



Codling Wind Park Limited

Ref: CWP-CWP-COR-01-LET-0203

18/02/2022

MAC Assessment Criteria Consultation  
Offshore Energy – Environment and Consenting Division  
Department of Environment, Climate and Communications  
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To Sir/Madam,

## Consultation on Maritime Area Consent Assessment for Relevant Projects

### 1 INTRODUCTION

Codling Wind Park (CWP) is a proposed offshore wind farm in the Irish Sea, set in an area called the Codling Bank, approximately 13-22 kilometres off the County Wicklow coast, between Greystones and Wicklow Town.

CWP is a 50:50 joint venture between EDF Renewables and Fred. Olsen Seawind, two leading developers, owners and operators of renewable energy assets, with many years of global experience in the renewable energy and offshore wind sector.

CWP has been designated as one of the Phase 1 projects and, with an expected capacity of between 900 and 1,500 megawatts (MW), it has the potential to meet up to 30% of the targeted 5GW of offshore wind by 2030. The expected output of the wind park would be enough to supply the equivalent of up to 1.2 million Irish homes – 70% of all Irish households – with low-carbon, locally-produced, low-cost electricity, and to save almost 2 million tonnes of carbon emissions every year.

Representing one of the largest energy infrastructure investments in Ireland this decade, the project will deliver substantial benefits to the regional and national economy, including more than 1,000 construction jobs and around 75 long-term, locally based jobs.

### 2 OVERVIEW OF CODLING POSITIONS

CWP has provided detailed responses to each of the questions in the Department of Environment, Climate and Communications (DECC) consultation as an annex to this letter. CWP's key positions are summarised as follows:

- CWP welcomes the consultation on the MAC process for Phase One projects that will ensure that credible projects are able to be awarded a MAC.
- The proposed methodology for assessment of "Relevant Person" is not entirely clear within the Consultation Document in terms of who is assessed nor how often. In relation to certain clauses the drafting would seem to make sense when the Relevant Person is the sponsor whereas in other cases the provision would appear to

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make more sense when read in the context of the Relevant Person being the project company. These points are considered in further detail below.

- It is common practice that, due to their size, such developments are managed by a joint venture of multiple companies, with the company developing the project relying on expertise and support from its sponsors and external consultants in addition to the project delivery team. This combination of expertise needs to be recognised as a valid means of satisfying the technical assessment criteria.
- CWP submits that the requirement for an explicit sponsor guarantee in respect of financial obligations under the MAC is overly onerous as the sponsors will be sufficiently commercially motivated to deliver the project within the required parameters and timelines, by virtue of their own vested interest in and financial commitment to the project. If a Supporting Entity Guarantee is required, CWP believes that it should be limited to the developers' obligation to pay the levies under the MAC.
- There are certain requirements set out in the appendices for "Senior Members of the Team". CWP understands this to be the cumulative experience of the project delivery team, including the sponsors. In particular CWP notes the requirement for 10 years Irish planning experience. CWP submits that this requirement should not be limited to Irish planning experience but rather the MAC Applicant should be required to demonstrate that the project delivery team has the requisite offshore and Irish planning experience and/or has access to or engaged suitably qualified consultants to provide any additional support.
- Codling Wind Park Limited, as the only Relevant Project with a foreshore lease, is required to surrender its existing lease to secure a MAC. In order to ensure a level playing field between the Relevant Projects, CWP asserts that the scale of payment made by any Relevant Project under its foreshore lease should be taken into account.
- CWP notes that there is no mention of the Operation and Maintenance Base (OMB) in the Consultation Documents. CWP requests flexibility in terms of how Relevant Projects structure their MAC(s) generally and specifically in relation to the OMB.

In answering the consultation questions, CWP will expand on and explain these points.

In conclusion, we would like to thank the DECC for the opportunity to engage on this matter.

Should you wish to discuss this further, please contact [REDACTED] at [REDACTED] or myself.

Yours faithfully

[REDACTED]  
[REDACTED]  
[REDACTED]

### 3 CODLING WIND PARK RESPONSE TO CONSULTATION QUESTIONS

#### 3.1.3 MAC Technical Capability Assessment

*To what extent do you consider that the Guidance sets out a technical capability assessment process that is effective, efficient, and transparent? Are there any specific aspects of the Guidance that you consider require further clarification?*

CWP recognises the purpose of the data to be gathered from the MAC Applicant and the need to be very thorough, however CWP has the following concerns with the information that is being requested.

The MAC Technical Capability Assessment requires a significant amount of detailed information for projects at a very early stage of the development process.

The detail of information requested raises the following principal concerns:

- CWP notes that the MAC Applicant is required to provide expected dates for certain key milestones at Appendix C of the Technical Capability Assessment Guidelines. CWP believes that these should be indicative only. While developers are fully committed to achieving these timelines, there may be circumstances outside of a developer's control, for example, completion of the Grid Connection Assessment (GCA) process, the ORESS auction, planning determination timelines, Judicial Review, which may cause these dates to shift.
- There are certain requirements set out in the appendices for "Senior Members of the Team". CWP understands this to be the cumulative experience of the team, including the shareholders and third parties who may be engaged to support the delivery of the project. It is likely that, due to the early stage of offshore wind development in Ireland, the experience may have been gained elsewhere and the senior team will have been selected for a combination of their leadership and experience in both Ireland and other jurisdictions. In particular, Clause 4.2 (3) of the Guide on Technical Capability provides that the MAC Applicant will be required to demonstrate at least 10 years of experience of the Irish Planning system. CWP submits that this should not be an absolute requirement but rather the MAC Applicant should be required to demonstrate that the project delivery team has offshore and Irish planning experience and/or the project has access to or engaged suitably qualified consultants to provide any additional support. This is in line with Schedule 2(2)(g) of the Maritime Area Planning Act (MAP Act) which requires the Relevant Authority to have regard to:

*"whether the relevant person, or a person acting for or on behalf of the relevant person in the relevant person's capacity as such, has (or has access to), or continues to have (or have access to), as the case may be, the requisite technical knowledge or qualifications, or both, to undertake the proposed maritime usage, or continue to undertake the maritime usage, as the case may be" (emphasis added)*

- CWP notes that in each phase of development specified in 4.1 of the Guide on Technical Capability ((a) development, (b) construction and (c) operations), reference is made to 12 months continuous experience. CWP suggests that these criteria can be met on joint basis and that one or other member fulfils the criteria. In terms of operations, CWP submits that the O&M strategy may be outsourced to a third party - which is in fact the model typically adopted in the offshore wind industry. CWP submits that this should be acknowledged and should not impact a developer's ability to satisfy this criterion.
- Clauses 2.2 and 2.5 of the Guide on Technical Capability state that a technical capability assessment should be required when an assignment or transfer of interest in the MAC takes place, which appears not to allow for any materiality threshold. CWP considers that the provision is overly restrictive, particularly in the case of assignment of a minority shareholding to an investor/financial sponsor who may have no role in the development of the project. In such circumstances, to the extent that the lead developer(s) remain majority shareholder and senior personnel with responsibility for project management (project delivery team) remain in place, CWP would suggest a further technical capability assessment should not be required.

#### Technical Assessment Criteria

*Do you consider the criteria to be appropriate? What alternative criteria, if any, would you suggest?*

Please see CWP's response to the previous question. In summary, CWP believes that there will need to be some flexibility in how the projects may satisfy the criteria, especially as there will likely be distinct differences between the projects and how they and their Supporting Entities are structured.

#### Templates in Appendix A to F

*Do you consider the templates sufficiently clear to understand the specific information being requested in each case?*

CWP believes that the majority of the templates are sufficiently clear, however, as stated above, CWP believes that there will need to be some flexibility in how the projects are required to satisfy the criteria and how the templates are populated. Also as stated, there is some detail which cannot or should not be expected to be firm at the time of MAC application.

Clause 4.3 of the Consultation Document provides that the MAC Applicant must provide an outline of delivery timelines that demonstrates how the offshore wind project will achieve first generation in advance of the 2030 targets. It further provides that the timeline provided is expected to demonstrate an understanding by the MAC Applicant with respect to both development of offshore wind farms and the expected timeframe of the consenting framework in Ireland. The template refers to the "Delivery Timetable" for certain key development milestones. CWP submits that any dates at this stage must be indicative only.

### **3.1.4 MAC Financial Capability Assessment**

*To what extent do you consider that the Guidance sets out a financial viability assessment process that is effective, efficient, and transparent? Are there any specific aspects of the Guidance that you consider requires further clarification?*

The proposed methodology for assessment of Relevant Person is not entirely clear within the document in terms of who is assessed nor how often. In relation to certain clauses the drafting would seem to make sense when the Relevant Person is the sponsor whereas in other cases the provision would appear to make more sense when read in the context of the Relevant Person being the project company.

As an overriding comment, CWP suggests that the focus of the financial assessment should be the sponsors, given that at such an early stage of the project lifecycle. CWP believes this aligns with the stated aim of the MAC from DECC's perspective based on feedback at the workshop on 4th February 2022 that the MAC evaluation should assess the developer rather than the project itself. However, as currently drafted (per Clause 2 of the Guide on Financial Viability Assessment) the financial viability test may apply to either the sponsor or project company, depending on which entity is acting as the MAC Applicant.

Likewise, the term "Supporting Entity" is used extensively in the consultation documents. However, it is not defined. CWP strongly recommend that the guidance accepts the possibility of multiple supporting entities which will have different stakes in the developing organisation and different financial profiles, so would not necessarily offer the same type of underwriting of the developer.

#### **Relevant Person assessment**

*Do you consider that the Guidance is sufficiently clear to understand which parties within a consortium need to submit documentation for assessment?*

CWP is not responding to this question.

*Are there any specific aspects of the pro-forma Supporting Entity Guarantee that would prevent you from undertaking your ORE Project(s)? To what extent do you consider the Relevant Authority should be able to recover costs under the guarantee?*

CWP submits that the requirement for an explicit sponsor guarantee in respect of financial obligations under the MAC lease is overly onerous, as the sponsors will be sufficiently commercially motivated to deliver the project within the required parameters and timelines, by virtue of their own vested interest in and financial commitment to the project.

The Consultation and the Guide on Financial Viability Assessment are not clear either in: (i) the extent of cover expected of the Supporting Entity guarantee nor (ii) the period for which it should be required. Regarding the extent of cover, in Clause 3.3 of the Guidance, it is stated that

*"Where the Relevant Person proposes to rely on a Supporting Entity, confirmation is required stating that the Supporting Entity will guarantee the obligations of the Relevant Person to complete the proposed ORE Project(s) if the Relevant Person is unable to meet its Financial Commitments".*

However, Appendix K states that

*"the purpose of the Guarantee is to ensure that the financial commitments or obligations in respect of the MAC will be discharged in full and on time".*

CWP notes that "total financial commitments" is not capitalised therefore CWP assumes that it refers only to financial obligations under the MAC, i.e. the levy payments due, and not Total Outstanding Financial Commitment as defined on page 21 and referred to within Clause 4.5 of the Guidance.

However, if DECC decides that a guarantee is necessary, then the parameters of that guarantee need to be very clearly defined and limited so as to reasonably reflect the specific credit exposure borne by the Government in respect of a project/sponsors' requirement to pay the levies pursuant to the MAC only. Developers should not be required to guarantee delivery of the project as at this stage the project is not sufficiently clearly defined and the sponsors will not have taken their final investment decision. Separate performance securities and financial guarantees in relation to the delivery of the project will be provided to various obligees such as relevant planning authorities, EirGrid and CRU, so the State's credit risk to the project is appropriately allocated under these various mechanisms. For example, under the terms of the ORESS, developers together with their Supporting Entities are required to put forward a performance bond of €24 per MWh – which for a 1 GW installation will be around €94m (based on the draft T&C's of ORESS 1 of October 2021).

Following precedent in other markets, the guarantee should be calculated by reference to a fixed number of levy years, we suggest 1-2 years is reasonable. This would provide sufficient cover to secure the developer's financial commitments to pay the levies under the MAC.

It should be noted that as of financial close the project will be fully capitalised. Project level guarantees should, at that point, be provided via the project finance debt facilities and as such, the sponsors should no longer remain directly obligated to the Government in this regard.

CWP further asserts that the requirement for a guarantee should fall away as and from Commercial Operation Date (COD) of the project. At this stage, the project will be operational, will have its own turnover and will be sufficiently creditworthy so as to be able to meet the liabilities which were previously guaranteed on its behalf.

Bearing the above in mind, we suggest the following amendments / clarifications in respect of the Supporting Entities guarantee:

- (i) a MAC guarantee is not required as the sponsors will be sufficiently commercially motivated to deliver the project by virtue of their own vested interest and financial commitment to the project;
- (ii) If a MAC guarantee *is* required, it should cover 1-2 years of MAC levies, calculated on a forward-looking basis;
- (iii) at financial close, the guarantee may be provided via project finance bank debt facilities, where the project opts for project finance; and
- (iv) at COD, any project finance bank guarantee should no longer be required as the project will then be sufficiently creditworthy so as to negate the requirement for any such guarantee.

#### **Assessment criteria**

*Do you consider the criteria to be appropriate? What alternative criteria, if any, would you suggest?*

The guidance does not define "financial statements". Very often development and investment in renewable energy is made through investment or holding companies. CWP therefore submits that the term "financial statements" should be deemed to include financial statements for a single entity or consolidated financial statements to the extent that they meet the criteria set out in Clause 3.1. in the Guidance for the Financial Viability Assessment.

CWP further asserts that the requirement to confirm appropriate insurances will be put in place for risks associated with the Project (clause 2.12 of the Financial Viability Assessment Guidance), is premature given that project insurance arrangements will not be firmed up at MAC stage. The aim of what is intended to be covered in respect of "potential contingent liabilities" is unclear, any such contingent liabilities will not be possible to estimate with any degree of confidence at MAC stage.

*Are there any quantitative metrics within the criteria that you consider should change? For example, the current and gearing ratios have been deliberately set at levels that would identify companies at significant risk of financial distress.*

In the case of a holding or investment company, CWP asserts that "turnover" as defined in Clause 4.7 is not a relevant criterion as this entity is by definition a "non-trading" entity and has no "turnover" as defined by General Accepted Accounting Principles (GAAP). Such a holding company may well be heavily invested in several jointly managed offshore wind projects generating vast amounts of financial income. CWP therefore proposes that the concept of "turnover" should be extended to include "turnover, financial income as well as income from associated companies". In certain cases, consolidated financial statements do not resolve this matter as these investments are likely to be reported under the equity method.

The ability to fulfil the criteria outlined in Clause 4 of the Financial Viability Assessment Guidance (required to be self-assessed by Applicants in Appendix J) will depend on the specific entity that is to be evaluated: whether the project company, its direct shareholders or the Supporting Entities. The Cash Cover requirement appears overly onerous with respect to the calculation of Relevant Person Total Outstanding Financial Commitment: the calculation

does not capture the potential for the project to be financed via bank finance (project finance) which is expected to be the preferred method of funding for many/most Phase 1 developers. We note that Clause 5 allows for the possibility of project finance but requires a loan agreement to be provided, which is not practical at MAC stage. CWP asserts that a more appropriate test at MAC stage may be to seek evidence of the sponsor(s) track record in managing complex project finance processes and closing large project finance transactions. Likewise, the forward-looking cashflow adequacy test should seek to examine the level of development spend over the forthcoming 3-year period, rather than the total project funding obligation.

Further, CWP submits that the requirement to report on financial eligibility criteria should cease once financial close of the project is reached, at which point the project is fully funded.

*Should these metrics be more stringent?*

Please see CWP's response to the previous question.

#### **Assessment outcome**

*Do you consider that the outcome of the financial viability assessment is adequately clear?*

CWP is not responding to this question.

*Do you consider that the Relevant Authority has too much / too little flexibility to ensure that Relevant Persons with the financial capability to deliver ORE Projects pass the financial viability assessment?*

CWP is not responding to this question.

#### **Other financing arrangements**

*Do you consider that the financing arrangements listed in the Guidance are appropriate? Should any other financing arrangements be identified in the Guidance?*

CWP asserts that the requirement for Relevant Persons to provide details of funding arrangements for the project (as per Appendix F) with yearly sources & uses of funds projections up to 2028, seems overly onerous given the expected timeline for ORESS1 project development. Specifically, with regards to sources of funds, given many/most ORESS 1 developers' intention to raise project financing (vs. financing the project on balance sheet through their own funds), and the lead time required to secure financing, the information would be highly indicative at the time of application. In relation to uses of funds, by way of example the template in Appendix F currently includes references to Grid Connection and Decommissioning Liabilities, quantification of which is currently subject to a high level of uncertainty.

CWP therefore proposes that this detail is removed from the request or a more generic fulfilment of this criteria is permissible.

*Do you consider that the other financing arrangements provide adequate flexibility for companies to demonstrate their ability to demonstrate their financial viability in the future? For example, financial close for ORE Projects may occur several years after the grant of any MAC. To what extent is the timing of the financial viability assessment problematic?*

Please see answer to previous question

### **3.2.3 Public Interest**

*Are there any other public interest considerations which the Department should consider at MAC application stage?*

CWP does not believe there are any additional public interest considerations that the Department need to consider at this stage.

#### **3.3.1 Levy Framework**

*The Department invites feedback on the below proposed levy model for Relevant Projects:*

- *Operational Levy: 2% Gross Revenue/annum*
- *Development Levy: €20,000/km<sup>2</sup>/annum*

CWP believes that the applying Development and Operational levies is a reasonable condition to secure access to the seabed, both in development and once the offshore wind farm is operational. It is noted that the levies are calculated based on the square area occupied by the MAC. CWP suggests that cable routes are excluded from the

MAC levy, as the cables are essentially a contestably built transmission system which will be handed back to the State.

CWP suggests further clarification is provided regarding MACs for Operations and Maintenance facilities and how the DECC will deal with areas where cable routes are used jointly by other projects.

CWP believes a 2% of Gross Revenue level is appropriate.

Codling Wind Park Limited, as the only Relevant Project with a foreshore lease, is required to surrender its existing lease to secure a MAC. In order to ensure a level playing field between the Relevant Projects, CWP asserts that the scale of payment made by any Relevant Project under its foreshore lease should be taken into account.

### 3.3.2 Application Fees

- *Option 1: Charge no fee*
- *Option 2: Charge a handling fee based on the likely calculated workload in processing and assessing MAC applications OM*

*Which of the two options is the most appropriate for the Relevant Projects? Are there any other application fee models which would be more appropriate?*

CWP suggests that a fee is charged, and that this fee should be used solely to fund handling of the application which will ensure that the workload to process and assess the MAC applications is sufficiently resourced. CWP strongly believes that well-resourced Government departments, bodies and agencies are essential to the success of the Irish offshore wind industry and timely achievement of Irish renewable energy targets.

### 3.3.3 MAC application window

*Is two months a reasonable duration for the MAC application window? If not, how long should the Department keep the MAC submission window open for? Responses should be informed by the readiness of applicants to submit all information required at MAC application stage, as outlined in this consultation.*

CWP believes that a two-month application window is a reasonable duration, as long as a reasonable period of preparation from publication of the final MAC criteria and templates to the MAC Application Window opening is allowed for. CWP suggests that the time between publication of the final MAC criteria and the MAC Application Window should not be less than 1 month.

### 3.3.4 Duration of a MAC

*Based on international practice, a period of thirty years is often cited as a common duration for maritime area consent (or equivalent authorisation). Is thirty years an appropriate duration for a MAC? Responses should have regard to:*

- *Time required to apply for other consents*
- *Time required to complete site investigatory works*
- *Procurement*
- *Supply chain considerations*
- *Construction time*
- *Reenergisation*
- *Decommissioning*

The proposed 30-year MAC term from date of issue is materially shorter than most international precedents. CWP notes that The Crown Estate leases in the UK are in excess of 50 years (the term comes into effect upon a project serving notice that it wishes to exercise its option and, practically, this is often done at or shortly before the beginning of construction), and concessions granted under the French regime are for period of up to 40 years. While the Dutch regime currently provides for 30-year permits, CWP notes that legislation is in progress which will seek to increase the term to 40 years.

CWP considers that a 30-year term from the date when MAC is granted which will likely be, in the context of Irish projects, a few years ahead of most projects Financial Investment Decision does not align with the lifespan of an offshore windfarm which is assumed to be able to operate for up to 50 years. As such, the proposed duration is

commercially limiting; to the extent it does not allow developers to realise the full economic value of the project it will lead to increased cost in terms of ORESS and ultimately the Irish consumer.

CWP suggests that the duration of the MAC should be at least 55-65 years. This would reflect the development period (10 years), the operational period (40 - 50 years) plus the decommissioning period (5 years).

### 3.3.5 Additional consultation questions

*Are there any specific aspects of the assessment methodology that you consider requires further clarification?*

#### 1. Amendments to MACs

The MAP Act contains provisions for both "*material*" and "*non-material*" amendments to a MAC. It also provides that the Minister may specify (by way of regulations) amendments that are deemed to be "*non-material*".

In relation to "*material*" amendments to a MAC – Under Section 86(1) of the MAP Act, where the Holder wishes to amend the MAC in any material way, the other provisions applicable to a MAC application shall apply (i.e., including the fit and proper person test). Therefore, CWP suggests that the guidelines must clearly define "*material*" and "*non-material*" amendments.

Also, CWP suggests that clarification be provided as regards amendments to a MAC that are required on the basis that certain Government/regulatory policy may not be definitive at the time of submission of the MAC application. Given that a material amendment of a MAC appears to be treated in the same manner as a MAC application, it would be unduly onerous for a developer to have to apply for an amendment as if it were a new MAC application where such amendment is required because certain Government/regulatory decisions have not been finalised prior to the developer submitting its MAC application. CWP recommends that such amendments will be specified as "*non-material*" by way of regulations. For example, as proposed in the CRU Grid Connection Assessment Consultation published in October 2021, it is feasible that actual connection points and therefore cable routes will not be known until after the ORESS 1 auction.

CWP notes that geographical coordinates used in the MAC application must be consistent with the original foreshore lease application, and that where coordinates of MAC application differ to the original foreshore lease application, an "explanation for differences" must be provided. CWP request clarification, therefore, that flexibility to amend the coordinates will be permitted, where an explanation can be provided by the MAC Applicant.

#### 2. National Marine Planning Framework

We note that a set of statutory planning guidelines for Offshore Wind Developments is being developed by Department of Housing, Local Government and Heritage as part of actions under the National Marine Planning Framework (NMPF) which are now expected to be ready for use sometime in late 2022.

Although the development of guidelines is welcomed, these timelines may not be consistent with the timelines within which Phase One projects are expected to/required to submit offshore planning applications. If the Relevant Projects need to demonstrate compliance with the guidelines in their planning applications, or not adhering to them will increase planning risks, then an extended period of time between MAC award and planning submissions will be required until such time as the full suite of planning legislation and guidelines have been confirmed. CWP submit that this should be reflected in any timelines set out in the MAC terms and conditions.

#### 3. Consistency with Offshore RE Policy

As part of the Consistency with Offshore RE Policy section (page 20 of the Consultation Document), the consultation explains the requirement to provide the following information including

- Expected Maximum Export Capacity (MEC) of final development and maximum energy output, expressed in GWh/annum;
- Indicative timelines, including proposed start and duration of project energisation;
- Wind turbine technology.

CWP believes that the information which could be provided at this stage will be indicative and/or at a high level, as each will be subject the conclusion of other processes such as the GCA and the outcome of planning from An Bord Pleanála.



#### 4. MAC for Operations and Maintenance Base

CWP notes that there is no reference to the Operations and Maintenance Base (OMB) in the Consultation Documents. While the OMB will be substantially land-based, it is likely that minor elements of the OMB will be located within the maritime area (e.g. pontoons etc) and that a MAC will be required for those minor elements. CWP notes that section 144 of the MAP Act provides for automatic termination of a MAC if planning is refused. Although presumably not intended, there is a risk that a refusal of permission for the OMB (because it includes development of something as minor as a pontoon) could result in the termination of the MAC for the offshore array and related offshore infrastructure if developers are obliged to apply for a single MAC for all offshore elements of the project.

Furthermore, holding the MAC process for the OMB until MARA is established will present a timing risk for the projects.

CWP requests flexibility in terms of how Relevant Projects structure their MAC(s) (e.g., a single MAC or multiple MACs) generally and specifically in relation to the OMB.

#### 5. Change of control

The consultation provides that a MAC assessment will be required when:

*"material amendment to a MAC is proposed by the Holder, including where the amendment has a significant impact on the associated costs and/or risk profile of the ORE Project or material changes to the shareholding or control of the Holder"*

CWP asserts that the triggers upon which a new assessment is required are broad, noting that the list outlined in Clause 2.5.3 is non-exhaustive. The reference to "material change" is particularly vague as it is not clear on initial reading what exactly constitutes material change. From a bankability perspective it will be critical for developers to understand the conditions which may lead to a re-assessment of Relevant Person status, to the extent that any such review could result in a revocation of the MAC. CWP advises that materiality thresholds should be carefully considered such that it does not threaten the validity of the MAC unless there is a genuine material change to the condition of the sponsors and/or project company.

Clause 2.6 of the Guidance for Financial Viability Assessment indicates that a financial viability assessment will be required where an assignment of a MAC occurs, with an assessment being performed "on all parties who hold an interest in the MAC". The drafting implies that any change of control at project company level post MAC award (where the MAC is applied for by and awarded to project company) will trigger a financial viability assessment.

While the drafting is somewhat unclear, CWP interprets a change of control in an entity which exerts "significant influence or control" over a Relevant Person as triggering a financial viability test unless the incoming party is a listed company with a market cap of €100m or greater. The clause could therefore have the effect of restricting the sponsor's ability to divest a shareholding in the project to the extent that the incoming investor is deemed to have "significant influence or control" and does not meet the minimum market cap threshold.

CWP notes that there appears to be an attempt to carve-out minority divestments however neither the reference to "significant control" in 2.6 of the Guide on Financial Viability Assessment nor "material change in shareholding" in clause 2.5.3 of the Consultation Document outline objectively determinable thresholds in the form of defined percentages. CWP requests that clarity be provided on these points and that "control" should be defined with reference to an objective test, for example Section 432 of the Taxes Consolidation Act 1997 (as amended).

Further, CWP suggests that where the incoming MAC Holder is a minority investor who has no role in the development/construction of the windfarm then a financial viability test should not be required, or a less stringent test is applied which is commensurate with the equity investment (with appropriate thresholds for minority interest).

#### 6. Confidentiality

The information required to be submitted by the MAC Applicant and the Supporting Entities for the application may be commercially sensitive. For example, any financial information or information in relation to the project timeline, turbine technologies, MEC would be sensitive both in terms of the relationship with competitors, and in relation to financiers and suppliers. CWP requests clarification that all information submitted as part of the MAC application will be treated as strictly confidential unless stated otherwise and such information will not be disclosed to any third parties.

