

The below clause setting out the more detailed rules on permitted changes to the concessionaire after signing of the contract is expected to be included in the concession contract to be published as part of the preliminary tender conditions.

1. Changes to the concessionaire [to be included where the concessionaire is a capital company]

- 1.1 At the time of entering into this concession contract the concessionaire is owned by the following parties [names and %-shareholding]. **The parties control the concessionaire in accordance with their respective shareholdings and no party has been granted special veto rights on material decisions or has been granted the power by agreement to appoint the majority of the board of directors, supervisory board, or similar controlling corporate bodies.** [in the affirmative the control rights must be listed and the highlighted sentence deleted].
- 1.2 Change of control in the concessionaire requires the prior written approval of the DEA.
- 1.3 As a Change of Control is considered any transfer of a majority of the shares of the concessionaire and/or any changes to the control rights set out in clause 1.1 above, including the granting of new veto rights, rights of appointment etc.
- 1.4 Approval of a Change of Control will only be granted provided the DEA finds that the concessionaire continues to satisfy the requirements for technical and financial capacity considered necessary to operate, maintain and dismantle the offshore wind farm.
- 1.5 If the authorization to produce electricity pursuant to section 10 of the Electricity Supply Act has been issued at the time of the request for approval of a Change of Control, approval will furthermore only be granted provided the Minister for Energy, Utilities and Climate consents to such indirect transfer of the authorization, cf. section 53 of the Electricity Supply Act.
- 1.6 The DEA shall be entitled to refuse the request for a Change of Control, if the requested Change of Control in the view of the DEA: a) is not permissible pursuant to clause 1.4 and/or 1.5, b) cannot be permitted based on the relevant legislation applicable at the time of request for accept of a Change of Control or c) can be considered a material change of the contract and hence would constitute a new award of the concession.
- 1.7 In order for the DEA to assess a request for a Change of Control the concessionaire shall include documentation of the financial and technical ability of the new shareholder or controlling party with any request for approval. This documentation shall be similar to the documentation which was forwarded as part of the application for prequalification. The concessionaire is required to supply the DEA with any further documentation, which the DEA finds relevant in order to assess the request.

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2. Changes to the Concessionaire [to be included where the concessionaire is a consortium/joint venture]

2.1 The concessionaire shall remain as stated in [reference to the description of the parties] throughout the duration of the contract (i.e. all members of the concessionaire described in [repeat reference] shall remain party to the contract in its duration). This clause does not impact the use of subcontractors.

2.2 Without prejudice to the above, the concessionaire shall be entitled to remove, replace or add members as stated below in clause 2.3, however subject to the DEA's prior approval, cf. clause 2.5.

2.3 Permitted changes

2.3.1 Removal of a consortium member/a joint venture member

The concessionaire shall be entitled to remove a consortium member/a joint venture member if the member's participation in the [final bid] was limited to a specific phase of the contract (e.g. the construction phase). Such removal shall not change the liability and responsibility of the removed member under the contract relating to the period prior to the approval of the removal. The removed member remains liable for all claims made after its removal to the extent such claims relate to circumstances from before the removal was approved (e.g. if a defect in the wind turbine generators foundation structure designed and delivered by the removed member, materialises years after the removal was approved, the removed member will still remain liable for any claims arising at that time as a consequence of the materialised defect.) The request for removal shall not be approved until all the concessionaire's obligations related to the specific phase have been completed in accordance with the contract (e.g. a member, whose participation solely relates to the construction phase, may only be removed once the construction of the wind farm is completed and the wind farm has successfully been put into operation).

2.3.2 Replacement of a consortium member/a joint venture member

The concessionaire shall be entitled to replace a consortium member/a joint venture member (the original member) if the replacement is based on a universal or partial succession (or similar) of the original member (e.g. a merger). Such replacement shall not change the liability and responsibility of the original member under the contract relating to the period prior to the approval of the replacement. The removed member remains liable for claims made after the replacement to the extent such claims relate to circumstances from before the replacement was approved. In case of partial succession (or similar) the new member shall accept joint and several liability and responsibility with the original member for all claims relating to circumstances from before the replacement was approved.

If the replacement is the result of a bankruptcy of the original member, the DEA can – depending on the specific circumstances, cf. also below on material changes – accept that the

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new member does not accept joint and several liability and responsibility with the original member.

The concessionaire shall be entitled to replace a consortium member/a joint venture member (the original member) if the replacement is part of a corporate restructuring/internal reorganisation (e.g. transfer of the contract to a 100 % owned and controlled entity, in the sense that the concessionaire must be able to appoint more than half of the entity's administrative, management or supervisory body). Such a replacement requires that both members (i.e. the original member and the new member) undertake joint and several liability and responsibility for all liabilities and obligations pursuant to the contract. Subsequent transfer of ownership or control (or any part thereof) of the subsidiary (i.e. the new member) to a third party will in general be considered a material change, cf. below, which cannot be permitted, unless the specific circumstances of the transfer falls under any of the permitted changes pursuant to this clause.

2.3.3 The concessionaire shall only be entitled to remove or replace a consortium member/a joint venture member pursuant to the above if:

- i. the concessionaire, following the removal or replacement, still fulfils the criteria for qualitative selection initially established, and
- ii. the Minister for Climate, Energy and Building where necessary consents to the transfer of the authorization to produce electricity pursuant to section 10 of the Electricity Supply Act, cf. section 53 of the Electricity Supply Act, if such authorization has been issued at the time of the request for a change.

2.3.4 *Adding of a new member to a consortium*

The concessionaire shall be entitled to add a new member to the consortium, provided such new member issues a solemn declaration in respect of due, unsettled taxes for which such new member is liable in Denmark and in its country of domicile as required by Danish law, cf. consolidated act no. 336 of 13 May 1997 and documentation of the financial and technical ability of the new member, cf. below.

2.4 The concessionaire is entitled to request a removal, replacement or addition under other conditions than stated above.

2.5 Notwithstanding the above any removal, replacement or addition is subject to approval from the DEA and the concessionaire shall request the removal, replacement or addition in writing and state whether the request falls under one of the rules stated above.

2.6 The DEA shall be entitled to refuse the request for a change for removal, replacement or addition if the requested change in the view of the DEA: a) does not fall under one or more of the above stated rules, b) cannot be permitted based on the relevant legislation applicable at the time of request for removal, replacement or addition or c) can be considered a material change of the contract and hence would constitute a new award of the concession.

Where a change is requested based on clauses 2.3.1– 2.3.4 above, the DEA shall not withhold approval unreasonably and any rejection shall be well substantiated in writing. Also see 2.3.3.

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- 2.7 In order for the DEA to assess a request for a change the concessionaire shall include documentation of the financial and technical ability of the new member with any request for addition or replacement. This documentation shall be similar to the documentation which was forwarded as part of the application for prequalification for the members of the concessionaire.

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