

CLEANTECH: A SECTOR HIGHLY DEPENDANT ON LEGISLATIVE, REGULATORY AND TAX MEASURES

According to the *Chausson Finance* indicator, French private equity funds have invested up to 134.5 million euros in the *Cleantech* in 2008 out of more than one billion euros invested. Therefore, the *Cleantech* sector became the fourth more attractive sector for venture capital players.

The *Cleantech* sector is extremely capital-intensive. Hence, in addition to the financing provided by private equity actors, *Cleantech* companies will definitively have to obtain bank financing to complete their project related facilities investments.

If they fail in raising such funds, some companies will have no other choice than abandoning their projects, which happened recently to Silpro (*Silicium de Provence*) and to its project of silicon's factory for photovoltaic cells. Indeed, EDF Energies Nouvelles (a 50 %-owned subsidiary of the EDF group, producing green electricity), which holds 12.8 % of the Silpro project, announced on April 7, 2009 that "given the current financial turmoil and the fall of demand of silicon, Silpro has faced major financing issues, which led it to ask for bankruptcy reorganization proceedings". The lack of financing may also lead to consolidations between competitors. For instance, a supplier in solar energy, Recurrent Energy, announced on March, 18, 2009 the purchase of 350 MW of development projects from his challenger UPC Solar.

Besides, the *Cleantech* sector, unlike the Internet one, is a sector where the return on investment is significantly longer, as *Cleantech* projects require most of the time investments in heavy facilities and/or infrastructures.

Furthermore, another paramount distinctive characteristic must be taken into account. Indeed, *Cleantech* companies, as well as more generally Green Business and Renewable Energy ones, are extremely dependent on legislative, regulatory and tax measures, which are or shall be adopted in order to favour their development (tax incentives, preferential conditions of financing, change of the monopoly regulation, town-planning laws, etc.).

It is essential to underline that such measures are not only French (e.g.: (i) amendments to the 2008 Finance Act set up tax exemptions for photovoltaic panels, which power does not exceed three peak kilowatts; (ii) accelerated depreciation is possible for energy saving equipments; (iii) VAT rate's decrease to 5.5 % for individuals who invest in renewable energy equipments) but also European (e.g.: directive n° 2003/87 on the CO² emission trading system) and even worldwide (e.g.: Kyoto Protocol signed in December 1997 and implemented as of February 16, 2005, relating to the reduction or limitation of greenhouse gas emissions).

A flagship measure of the *Grenelle de l'Environnement* goes along the same lines and meets the financing needs of environment related projects: the "green zero-interest rate loan" ("*éco-prêt à taux zéro*"). This measure aims at encouraging individuals to improve the energy efficiency of their houses by granting them very favourable financial incentives. Therefore, companies in this sector will surely be impacted and benefit from this new tool.

The “green zero-interest rate loan” was adopted through the amendments to the 2009 Finance Act and its terms were detailed in an agreement executed on February 26, 2009 by credit institutions, professionals in the building and real estate sectors and the ADEME (French Environment and Energy Management Agency). This measure entered into force on April 1, 2009, further to the release on March 31, 2009 of three decrees and an order which allow banks to start granting this new tool. Besides, Jean-Louis Borloo, State Minister, Minister for Ecology, Energy, Sustainable Development and Town and Country Planning, attended on April 16, 2009 the signature of the first green zero-interest rate loans.

Individuals, whatever their income is, can benefit from this green loan, provided that they significantly improve the energy efficiency of their houses and perform energy savings (thermal insulation of the roof, of the walls, setting up of a more efficient heating system using renewable energies etc.). This ten-year loan, which can be extended to fifteen years, is capped to € 30,000. However, such loan shall not exclude the application of other tax incentives and support measures as, for instance, the tax credit for sustainable development.

Thus, investment funds and companies in the *Cleantech* sector will have to monitor the legislative, regulatory and tax schedule closely (in particular the measures which will be taken pursuant to the principles adopted by the *Grenelle de l'Environnement*). It will indeed constitute a major concern impacting the duration and the level of the return on investment of their projects.

As a consequence, it is paramount for *Cleantech* companies to anticipate the legislative, regulatory and tax draft bills in order to take these elements into account

when preparing their business plans. It is a key item for those which will want to appeal to private equity players ... and attract their funds.

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Ichay & Mullenex Avocats is a French law firm focusing on all legal issues related to the new technologies in France and abroad. They are considered experts in intellectual property and Internet law, e-commerce, online gaming, data protection. Ichay & Mullenex Avocats also assists its clients on all issues related to financing, mergers & acquisitions, restructuring, etc. and advises them on their litigation and arbitration procedures.

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