SHARKAWY & SARHAN

SHARKAWY & SARHAN LAW FIRM

SOLAR POWER GENERATION LICENSING REQUIREMENTS MEMO

Date: 29 August 2017

Subject: SOLAR POWER GENERATION LICENSING REQUIREMENTS MEMO

Contents

I. INTRODUCTION

In order to practice any Power Generation activities in Egypt, the entity will have to obtain several permits and approvals.

In addition to power generation license required by the law in order to operate solar power facility (the "**Facility**"). The process of building up and operating a Facility includes various elements that requires different set of licenses and approvals.

Solar power facilities (the "**Facilities**") are different in size and nature; accordingly, they differ in establishment, operation and management needs and requirements, as well as effects on their surrounding environment. Thus, licensing requirements differ from one project to another according to the operational nature and size of the Facility. As shall be explained below, notwithstanding the power generation license required for all power generating Facilities, some licenses are project specific and would be either inapplicable or irrelevant to some other projects.

Under the new Investment Law number 72 of 2017, specific projects including new and renewable energy projects (the "**Project/s**") can be granted one license for the establishment, operation and management of industrial projects (which would include the construction license and allocation of any necessary facilities).

This unified licensing scheme can be granted only by virtue of a decision from the Cabinet of Ministers.

Until such scheme is implemented, Solar Power Generating facilities and the SPVs under the Fit scheme will be subject to the current licensing regulations reflected in this memo.

II. POWER GENERATION LICENSE

1. Legal Framework

According to the New Electricity Law, the main entity responsible for granting power activity licences (which include power generation, power distribution and authorized supplier activity) in accordance to the general rules and regulations set forth in the New Electricity Law no. 87/2015 (the "**New Electricity Law**") and its Executive Regulation issued in accordance to the Ministerial decision 230/2016, is the Egyptian Electric Utility and Consumer Protection Regulatory Agency (the "**EERA**").

Accordingly, any person wishes to operate any power generation, distribution or selling activities must take the form of a joint stock company fulfilling specific requirements (the "**Company**")[1]. Upon establishment, the company must apply first for an Interim License from EERA that covers its activities during the Project development phase. There is only one exception to this requirement, in case the Power Generation facility is only generating electricity supplying the owner's personal use, upon fulfilling several requirements as stated below.

Exemption for personal usage of power generating facilities:

Power Generation Facilities generating power only supplying the owner's personal usage are exempted from obtaining the Power Generation License provided that they meet the following conditions[2]:

- The owner of both, the Power Generation Facility and the Consumer Facility must be the same legal person;
- The Power Generation Facility must not be connected with the transmission or distribution grid with a capacity more than 500KW.
- The Power Generation Facility must not conclude any contracts or agreements that entails providing electricity from the Power Generation Station to any other entity;

The applicant must submit to the EERA an exemption request. The EERA shall have the right to perform field visits and check all required records and documents in order to ensure the eligibility of the applicant.

In light of the previous, EERA shall have discretionary power to either accept or reject the request upon checking the required documents, noting that a rejection decision should be reasoned.

[1] We shall further address the establishment requirements of the JSC and specific requirements in details in a separate memo.
[2] Article 21 of the New Electricity Law Executive Regulation issued by the ministerial decision 230/2016.

2. Interim Power Generation License

The Interim License, as stated above, is issued from the EERA. Obtaining the interim license is a required step in order to obtain the Final License from the EERA.

The Interim License should indicate the purpose for the license, its duration, type of service (i.e. power generation or distribution), the Interim Fees (maximum 1000EGP for each MW for authorized capacity while the total amount should be a minimum of 10,000 EGP) as well as the geographical limitations for the licensed activity[3].

Applying for the Interim License would require filling out the relevant form issued from the EERA and attaching the following documents[4]:

1- The Investment Gazette stated within the main activity of the company, or the Articles Of Association (the "**AOA**");
2- The Commercial Register (the "**CR**");
3- Tax Card;
4- The Project Primary Feasibility Study;
5- The Land Possession documentation ;
6- Acceptance Letter from the licensed distribution company or the EETC to connect with the Grid;
7- The Technical Study for the Grid connection(whether the licensed distribution company or the EETC);
8- A study with the estimate number of beneficiaries (i.e any consumer who is contracted with any of the electricity bodies/entities, *whether end customers or other license holders*) expected to provide them with electricity, attaching the primary agreements concluded with those beneficiaries;
9- An acknowledgment to obtain all required approvals for the project construction works;
10- Receipt of payment of license Interim Fees.

It should be noted that the Interim License is issued with one-year validity and can be extended for an additional one-year period. If the Company wishes to extend the Interim License for another year after the end of the two years, EERA's approval can be obtained provided that the Company has already taken steps towards implementing the project.

Upon finalizing the Project development phase, the Company shall then apply for obtaining the final license from EERA.

[3] Article 15 of the New Electricity Law.
[4] Article 23 of the New Electricity Law Executive Regulation issued by the ministerial decision 230/2016.

3. Final Power Generation License

The Power Generation Facility (i.e. the Company) may not perform any operations related to power generation except after obtaining the final license from EERA. While the maximum duration for the final power generation license- as permitted by the law- is 25 years. The EERA typically issue a license for a five years duration, this duration might be renewed for a similar period. The only exception is the Fit Scheme projects, which the government expressed and ensured that the license would cover the 25 years.

On the other hand, the licensee must apply for an effectiveness certificate of the license on an annual basis during the term of the license.

The effectiveness certificate and the renewal of the license is subject to the EERA's assessment of the Licensee's performance during the lapsed license period[5].

The final Power Generation License should include all detailed information regarding the duration, type of service (i.e. power generation or distribution), insolvency rules and the geographical area for the project implementation.

The license should also include the rules and obligations implemented by the licensee, these include:

a) Observing the Quality Standards;

b) Holding separate accounts and statements for each licensed activity;

c) Performing and presenting periodical reports of activities, in accordance to relevant forms issued from EERA;

d) Availability of providing the service for all beneficiaries without discrimination;

e) Refrain from breaching rules related to free competition, transparency or equal opportunities;

f) Respecting the occupational and environmental safety and health rules and regulations;

g) Notifying the EERA with any amendments/changes in the ownership of the licensed assets.

It must be highlighted that the previous list of obligations are not inclusive, these are the main obligations that should be stated in the Final Power Generation License, as stated by the New Electricity Law. The Executive Regulation of the law, on the other hand, set forth various technical obligations that must be observed by the licensed Company.

Applying for the Final License entails filling-in the issued form from the EERA attaching the following documents:

[5] Article 16 of the New Electricity Law.

1- The Investment Gazette stated within the main activity of the company, or the company's AOA;
2- The CR;
3- Tax Card;
4- A copy of the interim license issued from EERA;
5- The Final Feasibility Study of the project;
6- Relevant construction approvals issued from competent entities;
7- The Management Service Agreement between the owner company and the operating company (if applicable);
8- Network Connection Agreement ("NCA"), Power Supply Agreement or the Usage of Grid Agreement concluded between the applicant company and the distribution company or the EETC;
9- A template form of the contracts concluded with the beneficiaries, NCA and Power Supply Agreement as well as usage of the network situated with other licensed parties agreement;
10- The organizational structure and each department's specific tasks;
11- Authenticated Financial Statements and the Authenticated budget for companies having several activities;
12- Receipt of payment of license interim fees.

Additional documents are required in accordance to Article 26 of the New Electricity Law Executive Regulation, these include:

1- The Generation Facility Possession certificate/document;
2- The power generation facility essential Technical Information;
3- The construction design of the Power Generation Facility accredited from the engineering syndicate;
4- Power Generation Facility's operational and performance indicators;
5- Power Generation previous experience (if any);
6- The Egyptian Environmental Affairs Agency approval of the Environmental Impact Assessment;
7- A study on the Power Generation costs and expected sale prices as well as the estimated amount of power to be generated.

4. Power Generation Licensing Under Fit Scheme

The power generation licensing processes and requirements under the Fit scheme is almost similar to the above stated general rules.

However, due to the special nature of the Fit Scheme, only a few differences to the process are to be noted as follows:

1- As a first step, the Developer must address the "Central Unit for Feed in-Tarif Projects" in order to acquire the evaluation application for projects >500 kW and present the required documents, in order to be qualified for the Fit Scheme and obtain a qualification letter;

2- Upon being qualified, investors must establish a joint stock Single Purpose Vehicle(SPV) under the investment law;

3- Then the SPV must apply first for an Interim License from EERA that covers its activities during the Project development phase, which ends by the Financial Closure of the Project. However it must be noted that this Interim Licence is only valid for one year and subject to renewal;

4- Under Round Two, before the PPA Conditions Satisfaction Date, the Seller must only obtain a letter from EERA confirming that all the documents required for obtaining the permanent Generation License have been submitted or waived and that such license is ready to be issued after the occurrence of Financial Closure (as defined under the PPA).

5- The PPA becomes effective at the PPA Conditions Satisfaction Date (which corresponds to the date of Financial Closure of the Project). Subsequently, the SPV obtains the permanent Generation License from EERA.

6- Government presentations suggest that the permanent Generation License will cover the entire project term (i.e. 25 years for Solar PV projects).

III. Project Site Permits

These are the permits necessary for the project site. Rules and procedures for obtaining these permits varies from one case to another depending on the location of the project site and the relevant governmental entities involved.

However, the following are the main governmental entities that may be involved with respect to the site and project permits for similar projects:

1- The relevant Notary Public office;

2- The relevant municipal counsel;

3- The Operations Authority of the Egyptian Armed Forces;

4- The Egyptian Environmental Affairs Agency (EEAA);

5- The Civil Aviation Authority;

6- The General Authority for Antiquities;

7- The Civil Defense and Fire Fighting Department of the Ministry of Interior;

8- The National Telecommunications Regulatory Authority (for establishing any wireless communications system in the Project site); and

9- The Egyptian Shore Protection Authority (if the project land will be located nearby seashore).

1- Main challenges

The main challenge for obtaining project site permits from the stated issuing entities is that, often many of them will be dependent on securing other permits. This would be challenging, taking into account that licensing is a matter of administrative discretion and there are no laws that would set an exhaustive list of the licenses. Accordingly, there is no clear guidance on the sequence of permits and which permits depend on which permits being secured first.

Specific terms and conditions:

Different requirements and conditions would be required for different pieces of land according to their situation in different geographical areas. Accordingly, usually Armed Forces and Civil Aviation permits would entail specific condition to be implemented by the project owners (as the case may be in the FIT scheme land).

2- Site permits under the Fit Scheme

The FIT scheme projects will be implemented on NREA land and land rights will be secured by virtue of the Usufruct Agreement.

The main advantage of NREA land (i.e. Benban Site) is that it is fully permitted and zoned, and is explicitly allocated for the purpose of creating renewable energy projects.

With respect to the Benban Site NREA has obtained pre-approvals/non-objections from various entities.

IV. Construction License/permit

According to the Egyptian Construction Law (119/2008), any construction related activities would require an approval/permit from the relevant municipal body for the construction works of the Project[6]. The Egyptian Construction Law provides a broad definition of construction works to include "any works carried out in the fields of construction, building, public utilities, land reclamation, dredging, installation, sea constructions and any other fields having similar nature ("**Construction Works**").

Different application forms exist for different geographical areas. (ex.: A specific application form is issued for requests to perform any construction works in North Sinai).

[6] Article 39 of the Construction Law 119/2008.

According to the newly issued unified licensing law (the "**New Licensing Law**"), the applicant facility will have to obtain the construction license from the IDA for the construction works of the Project.

However, the relevant municipal bodies currently continue to process and issue construction licenses until the IDA starts operating its construction license department following the issuance of the executive regulations of the law (which has been recently issued) and developing the IDA's internal forms and procedures in this regards.

1- Responsibility of Issuance under the Fit Scheme

Such licenses are typically obtained by the EPC Contractor based on the designs submitted to the relevant engineering department of the municipal body. It is required that the designs submitted for obtaining the license are certified by a syndicated engineer and under his/her responsibility.

However, it should be noted that the New Licensing Law stipulates that the IDA will be the sole licensing authority for industrial projects.

V. Environmental Approval

The Egyptian Environment Affairs Agency (the "**EEAA**") is the competent authority responsible for creating and enforcing regulatory standards in the field of environment. The most important environmental approval is the Environmental Impact Assessment (the "**EIA**") approval issued by the Central Department for Environmental Impact Assessment (a subordinate department of the EEAA).

Under the Environment Law certain establishments that may impact the environment (including power plants) will only be granted an operating license from the licensing authority following the issuance of an Environmental Impact Assessment (EIA) report. The EIA report is based on an application/study prepared by the establishment seeking to obtain a license.

The law does not differentiate between the size of the power generation facility, any power generation facility subject to the law 102/1986(establishing NREA)[7] would be required to provide **EIA.** Thus, the Environmental Impact Assessment report should be required for medium and small sized facilities[8].

According to the list issued from the Egyptian Environmental Affairs Agency ("EEAA"), all Solar power plants/facilities not situated in high sensitive environmental areas, without electric transmission lines or substations are classified as category (B) (which is the category having the medium level of effects on the environment)[9].

However, it should be noted that the projects implemented outside the registered industrial areas or upon the EEAA decision, the project would be classified as having a higher risk and should be classified as category (C). This decision may be due to several factors, (i.e the size of the project, its geographical location …etc.).

Application form:

There are different application forms prepared by EEAA depending on the classification of the likely extent of the impact of the establishment on the environment[10].

1- Compliance Requirements

The generating facility must keep and maintain an environmental ledger indicating the effect of the project on the environment and recording the following information:

I- Exhaust gases released from the project;
II- Specifications of drain wastes and materials released from the project after the treatment process and the efficiency of the treatment units;
III- Implemented safety, follow up and self-observation procedures;
IV- Periodic assessments and examinations performed, specifying the number, time and places of samples taken; and

[7] Annex (2) issued in accordance to the head of the cabinet decision 1095/2011 amending the Executive Regulation of the environmental law 4/1994.
[8] Articles 10 & 11 the Executive Regulation of the environmental law 4/1994 issued by the decision 338/1995.
[9] http://www.eeaa.gov.eg/portals/0/eeaaReports/N-EIA/B-2017.pdf No. 160 in the list.
[10] http://www.eeaa.gov.eg/en-us/services/eia.aspx

V- The person in charge of the follow up.

It should be noted that the EEAA conducts a periodical inspection on the environmental ledgers at least once per annum.

The licenced Facility shall be obliged to:

1- Notify the EEAA on annual basis of the rates of exhausted and drained materials; and

2- Promptly notify the EEAA with any derogation in the rates and specifications of the exhausted or drained materials and procedures implemented to rectify such derogations.

2- Environmental approval under the FIT scheme

NREA has obtained the EEAA approval on the environmental strategic/regional study (EISA) for the whole Benban PV site.

Accordingly, instead of having to prepare full EIA study, the SPV will only have to fill-in EIA Category (B) form required by EEAA and submit it to NREA.

Then, NREA will submit the EIA forms on behalf of the SPV to the EEAA to obtain its approval.

Finally, upon obtaining the approval, the SPV would be obliged to abide by the conditions and requirements set out in the approval of the EEAA for the Benban Site.

VI. Operational licenses

Further to the above list of licences and permits required for establishing and operating the Facility, additional operational licences would be required; some would be required for specific projects, while others are a basic requirement for all Power generation projects. This depends on the operational nature and needs of the Facility and its technical requirements in accordance to the following:

Type	Requirements	Applicability
Industrial Operation License	A New Industrial Licensing Law number 15 for the year 2017 was recently issued. Under this new licensing law, industrial projects' licenses (including electricity generation projects) should now be issued through the Industrial Development Authority (the "**IDA**"). The Law also introduced two licensing schemes, namely: A- Notification scheme, for industries that are categorized as non-dangerous/low risk industries. B- Prior approval scheme. For industries that are categorized as risky/dangerous regarding security, health, safety, or the environment. The most recently issued executive regulation of the New Industrial Licensing Law indicates that the power generation facilities would be included under the notification scheme.	Required for all power generation projects
Industrial License /Register & Egyptian Federation of Industries Membership	According to law no. 24 for 1977, the SPV must obtain and maintain an industrial ledger from the Industrial Development Authority (IDA) for as long as it satisfies the following conditions: ➢ Engages in the process of generating electricity in Egypt; ➢ Has capital of not less than EGP 5,000; and ➢ Has not less than ten employees. In practice, we understand that power plants operating in Egypt (conventional power plants) typically maintain and keep an industrial ledger. The industrial ledger must be renewed every five years. Non-compliance with the requirement to maintain the ledger or with the record keeping and notification in relation thereof is punishable by insignificant fines ranging between EGP 20 – 200 (around USD 2.5 – 25). However, in practice, non-renewal of such industrial ledger can hamper the renewal of the industrial operational license. It is also worth noting that membership of the local Engineering Chamber under the Egyptian Federation of Industries is a prerequisite to obtain the industrial ledger. Existing conventional power generation facilities in Egypt are subject to this requirement and are obliged to obtain and maintain industrial ledger. The law does not distinct between conventional and renewable power generation projects in this regard.	Required for all power generation projects

	Invocations from regulators denote the renewable energy projects will be subject to same requirement.	
Water Supply	This will depend on the method the SPV / Facility would seek to secure its needed water supply (for example: securing pipeline supply from the relevant portable water distribution company, or obtaining licence for drilling underground-water wells…etc.).	This license is project specific.
Wireless Equipment License	This licence should be issued from the National Telecommunications Regulatory Agency (NTRA) for installing any wireless communications facilities at the Project site. Licenses depend on the used frequencies of the wireless communication systems and must be renewed on annual basis.	This license is project specific.