The Restructuring of the Southern European Energy Market

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Agenda

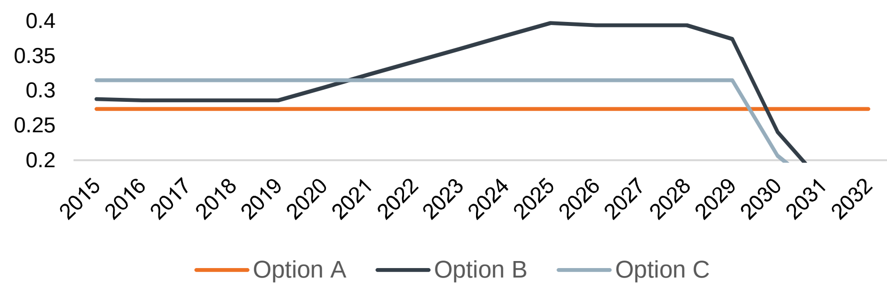
1. The Cause of Distress: Regulatory / Tax Changes
2. Litigation and Possible Outcomes
3. Current Outlook for the Industry and Pressures on Directors and Owners
4. Restructuring Solutions?

Regulatory and Tax Framework: Italy

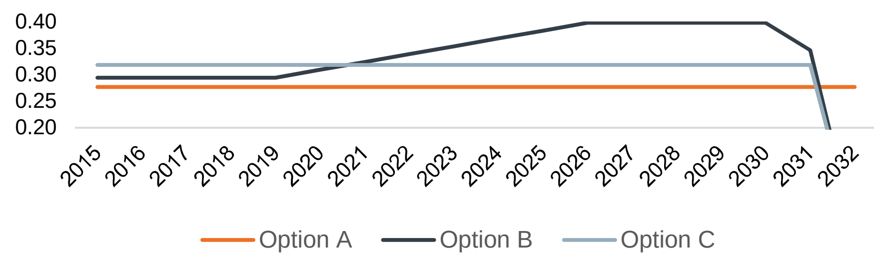
2012:	Italy established an administrative fee of .05c€/kW that applied to projects governed by Conto Energia II, III and IV (being the applicable PV support mechanisms)
2011-2013:	Italy enacted the "Robin Hood Tax" on top of the corporate rate applicable to renewable energy facilities, and later decreased the threshold of taxable income subject to that tax
2013:	Italy enacted the Destinazione Italia Decree, which substantially altered the off-take regime, and Italy imposed a "Capacity Payment"
2014:	Italy passed LD 91/2014, which imposes significant reductions to the incentivized remuneration available under the Conto Energia and contractual agreements. Italy also postponed payments owed to renewable energy projects and imposed a fee to cover the GSE's expenses
2015:	Cassa Depositi and Prestiti's role to be clarified

Italian Assets: Alternative FiT Scenario

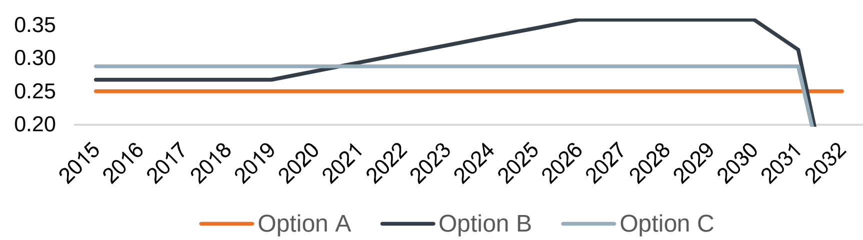
Project 1 – Alternative FiT Scenario



Project 2 – Alternative FiT Scenario



Project 3 – Alternative FiT Scenario

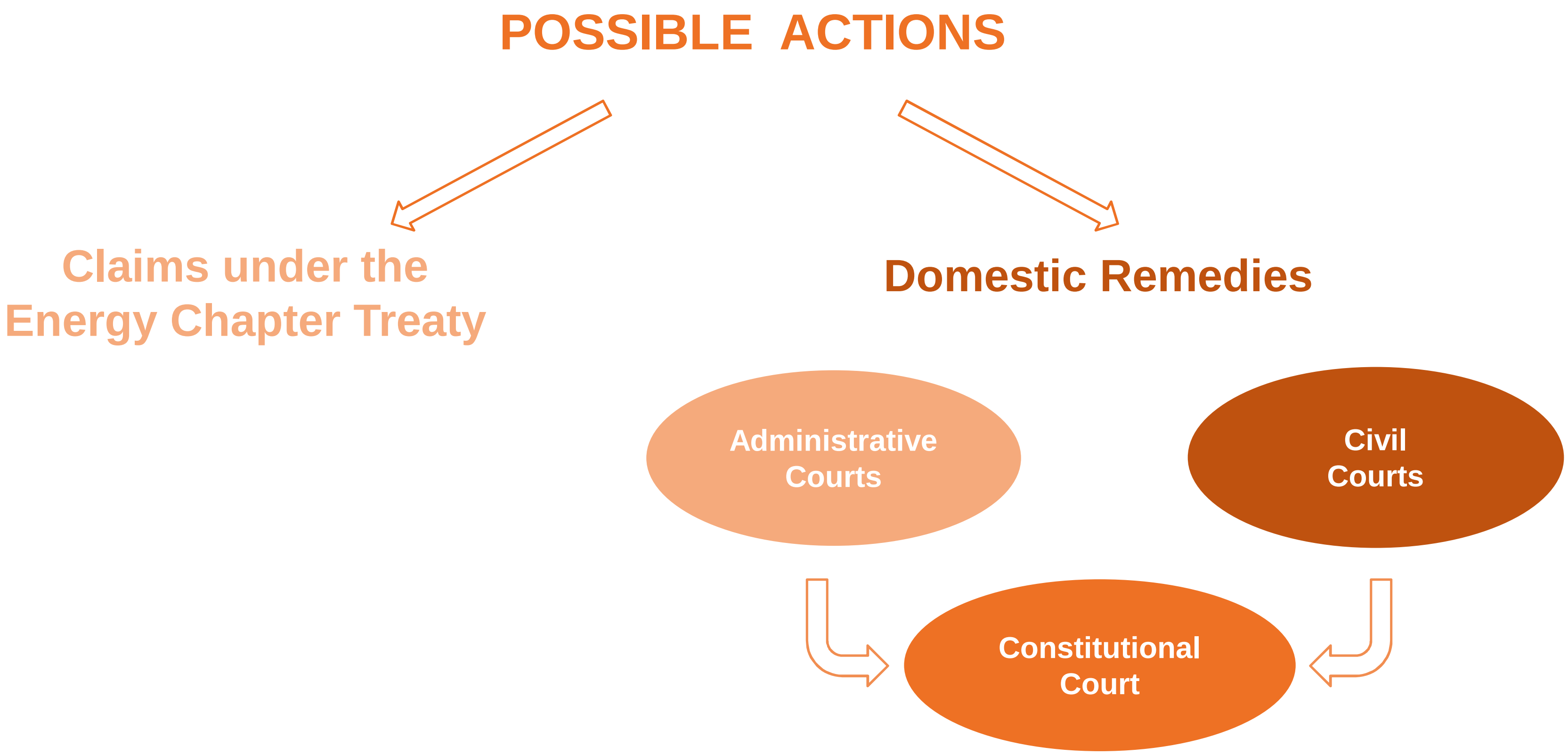


By Law Decree dated 25 June 2014, the Italian Government approved the so-called "Electricity Bill-Cut Decree", aimed at reducing electricity costs for consumers and SMEs by 10% (the "**Decree**"). The Decree has been converted into law on 11 August. Set out below are the options available according to the Decree. PV producers shall opt for any of the Options by 30 November 2014.

DSCR	P 1	P 2	P 3
Option A	< 1.00 x	< 1.00 x	< 1.00 x
Option B	< 1.00 x	> 1.00 x	> 1.00 x
Option C	< 1.00 x	> 1.00 x	> 1.00 x

The new structure of FiT will create a "stress" on the debt service cover ratio and indirectly on the capability of each project to deliver a yield.

Litigation: Italy



"Fork In the Road" concern (art. 26 (3) (B) (I) of the ECT): Investors are required to choose between international arbitration and domestic litigation

Introduction – Regulatory Issues: Spain

Key issues of the Reform (Royal Decree for Renewables – RD413/2014):

- Total revenues for renewable projects will be based on: revenues of energy sold at pool price, additional compensation on investments (capacity payment) and additional compensation on operating expenses
- Revenues for renewable energy projects will be calculated for a "standard/average" project based on energy sold at pool prices, average operating expenses, original Capex and minimum production hours
- Revenue calculation is intended to provide projects with a "Reasonable Return" before taxes. The reasonable return will be equivalent to the return of the 10-year Spanish Bond in the secondary market plus a margin to be determined every regulatory period. Applicable margin for the first regulatory period to be 300bps

Key parameters of New Regulatory Framework could be revised every three or six years, with the first regulatory period ending on 31 December 2019 and the first sub-regulatory period ending on 31 December 2016

Regulatory / Tax: Spain

- **New regime:** contained in Act 24/2013, on the Electricity Sector, Royal Decree 413/2014, regulating the activity of electricity production from renewable energy sources, cogeneration and waste and Ministerial Order IET/1045/2014, on remuneration parameters
- **Objective:** cost coverage and achievement of a reasonable rate of return on investment from the commissioning date
- **Reasonable rate of return:** 10-year Spanish government bonds + spread (300 bp for facilities incentivized by 14 July 2013). Currently fixed at 7.398%
- **Standard facility:** activity carried out by an efficient and well managed company
- **Classification of standard facilities:** based on standardized (estimated) cost and revenue of each technology

Regulatory / Tax: Spain

REMUNERATION OF THE FACILITY

Remuneration from electricity market price (paid by the market)

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Specific remuneration (paid by the Electricity System)

- ✓ The above applies generally to existing and future facilities

- ✓ Future facilities in non-mainland territories may receive an additional incentive based on potential reductions of the production costs in the relevant territory

Regulatory / Tax: Spain

SPECIFIC REMUNERATION

Remuneration on operation (Ro)

OPEX not covered by the market price

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Remuneration on investment (Rinv)

CAPEX not recovered through the market price

Future amendments of the remuneration scheme: Spain

Potential changes to the new remuneration scheme

- As explained before, some parameters can be periodically reviewed. This is not applicable to CAPEX and regulatory lifespan parameters
- As a result, the remuneration is subject to possible changes (for instance, in view of the evolution of the Spanish bond)
- In theory, the flexibility of the remuneration scheme is intended to avoid the necessity of making amendments to the scheme as a whole
- It is crucial that the main objective of the reform (i.e. reduction and control of the tariff deficit) is achieved
- Legal perspective of future amendments to the remuneration scheme

Litigation: Spain

Types of legal proceedings against the new reform:

- RD 413/2014 and Order IET/1045/2014: direct judicial administrative appeal
- Settlements paid by the CNMC: administrative and subsequent appeals (according to the Audiencia Nacional, only final settlements may be appealed against)
- Self-assessment tax: administrative challenge and claim and subsequent judicial administrative claim
- Judicial administrative track: refer a question of constitutionality and a matter for preliminary ruling to the ECJ
- Claim damages through administrative and judicial channels (financial liability of the administration)
- International Arbitration based on the Energy Charter Treaty (only for international investors)

Directors' Duties: Italy and Spain

Director's Duties: Italy

- Cuts in Spain have been more severe than in Italy, and so pressure on directors is less severe
- Outside insolvency scenarios, directors are typically required to pursue the best interest of the company and its stakeholders (primarily investors). The negotiation of contractual arrangements to unblock dividend flow is key to this

Directors' Duties: Spain

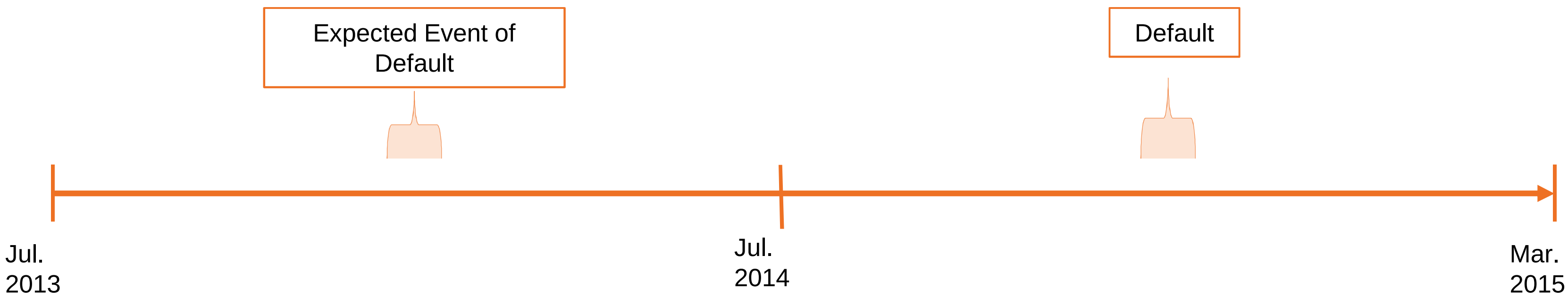
- General duty of directors to file for insolvency within the 2 month period following an insolvency event (general inability to pay). Personal liability to comply with this duty
- Additional 4 month window if the company files for pre-insolvency protection (article 5bis of the Spanish Insolvency Act)
- Potential insolvency liability of directors and shareholders if they unjustifiably decline to accept a proposal for a debt for equity swap. Only in the context of in-court and out of court restructuring. Not in insolvency composition

Directors' Duties: Spain

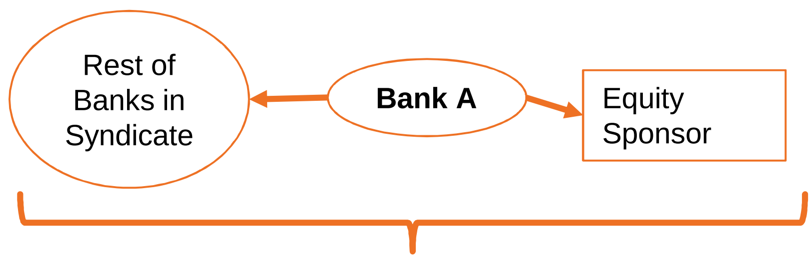
Directors' Duties: Spain (cont.)

- Additional insolvency issues to be considered:
  - Stays on enforcement on assets necessary for the activity of the company. Special reference to cash sitting on accounts;
  - The benefits of an enforcement prior to the filing under 5bis or insolvency;
  - The subordination of "de facto" directors (cases in connection with enforcement of security on shares and control on project accounts and business covenants);
  - The disposal of production units during the insolvency proceedings (protection of secured creditors);
  - The "old" and pending issue of resilience of pledges on future receivables;
  - Lender liability.
- The change in circumstances: Special reference to the Spanish Supreme Court Resolution 333/2014 of 30 June 2014

Outlook: Spain



- Banks will have a short period of time to deal with a significant number of renewable projects facing default at the same time
- Some key risks identified in case misalignment of interest are:
  - Disruption risk
  - "Concurso de Acreedores"
  - Technical mismanagement of the Asset



Are interests aligned?

Outlook: Spain

Impact for RD 661/2007 Solar PV projects is expected to be the following:

Aggregation Criteria

Eur / MWh		ENERGY REFORM IMPLICIT PRICE											
Start of Operations	RD 661/2007 FiT	Fixed Structure				1-axis Tracker				2-axis Tracker			
		2007		2008		2007		2008		2007		2008	
		100kW - 2MW	2MW - 10MW	100kW - 2MW	2MW - 10MW	100kW - 2MW	2MW - 10MW	100kW - 2MW	2MW - 10MW	100kW - 2MW	2MW - 10MW	100kW - 2MW	2MW - 10MW
P ≤ 100kW	488,606	376,120	341,542	384,691	350,030	343,015	307,998	361,688	320,967	360,663	334,635	361,040	331,207
	Reduction	*-23,02%*	*-30,10%*	*-21,27%*	*-28,36%*	*-29,80%*	*-36,96%*	*-25,98%*	*-34,31%*	*-26,19%*	*-31,51%*	*-26,11%*	*-32,21%*
100kW < P ≤ 10MW	463,218	408,467	385,849	401,635	373,612	391,075	N/A	385,465	340,855	433,787	307,613	384,848	380,467
	Reduction	*-11,82%*	*-16,70%*	*-13,29%*	*-19,34%*	*-15,57%*	*N/A*	*-16,79%*	*-26,42%*	*-6,35%*	*-33,59%*	*-16,92%*	*-17,86%*

Notes:

1. Implicit Price includes pool price (49 €/MWh), 7% tax on Energy Production and Reactive Complement reduction
2. Equivalent production hours as indicated in regulation (maximum to receive Remuneration for Operations)
3. Impact might differ once applied to real projects based on each project characteristics (Production, Opex, Gearing, etc.)
4. Reduction being percentage change in revenues comparing FiT with Implicit Energy Price Post Reform

Restructuring Options for Banks / Sponsors: Spain

Current situation

RD 1565/2010
RDL 14/2010
RD 12/2012

PROJECT

Law 15/2012 (7%)
RDL 2/2013
Energy Reform 2013

Potential Optimization Process

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REVENUES
- Technical improvements
- Monitoring…

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OPEX
- O&M Contracts
- Insurance
- Derivative / IRS
- Security / Surveillance
- Market Agent

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1. Feasibility under New Base Case

2. Debt Restructuring Process

3. Asset/Debt Disposal

4. Forced Ownership of Projects

Options for Banks / Sponsors: Spain

Key uncertainties/risks derived from the Energy Reform that could complicate restructuring processes are the following:

- Cash flow stream uncertainty derived from Regulatory Periods & Sub-Periods revisions and payments from CNMC
- Impact on treasury of Wind and Solar CSP projects due to revenues received in 2H2013 that will be compensated
- Aggregation Criteria relevant for Solar PV projects (Art 14. RD 413/2014)
- Pool prices and 10-yr bond variations going forward

Restructuring: Italian Perspective

Key issues:

- Time is not mature yet for distressed asset market as people still have to digest situation (Cassa Depositi e Prestiti's role still to be clarified)
- Banks' approach is "stay at the window and wait" but open to restructuring options
- Possibility of restructuring for bigger portfolios by:
  - Converting SPV loans into Holdco portfolio financings (crossed collateralised by various projects)
  - Small additional equity injections circa 20% of original equity
- Aggregation game is starting, for the time being, on a paper for paper basis
- Possible development of new financing techniques, e.g. green bonds
- YieldCos based on US/UK model to develop soon

The Future?

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