EXTENDED OPERATION OF WIND FARMS IN GERMANY
APPLICABLE LEGAL REGIME

CONFERENCE ON THE OPTIMIZATION, EXTENDED OPERATION AND REPOWERING OF WIND FARMS –
LA DEFENSE/PARIS – MARCH 17, 2016
**Experts on Sustainable Development**

**Sterr-Kölln & Partner mbB / SK & Partner**

- Rechtsanwälte, Wirtschaftsprüfer, Steuerberater / Avocats à la cour
- Offices: Paris, Berlin, Freiburg

**Facts & Figures**

- 1978: Creation of Sterr-Kölln & Partner
- 1995: Specialization in Cleantech (renewable energies and energy efficiency)
- 2005: Opening of the Paris law office
- 2009: Opening of the Berlin law office
- Project volume > 7 billion Euro
Extended Operation means the operation of a wind farm (hereinafter WF) beyond its nominal design life (20 year standard term).

Feed-in tariff expires after 20 years (or more, for WF which have gone into operation before the year 2000).

Cases of susceptible interest

→ For a site representing favorable wind conditions, when a new license cannot be obtained

→ To avoid the tender bidding process (as of 2017)
I. Public Law

II. Securing land rights

III. Insurance

IV. Grid connection
I. PUBLIC LAW

Case-by-case review

Main categories of licenses

- Unlimited duration, no instructions (Auflagen)
  - No duties vis-à-vis local authorities (new instructions may be issued a posteriori)
- Instructions, recommendations
  - Compliance with instructions and/or recommendations in consultation with local authorities
- Limited duration
  - Application for extended operation

EXTENDED OPERATION OF WIND FARMS IN GERMANY – APPLICABLE LEGAL REGIME
I. PUBLIC LAW

- Need of a stability proof test, regardless of the content of the license

- 2012-Guideline for Wind Turbines of the German Institute for Structural Engineering shall be the basis for the stability proof test.

- Technical guideline, sets out the type testing procedure (Typenprüfung) and refers to an individual procedure for stability proof test for the extended operation

→ Applied by local authorities
II. SECURING LAND RIGHTS

Long-term land leases

Check their duration!

- Leases concluded with local authorities: 20 year standard term

- Leases concluded between private parties (20 or 25 year standard term + extension (optional) → respect the deadline for extension!

- Note re-negotiation clauses for remuneration

- Provide enough time to negotiate with land owners
II. SECURING LAND RIGHTS

Easements

(beschränkte persönliche Dienstbarkeiten)

- Easement term may be limited: new easement must be registered
- New easements means new priority rights
- Formalities may be long and cumbersome
III. INSURANCE

- Case-by-case technical evaluation of each wind turbine

- Comprehensive Report including a structural stability proof test (*Standsicherheitsnachweis*): global risk assessment is crucial!

- Report maximum 3-6 months old

- Possibility of limited coverage (duration and liability)

- One year standard term
III. GRID CONNECTION

- Feed-in tariff expires after 20 years (or more, for WF which have gone into operation before the year 2000) but priority rights to feed-in are maintained.

- Grid connection rights are not limited in time.

- Check the rules of the specific grid connection agreement for any possible additional requirements.
CHECKLIST PART I

✓ Licenses
  ▪ Does the license have a limited term or not?
  ▪ Any instructions /recommendations concerning the extended operation of the WF?

✓ Stability proof test in accordance with the 2012 DIBt-Guideline

✓ Securing land rights
  ▪ Duration of land lease agreements
  ▪ Extension options? Note the deadlines!
  ▪ Limited personal encumbrances limited in time?
CHECKLIST PART II

✔ Insurance
  ▪ Check the conditions and the reasonable extension of insurance policies for coverage of the extended operation
  ▪ Detailed technical evaluation of the wind turbines needed (maximum 3-6 months old)!

✔ Grid connection
  ▪ Check the grid connection agreement
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