

Feature

Italy



THE RUN FOR THE SUN

New incentives to encourage the production of clean energy in Italy have led to a rush to register and build new plants. But while investors are ready, the legislation has yet to catch up. **Federico Manili** reports.

The production of energy from photovoltaic sources in Italy has been incentivised through the so-called "Energy Bill" scheme. This scheme provides for the application of tariffs for legally established amounts at an uneven level, and depends on the quantity of energy produced by the benefiting entity.

The fixed tariff system was reformed by the Ministerial Decree of February 19, 2007, which has removed numerous limitations and hindrances to the application of the incentives provided for by

previously passed regulations.

This new Energy Bill has attracted a great number of Italian and foreign investors and companies by applying corrective measures that have broadened the application of the incentives, and made the application of the tariffs more secure. The increased degree of certainty this provides has helped to improve the planning of economic returns from energy produced by photovoltaic plants, as well as the preparation of long-term business plans by companies working in this area.

The photovoltaic sector is therefore going through a true golden age, which looks set to last for the foreseeable future. It must be taken into consideration that the European Union has imposed objectives for power produced from renewable sources, which will require huge efforts from Italy to reach the quantity of "green" MW already achieved by other European countries such as Germany, Spain and Denmark among others.

This year is a turning point for photovoltaic power

production. A Ministerial Decree has established the level of incentive tariffs for plants that will start production before the end of 2010. For those starting production after that date the tariffs are certain to be adjusted downwards. Therefore, thanks to the tariffs already being applied, 2010 is set to be the year of the "photovoltaic run". Operators are breathless in their search for suitable locations for the positioning of plants – everything from industrial and agricultural land to the roofs

of factories and coverings of greenhouses has been considered – and there is a rush to secure all permits in time to connect the plants to the national grid before the year end.

Amid the growing interest, the search for suitable locations to set up photovoltaic plants often runs up against problems and legal limitations. In some cases, for various reasons, it is not possible to acquire real property rights on the land to be used for the location of the plant. In these cases the investor runs the risk of not obtaining financing – be it in the form of leasing or project financing – which can of course lead to the loss of the project.

The acquisition of real estate rights – for example the so-called “surface right” – constitutes the guarantee of the “bankability” of the project. If it is not possible to obtain a surface right, a land lease right is often considered an alternative, although it raises more than a few problems.

Lawyers have different opinions on the profiles and on the levels of risk involved with land lease rights in connection with the financing of a plant.

Apart from these differences of opinion from a legal point of view on the matter, experience shows that the financing entities and their consultants do not usually consider rights on the land (such as land lease rights) to be completely fitting with the requirements of a project financing structure.

Furthermore, even in connection with leasing financing arrangements, one must take into consideration the risk factor introduced by the new bankruptcy law that, under specific circumstances, grants the trustee of the bankruptcy estate the right to withdraw from the land lease agreement.

However, even surface rights could prove to be insufficient to ensure the financing of a plant. For example, in a situation where a photovoltaic plant is planned



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for installation on the rooftop of industrial buildings, the process is frequently hindered by the existence of the previously existing mortgages on the building, issued in favour of other banks that have financed the acquisition or the construction of the building itself.

Therefore, notwithstanding the huge appetite for photovoltaic projects among investors, attracted by the generous incentives system created by current legislation, the photovoltaic run will not be a smooth one.

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