Ukraine's renewables sector hoping for sovereign bond lifeline

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Strategic Considerations: The problems in Ukraine's chaotic energy sector continue to mount, with unpaid debts poisoning the operational environment for all stakeholders. If the government pushes ahead with raising funds, it could flood the system with fresh cash, but if it does not, a host of legal challenges may soon be heading its way.

- Ukraine's government might issue bonds to cover debt it owes to renewables
- Renewables are ready to sue the Ukrainian government over unpaid debts
- Investors stepping away from the renewables market

Investors in Ukraine's renewables sector are pushing for the country's government to repay around USD 800m of outstanding debt through tapping the domestic bond market among other options, according to several market participants.

Large financial incentives for renewables players sparked a boom in solar and wind project development in Ukraine, but a complex liberalized market structure combined with rigid state price setting, delayed payments, and lobbying from large industrials stifled payments to energy producers.

Ukraine's SE Guaranteed Buyer is committed to purchasing 100% of the electricity produced by renewable energy producers, but its debts to the sector have ballooned as cash in the industry's increasingly chaotic supply chain has become more scarce.

While partial payments are being made, calls for the government to issue new bonds to pay renewables companies are growing and legal action could follow if the state does not produce a satisfactory solution soon.

Yaroslav Petrov, partner at law firm Asters, told this news service that the government is likely to issue bonds to deal with the debt, but further legislation is still needed before the state can go to the market.

Ukrainian law Number 810, introduced on 1 August, facilitates the issuance of domestic five-year bonds to cover the unpaid amounts from March to August this year, but further legislation adjusting the state budget is still required before it can be used.

It also compelled the state to start paying its bills in full from the date of the passing of the legislation. The government managed to fully cover the August bill, pay 80% of the September bill and pay 7.6% for October, according to Petrov.

A second bill, Number 4151, is in the pipeline that would allow the government to issue bonds to cover all outstanding payments to renewables. "Investors are pushing for this law because actually it is the only way to resume payments," said Petrov.

The American Chamber of Commerce, the second largest business association in Ukraine, has been advocating for the second bill.

Currently the government plans to cover the post-August bills by increasing the transmission tariff of grid operator Ukrenergo, starting in December. The tariff is the main source of money paid to the renewable players.

However, that may prove challenging, as the grid operator is struggling to collect money from its customers and is in turn behind on what it owes to the government.

Despite the government's willingness to find a solution, renewables players are not convinced that there has been enough structural change to shore up the financing of the Guaranteed Buyer, according to Oleksiy Feliv, managing partner at Integrites law firm.

The government has been pushing for solutions through the submission of a draft law to parliament seeking to put in place state guarantees to Ukrenergo, said Feliv. But the law was declined by

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parliament.

"You need some support from the parliament and obviously support from the parliament requires support also from the president (Volodymyr Zelensky) as he has the biggest party in the parliament," added Feliv.

While most stakeholders likely hope the crisis in the electricity sector can be settled amicably, renewables companies are prepared for a legal fight if necessary. Lawyers for a number of renewable energy companies say that suing the government is almost guaranteed.

"(Investors) are skeptical, they don't think overall that this government is professional enough to resolve such a systemic crisis," said Olena Kuchynska, managing partner at Kinstellar law firm. "The interest of foreign investors dropped significantly [...] we have a couple of M&As in this area and they all are on hold."

According to Petrov, it is now just a matter of time before arbitration cases are filed.

"There is no understanding of how it will be paid in the nearest future so this does not bring a lot of optimism and investors are trying to protect themselves," he said.

At least one trigger letter was sent by a company back in June, a necessary step before a company can file an investment arbitration case. After a letter has been sent, it takes about three-to-six months before a company can officially go to arbitration.

"I was in touch with this company and they are preparing, and they will do this for sure," Petrov added. Others also confirmed that they are ready to go to arbitration, both individually and as group claimants, he said. "It is coming and I think inevitable."

by Ilya Timtchenko

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