain a permit or a water law notification for a set of facilities to derive power from an OWF,
2. the competence of the West Pomeranian Voivode and the West Pomeranian Voivodeship Building Control Inspector in Polish sea areas from the western border of Poland to the meridian 16°41'56.70" (the border of the West Pomeranian and Pomeranian voivodeships and Pomeranian), and
3. the competence of the Pomeranian Voivode and the Pomeranian Voivodeship Building Control Inspector in the areas from the meridian 16°41'56.70" to the eastern border of the Polish maritime areas.

#### Contact us



**Dr. Łukasz Wyszomirski**  
 Senior Counsel, attorney-at-law  
 ☎ +48 694 402 342  
 ✉ [lukasz.wyszomirski@skslegal.pl](mailto:lukasz.wyszomirski@skslegal.pl)



**Tomasz Młodawski**  
 Senior Counsel, attorney-at-law  
 ☎ +48 600 871 096  
 ✉ [tomasz.mlodawski@skslegal.pl](mailto:tomasz.mlodawski@skslegal.pl)



**Maciej Kuder**  
 Junior Associate  
 ☎ +48 602 506 711  
 ✉ [maciej.kuder@skslegal.pl](mailto:maciej.kuder@skslegal.pl)