TaylorWessing

Real Estate, Infrastructure & Energy

# Commercial Rooftop PV

Climate change is one of the central challenges for our society and for politics. Governments at both European and German level have committed themselves to achieving climate neutrality in the coming decades. Moreover, the ESG and sustainability are becoming increasingly important for companies, contractual partners and customers.

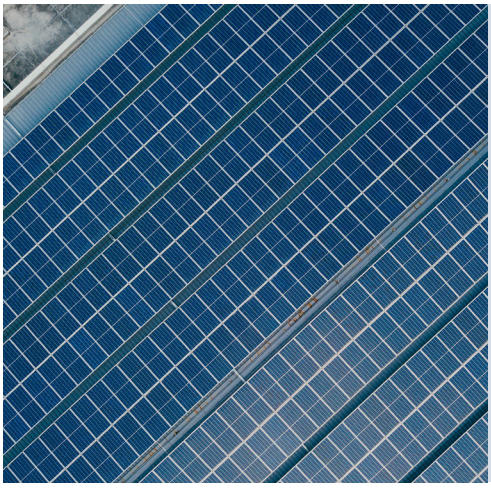
Especially in the building sector, PV installations have enormous potential to reduce $CO_2$ emissions while creating new business opportunities. PV installations can increase the value of real estate without the need for continuous investment. Solar is one of the fastest-growing sources for green electricity, plays a major role in the future global electricity generation mix and is key to the energy turnaround. However, many retail stores, warehouses, production halls and industrial buildings are currently unused, although they often offer ideal conditions for achieving additional revenues.

Taylor Wessing's interdisciplinary and international Real Estate, Infrastructure & Energy team advises on all aspects of PV installations including early- and late-stage transactions and financing, regulatory and planning aspects as well as plant construction plus related contracts and project agreements. The team has in depth expertise to deliver high quality legal services on investing, developing, operating, expanding or protecting interests in solar.

Below, we provide a brief overview on key legal aspects of **commercial rooftop PV solutions.**

**Ensuring a robust business case when it comes to rooftop PV extends into different legal practice areas and sectors:**

- Real Estate
- Energy & Infrastructure
- Environmental Planning & Regulatory
- Projects & Construction
- Corporate & M&A
- Banking & Finance



**The construction and operation of rooftop PV systems can sometimes be complex due to the different interests of many parties involved:**

- project planners
- land and property owners
- system operators
- financing parties
- competent authorities
- network operators
- meter operators
- residential construction companies
- industrial and commercial enterprises

**Taylor Wessing's international Real Estate, Infrastructure & Energy practice brings together experts from all relevant legal fields to contribute to the success of your rooftop solar PV project. Our team has the in depth expertise, long-standing experience and understands the market. In particular, the following (legal) aspects have to be considered:**

## General rooftop solar aspects

**Suitable business case:** PV installations and the generated electricity can be marketed in various ways. The suitable business case depends, for example, on the size of the installation, the amount of electricity generated, the electricity demand, the tenant structure and the company's own human and technical resources.

**Contractual partner:** The implementation of the PV project often requires contracts with the owners of the buildings and properties, project developers, contractors, PV module manufacturers, grid operators and energy suppliers. With our industry expertise, we can support you in making the right choice and set up and accompany tendering procedures.

**Challenges:** The generation of electricity depends on solar radiation and is therefore a fluctuating source of energy. The integration into the grid and the electricity market can be legally challenging in particular as legal requirements for grid connection, financial support and self-supply have been altered several times lately.

**Legal obligations:** In Germany, for example, more and more federal states or municipalities have an obligation to install PV systems in certain building projects. In addition, a national legal obligation (for commercial rooftops) is under political discussion.

## Real estate-related legal issues

**Property owners:** The buildings on which the PV installations are implemented need to be leased from the owners and are most often let out to tenants. The diverging interests of the land owner, the tenants of the buildings and the PV operator need to be harmonized in lease agreements that vary for each individual type of building.

**Financing banks:** Both the PV installation and the buildings on which the PV installation is implemented are most often financed by different banks. They need security for their financing and these securities need to be aligned. Our experts know how to harmonize such securities with no detrimental effects for either side.

**Construction permits:** In rare cases, it must also be checked whether the construction of the PV system requires a building permit. This depends largely on the size and location of the system.

## Energy regulatory legal aspects

**A number of regulatory issues have to be taken into account when it comes to rooftop solar:**

- Review of all remuneration requirements for state subsidies for the sale of the electricity produced
- Support in tendering procedures for obtaining state subsidies for larger PV systems
- Consulting on different/combined marketing concepts (feed-in, tenant electricity, self-supply)
- Advice on meeting building energy efficiency requirements by integrating PV systems
- Notification obligations (e. g. German Marktstammdatenregister and network operators)
- Coordination with the competent grid operator/amendment or signing of grid connection contracts
- Coordination with the responsible meter operator and drafting of a metering concept

## Contractual aspects

**Various contracts are required for the construction and operation of a rooftop PV system, including:**

- Construction agreements (e. g. EPC)
- PV module supply agreements
- Operating and service agreements
- Rooftop lease agreements
- Electricity supply agreements/direct marketing contracts
- Financing contracts
- Insurance contracts
- Amendment of existing lease agreements with tenants

## Financing aspects

**A number of legal and tax challenges in financing, constructing and operating a rooftop PV installation can affect the project's business model. It is therefore important to consider the following aspects:**

- Possibilities for claiming public subsidies with regard to OPEX and CAPEX
- Alignment of securities for the PV financing with the financing for the supporting buildings
- Structuring of loans
- Ensuring bankability of all project-related documents

# Your experts

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