



GAIA SILVA GAEDE
ADVOGADOS

LEGAL FRAMEWORK FOR OFFSHORE WIND FARMS



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LEGAL FRAMEWORK FOR OFFSHORE WIND FARMS

In 2018, offshore wind energy potential was considered for the first time in the Brazilian energy planning carried out by the Energy Research Company (“EPE”) and reflected in the National Energy Plan - PNE 2050.

In 2020, EPE published the Offshore Wind Roadmap for Brazil, which outlined the challenges to project development in the country and recommendations for addressing these challenges. Among these challenges, the need to reduce operating and maintenance costs was highlighted, since offshore wind farms use one of the most expensive renewable technologies, as well as the need to advance regulation on the subject to ensure greater security for the investments needed to develop this industry.

In this context of recognizing the potential of Brazilian offshore wind generation, including in light of the decarbonization of global industries, Law No. 15,097 of January 10, 2025 (“Legal Framework”) was enacted.

The Legal Framework regulates the use of federal property to generate electricity from offshore wind farms, which are wind farms located in the marine environment, in inland waters under federal control, in the territorial sea, in the exclusive economic zone and on the continental shelf.

Its aim is to create opportunities for new investments in renewable energy and infrastructure projects, encourage the sustainable exploitation of these resources and promote energy security and local, regional and national development. To this end, the Legal Framework is structured on the basis of various principles, among which we highlight:



Sustainable Development;

Rational use of natural resources, with a view to energy security;



Protecting the environment and ocean culture;

Free, prior and informed consultation with the peoples and communities affected by offshore projects;



Local and regional development, with an emphasis on infrastructure and national industry, reducing inequality and social inclusion;



Respect for ways of life, traditional uses and maritime practices;

Development of renewable technologies and reduction of carbon emissions.



TYPES OF ASSIGNMENT OF THE RIGHT TO USE PRISM AREAS FOR OFFSHORE WIND FARM DEVELOPMENTS

In order to exploit the potential for generating electricity from offshore wind farms, the Legal Framework defines the right to use federal property through the granting of an authorization by the Granting Authority, known as a Permanent Offer, or the granting of a concession, known as a Planned Offer, through a bidding process.

These grants must take place in areas known as Prismas and must not interfere with other installations or activities, in accordance with the concepts set out in the Legal Framework:

Power generation activities can be carried out in the vertical PRISMA at a depth coinciding with the underwater bed, with a polygonal surface defined by the geographical coordinates of its vertices.

DECLARATION OF PREVIOUS INTERFERENCE is the declaration issued by the Executive Power with a view to identifying the existence of interference by the prism with other installations or activities.



PERMANENT OFFER	PLANNED OFFER
The Granting Authority delimits the areas to be explored, based on the request of interested parties, in the form of an authorization .	The Granting Authority offers pre-delimited prisms for exploitation by private individuals, according to the spatial planning of the competent body, in the form of a concession, through a bidding procedure .
Authorization will be granted on the basis of a expression of interest by those interested in a particular prism.	Cession of use is a fixed-term administrative contract signed between the Federal Government and the party interested in using an offshore area to generate electricity. The cession of use contract must include two phases: (i) Evaluation Phase, with studies to determine the viability of the project and the presentation of a viability statement; and (ii) Execution Phase, with the implementation and operation of the project.
Judging criteria: not applicable.	Judging criteria: the highest amount offered as government participation, without disregarding other criteria established in the respective public notice.

PRISM GRANT PROCEDURE

Receipt of an Expression of Interest in a given Prism by the Granting Authority



Publication in extract, including on the internet.



Opening of a Public Call process with a minimum period of 120 days for other potentially interested parties to come forward.

If there is only **one** expression of interest.



Permanent Offer, once the minimum compulsory qualification requirements set out in the regulations have been met.

If there is **more than one** expression of interest: the Granting Authority may seek an **agreement** between the interested parties or redefine the area of the energy prism.



Permanent Offer.

If there is **more than one** expression of interest in a given prism and there is **no agreement** between the interested parties or the possibility of redefining the area of the energy prism.



Planned Offer.

FOR BOTH PERMANENT AND PLANNED OFFERS



MANDATORY MINIMUM QUALIFICATION: all interested parties and bidders must comply with the technical, economic, financial and legal qualification criteria, as well as observing the promotion of national industry.

ANEEL AUTHORIZATION: the granting of an offshore wind prism does not confer the right to exploit the electricity generation service, which requires an authorization from the National Electric Energy Agency (“ANEEL”).

TRANSFER OF GRANT: the transfer of the grant term is permitted with the prior and express authorization of the Granting Authority, provided that the new grantee meets the technical, economic-financial and legal requirements.



IMPEDIMENTS

In order to avoid conflicts and protect strategic interests, the Legal Framework vetoed the development of offshore wind projects in the following areas:

- Blocks tendered for oil and gas exploration if there is no compatibility in the explorations;
- Sea, river, lake or air navigation routes;
- Areas protected by environmental legislation;
- Areas listed as cultural and natural landscapes in tourist sites;
- Areas reserved for military exercises;
- Areas designated as Sustainable Use Authorization Term (“Taus”) in the territorial sea.

GOVERNMENTAL PARTICIPATION

The Legal Framework provides for the following government participations arising from the exploitation of offshore wind projects, defined in the respective call for tenders or grant terms:

Subscription bonus corresponding to the payment offered in the bid to obtain the grant, this being one of the criteria for selecting the winning bid;

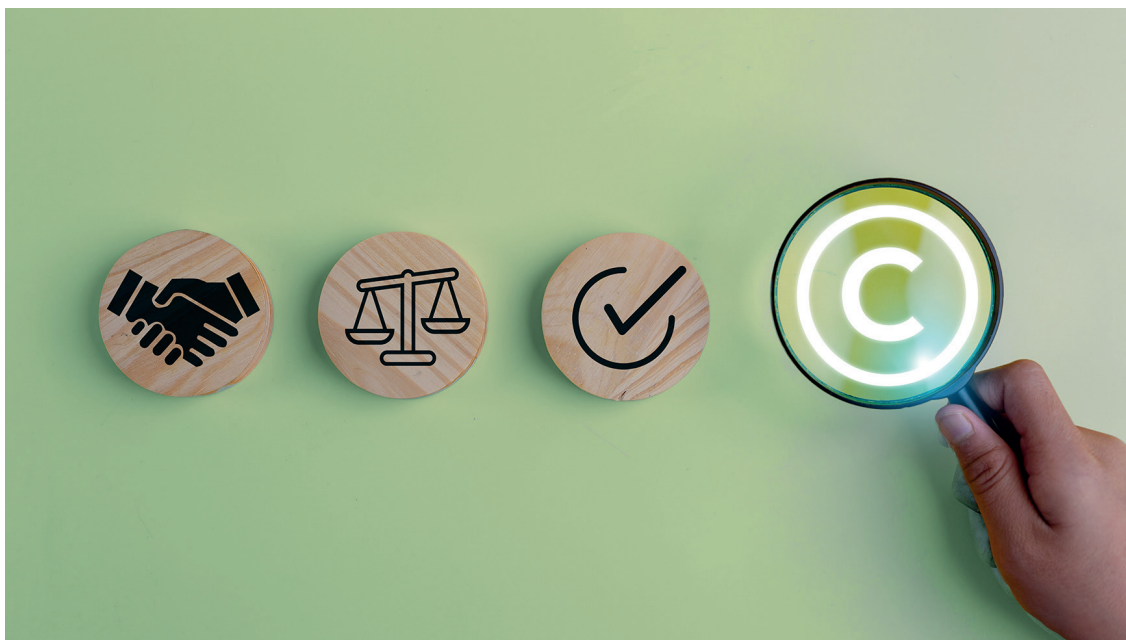
Occupation tax, calculated in R\$/km, with annual payment and priority application in actions aimed at research, innovation and development associated with energy and industry; and

Proportional participation, to be paid monthly from the start of commercial operation of the project, corresponding to a percentage of the value of the energy generated, as set out in the public notice.

In the distribution of the revenues generated by exploitation among the federative entities, the amount distributed will observe the allocation of 50% (fifty percent) to the Union, at least 10% (ten percent) to the States, the Federal District and Municipalities, and also 5% (five percent) to sustainable and economic development projects in impacted communities, in accordance with regulations.



LEGAL FRAMEWORK REGULATION



Although the publication of the Legal Framework represents a step forward for offshore wind projects, there are several points that need to be regulated by the Executive Power:

- **Locational definition of Prisms**, based on suggestions from interested parties or determined by the Granting Authority;
- Definition of the public entity responsible for centralizing the applications and procedures necessary to obtain the **Declaration of Prior Interference (“DIP”)** in the area;
- **Bidding procedure** and **concession** of the areas, including the criteria for assigning the use of federal property and applicable sanctions in the event of non-compliance with the obligations of the grant;

- Rules for **environmental licensing**, as well as **goals** for the implementation and operation of the project;
- Technical, economic, financial and legal **qualification requirements** and requirements for the promotion of **national industry**;
- **Government participation** in the terms of grant of each Prisma;
- Commercialization of **carbon credits**, or similar assets recognized within the scope of greenhouse gas emissions mitigation instruments, originating from the granted area and to be included in the grant;
- **Compatibility between wind power generation activities** and other activities; and
- Procedures for **integrating** offshore wind projects into the **National Interconnected System (“SIN”)**.

It will be up to the **National Energy Policy Council (“CNPE”)** to establish the guidelines and determine the adoption of the necessary measures to regulate the Legal Framework.

IMPORTANT: the development of offshore wind projects also requires addressing the country’s **logistical obstacles**, such as port infrastructure and the transmission of the energy to be generated, as well as **incentives** to develop the wind industry’s supply chain and **reduce costs**.



COMPREHENSIVE LEGAL SUPPORT IN RENEWABLE ENERGY, NATURAL GAS AND BIOFUELS PROJECTS

Our multidisciplinary team is equipped to provide legal advice at every stage of investment in renewable energy, natural gas and biofuels projects, including:

- Advisory on investment projects in renewable energy generation (hydroelectric power plants, wind, photovoltaic, and biomass energy);
- Advisory on investment projects in all stages of the production chain of natural gas (exploration and production fields, biofuels, transporters, distributors, storage, traders, exportation, among others);
- **Structuring of investments:** greenfield projects, M&A transactions (including due diligences, asset regularization and valuation) and joint ventures;
- Advisory on the creation of funding structures, such as project finance modalities for renewable energy generation projects. Participation in public hearings with the Regulatory Agencies (ANEEL¹ and ANP²) and other government bodies;

¹ The Brazilian Electricity Regulatory Agency (Agência Nacional de Energia Elétrica).

² The Brazilian Petroleum, Natural Gas, and Biofuels Agency (Agência Nacional do Petróleo, Gás Natural e Biocombustíveis).



- Specialized consultancy in the commercialization of electric energy and alternative solutions in self-production, natural gas, micro and mini distributed generation (DG), and the free energy market, with support in auctions, strategic litigation, and administrative proceedings before ANEEL, ANP and state regulatory agencies, energy distributors, and other sectorial agents;
- Support for new businesses and risk and opportunity assessment in the energy sector, in the decarbonization strategy of “hard-to-abate” sectors and energy transition of the sector, as well as the structuring and trading of green certificates, including I-REC and GAS-REC;
- Support in the development of carbon capture, utilization, and storage (CCUS) projects and new renewable energies, such as green hydrogen, offshore wind, hybrid generation, and energy storage, including battery energy storage systems (BESS) and reversible hydroelectric plants (UHR);
- Legal support in the development of the market and supply chain for electric vehicles (EVs), in industrial energy efficiency projects, and in the structuring of innovative energy models;
- **Tax Planning:** mapping of applicable legislation and tax benefits at the municipal, state, and federal levels for the implementation of renewable energy, natural gas and biofuels facilities;
- Analysis of tax burden, application of special customs regimes and ex-tariff on the import of equipment;

- **Legal Opinion:** position on relevant aspects of taxation applied to the sector (including the receipt of compensations regulated by ANEEL);
- **Assistance in the processes of qualification for specific tax regimes:** REIDI³, SUDAN/SUDENE⁴, among others;
- **Tax Obligations Advisory and Review:** Compliance analysis in tax calculation with current federal, state, and municipal tax regulations, in light of current jurisprudence, including the review of declarations and verification of the appropriate payment of taxes, to reduce risks and prevent fines;
- **Tax Litigation:** acting in defenses and other actions, seeking judicial or administrative solutions to reduce or nullify possible tax liabilities, as well as to recover payments possibly made unduly;
- **Tax Reform:** Analysis of the tax impacts resulting from the new rules brought by the tax reform;
- Legal analysis of regulatory impacts and support in obtaining licenses and authorizations, with strategic engagement with regulatory bodies such as the Brazilian Navy and the Agência Nacional de Transportes Aquaviários (ANTAQ).

³ Special Regime of Incentives for the Development of Infrastructure

⁴ Superintendency for the Development of the Amazon (Superintendência do Desenvolvimento da Amazônia) and The Superintendency for the Development of the Northeast (Superintendência do Desenvolvimento do Nordeste)





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