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Meitheal Na Gaoithe

How To Trade Sale A Wind Farm Company – Bank A Wind Farm Project



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Friday 20 November 2009

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INTRODUCTION

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- Andreas McConnell
- Partner – Philip Lee Solicitors
- Practice Areas – Corporate and Commercial, Corporate Finance, Capital Markets and Insolvency
- Key Practice Area – **Energy Sector**

OVERVIEW

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- What you will need to get started
- Understanding the process
- Some useful tips

What you will need to get started - Core Aims

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- Reducing Legal/Accounting costs
- Reducing the risk of weakening your negotiation position
- Increasing transaction speed

WHAT YOU WILL NEED TO GET STARTED (TRADE SALE) 1.

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- Statutory Books
- Share Certificates (if applicable)
- Authorisations (shareholder/board)
- Audited Accounts (all filings up to date in CRO)
- Up to date Management Accounts
- Bank Statements/Mandates
- Property Agreement (lease/option to lease/wayleaves etc)

WHAT YOU WILL NEED TO GET STARTED (TRADE SALE) 2.



- Planning Permission (full grant/bond/date)
- Grid Connection Agreement
- Power Purchase Agreement/REFIT Documents
- CER Authorisation (generating station/generating electricity)
- Wind Energy Report
- Turbine Agreements/Agreements with Civil Contractors (if applicable)

WHAT YOU WILL NEED TO GET STARTED (BANK FUNDING) 1.

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All of the aforementioned

Types of bank funding:

- Lending with recourse to personal assets
- Non recourse lending (project finance)
- Currently project finance is generally only available to projects with a lending requirement in excess of €5m.

WHAT YOU WILL NEED TO GET STARTED (BANK FUNDING) 2.

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- Full financial model on P90 basis (P50 and P75 data not generally bankable)
- Debt equity multiples generally range between 75 – 85%
- Percentage of debt provided largely (though not entirely) dependant on data from Wind Energy Report
- Generally + wind = + debt

WHAT YOU WILL NEED TO GET STARTED (BANK FUNDING) 3.

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- Equity provider details (including BES)
- Fully costed financial model
- Draft turbine supply agreement
- Warranties (turbine)
- Operation and maintenance conditions

UNDERSTANDING THE PROCESS (TRADE SALE)

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- Heads of Agreement/Letter of Intent (non-binding)
- Due Diligence Process
- Share Purchase Agreement
- Completion Accounts
- Warranties
- Deed of Tax Indemnity

WARRANTIES/INDEMNITIES – A BRIEF EXPLANATION 1.

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- Generally speaking a series of ‘binding promises’ personally provided by the selling shareholders to the purchaser concerning the assets, commitments, obligations and liabilities of the company in sale.

eg. “There are no claims against the company”

“The company is not in breach of any grid connection agreement condition”

WARRANTIES/INDEMNITIES – A BRIEF EXPLANATION 2.

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- Normally divided into general warranties and tax warranties.
- Financial penalties imposed for breach of warranty usually capped at purchase price.
- Time limit for claims: Matter for negotiation – usually up to two years for general warranties and five to seven years in respect of tax warranties
- Warranties generally limited by information provided through due diligence process and also disclosure letter.

UNDERTSANDING THE PROCESS (BANK FUNDING)

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- Generally a process of negotiation
- Bank will due diligence all information provided
- Bank will demand involvement in the negotiation of direct agreements (or amendments to them)
- Project funding and direct agreements will close simultaneously
- Bank will insist on ‘step in’ rights to direct agreements

USEFUL TIPS 1.

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- Engage with solicitor/accountants at the outset. This will (a) reduce costs (self help) and (b) minimise prejudice to your negotiating position
- Reveal all to professional team (minimise exposure to warranties)
- If project is likely to run into financial trouble – start the process early (trade sale/bank funding) – minimise prejudice to negotiating position

USEFUL TIPS 2.

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- Impose deadlines early
- Only agree to limited exclusivity in trade sale (enables opportunity to negotiate with third parties if time limit lapses)
- Engage with more than one bank
- Fix fees with legal team/accountants

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THANK YOU!