

Renewable Energy

Contributing editor
Eric Pogue

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Contributing editor

Eric Pogue

Hunton Andrews Kurth LLP

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Preface

Renewable Energy 2019

Second edition

Getting the Deal Through is delighted to publish the second edition of *Renewable Energy*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Armenia, Indonesia, Iran, Taiwan, Tanzania and Ukraine.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Eric Pogue of Hunton Andrews Kurth LLP, for his continued assistance with this volume.

GETTING THE
DEAL THROUGH

London
August 2018

Ethiopia

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Market framework

1 Who are the principal government participants in the electricity sector? What roles do they perform in relation to renewable energy?

Government policy in respect of the electricity sector is established by the Ministry of Water, Irrigation and Electricity. The electricity sector is regulated by the Ethiopian Energy Authority (EEA), which is an independent regulatory authority vested with the power to issue licences for the generation, transmission, and distribution of electricity within Ethiopia as well as the import and export of electricity into and out of the country. Ethiopian Electric Power (EEP) is responsible for the generation and transmission of electricity. The Ethiopian Electric Utility (EEU) purchases capacity and energy from EEP and distributes electricity to end users. Both EEP and EEU are public enterprises. They are wholly owned by the government of Ethiopia and governed by regulations issued by the Council of Ministers.

The majority of the energy generated by EEP is generated from hydroelectric resources. A relatively small percentage of power is generated from wind, geothermal and thermal sources.

2 Who are the principal private participants in the electricity sector? What roles do they serve in relation to renewable energy?

Although no independent power production (IPP) project has yet achieved financial close in Ethiopia, Ethiopia has recently determined that it should, as a matter of policy, use what limited financial resources it has available for the development of infrastructure to develop infrastructure in other sectors that are not as capable of generating self-sustaining revenues the electricity sector. As a result, Ethiopia has, over the past few years, begun to examine the legal and regulatory framework in the country in order to:

- determine whether it is capable of supporting an IPP programme;
- identify any changes that should be made to the legal and regulatory framework to facilitate the development of a successful IPP programme; and
- consider how best to approach the development of such a programme.

In part as a result of these efforts, EEP recently entered into two power purchase agreements under which two geothermal power plants will be developed.

3 Is there any legal definition of what constitutes 'renewable energy' or 'clean power' (or their equivalents) in your jurisdiction?

No.

4 What is the legal and regulatory framework applicable to developing, financing, operating and selling power and 'environmental attributes' from renewable energy projects?

The EEA is responsible for issuing generation licences, and would, in the case of an IPP, authorise the project company to generate electricity from a particular generation facility. Given that EEP is responsible for generating (or procuring the generation of) electricity in Ethiopia and that EEU has a monopoly over the distribution of electricity to

end users, any IPP seeking to develop a project in Ethiopia would need to enter into a Power Purchase Agreement with EEP. The foregoing applies to renewable and non-renewable projects alike. There is no legal or regulatory framework for selling environmental attributes from renewable energy projects, but the high cost of electricity in Sub-Saharan Africa in general and Ethiopia in particular means that renewable projects have a much easier time achieving grid parity than they would in other markets with lower electricity prices.

The following is a list of the principal legislation governing the development of energy in Ethiopia:

- Energy Proclamation No. 813/2013 (revised but not published);
- Ethiopian Energy Authority Establishment Council of Ministers Regulation No. 308/2014 (this Regulation is currently under review and will likely be amended);
- Electricity Operations Council of Ministers Regulations No. 49/1999 (under revision);
- Geothermal Resources Development Proclamation 981/2016;
- Investment Proclamation No. 769/2012 as amended;
- Investment Incentives and Investment Areas Reserved for Domestic Investors Council of Ministers Regulations No. 270/2012 as amended;
- the Constitution of the Federal Democratic and Republic of Ethiopia;
- the 1960 Federal Democratic Republic of Ethiopia Civil Code;
- Environmental Protection Authority Establishment Proclamation No. 9/1995m as amended;
- Environmental Impact Assessment Proclamation No. 299/2002; and
- National Bank Directives.

Foreign banks can lend to an Ethiopian incorporated company only if they obtain an authorisation from the National Bank of Ethiopia, where the Ethiopian company cannot find adequate funding from Ethiopian banks. The authorisation by the company in Ethiopia to borrow money from abroad is granted by the National Bank of Ethiopia and is granted on a case-by-case basis.

5 Can environmental attributes be stripped and sold separately?

No.

6 Does the government offer incentives to promote the development of renewable energy projects? In addition, has the government established policies that also promote renewable energy?

Foreign investors investing in an approved investment project may benefit from tax incentives depending on the type of investment they intend to make and the area in which the project will be located. An exemption from income taxation for a limited number of years is available to companies that are engaged in the generation of electricity in certain areas. Companies that invest in generation may also benefit from customs duty exemptions for capital goods and equipment. No incentives other than the foregoing are currently in place that would provide for additional incentives for investments in renewable energy projects.

7 Are renewable energy policies and incentives generally established at the national level, or are they established by states or other political subdivisions?

Ethiopia is a federation made up of nine ethnically based regions or states. The Constitution vests the right of ownership over rural and urban land, as well as of all natural resources, exclusively in the state and the nations, nationalities, and peoples of Ethiopia. The government of Ethiopia has wide-ranging powers deriving from the Ethiopian Constitution in relation to formulating and implementing major policy and institutional reforms aimed at creating an efficient and environmentally sustainable energy sector and at supporting investments in the electricity sector. Regions may enact laws in line with federal legislation and policies to implement the same, but in practice policy in the electricity sector is generally established at the national level.

8 What mechanisms are available to facilitate the purchase of renewable power by private companies?

None have been established to date.

9 Describe any notable pending or anticipated legislative proposals regarding renewable energy in your jurisdiction.

Earlier this year, the government adopted Proclamation No. 1076/2018. Proclamation 1076/2018 establishes a framework for the development and financing of public private partnerships in Ethiopia.

In relation to the energy sector, two pieces of legislation are expected to pass in the near future. They are the Draft Council of Ministers Regulation to provide for Energy Operations, and a regulation to implement the Geothermal Resources Development Proclamation.

The geothermal proclamation, which was promulgated in early 2017, aims to stimulate investment in geothermal resources. The development of geothermal resources is currently governed by generally applicable mining legislation, and its use to date has been limited as a result. The new proclamation will, if enacted, set forth the overall framework governing geothermal resources. The draft regulation will implement the proclamation at a more practical level by providing guidance on issues such as how licences should be applied for and issued to IPPs, and the requirements that projects must satisfy in order to qualify for a licence.

10 What are the biggest drivers of change in the renewable energy markets in your jurisdiction?

As mentioned above, the major source of energy in the country is hydroelectric power. Although hydroelectric power has provided the majority of generation capacity for decades, there is a growing recognition that hydroelectric power alone will not be sufficient to serve the country's growing economy. As is also noted above, there is a growing recognition that private capital will be required in order to make the sizeable investments that will be required in the electricity sector over the near to medium term.

11 Describe the legal framework applicable to disputes between renewable power market participants, related to pricing or otherwise.

Ethiopia is not a contracting party to either the New York Convention or the Washington Convention. Nonetheless, foreign arbitral awards are, as a general matter, enforceable under the Civil Procedure Code.

Utility-scale renewable projects

12 Describe the primary types and sizes of existing and planned utility-scale renewable energy projects in your jurisdiction.

In December 2017, EEP entered into a power purchase agreement in respect of the Corbetti Geothermal Project. The project will have a capacity of up to 520MW. Berkeley Energy is the majority shareholder in the project. The project should achieve commercial operations by 2020.

Ethiopia has mandated the International Finance Corporation (IFC) to conduct reverse auctions for up to 500MW of photovoltaic solar on the IFC's Scaling Solar platform. In March 2018, 12 developers were prequalified.

Several other projects are also in development. These include the Tule Moya Geothermal Plant, the Abaya Geothermal Plant and the Metahara Solar Project.

13 What types of issues restrain the development of utility-scale renewable energy projects?

In our view, the principal issues are:

- lack of a formalised legal framework governing IPPs
- lack of experience in procuring utility-scale IPPs and in approving the tariffs for such IPPs;
- the lack of a track record in promoting IPPs; and
- a shortage of hard currency.

Hydropower

14 Describe the primary types of hydropower projects that are prevalent.

EEP owns and operates several large hydropower projects. No hydropower IPPs have yet been developed.

15 What legal considerations are relevant for hydroelectric generation in your jurisdiction?

Not applicable.

Distributed generation

16 Describe the prevalence of on-site, distributed generation projects.

The use of solar panels in households and small businesses is becoming more widespread. The legal framework that would be necessary to support net metering is not in place as yet.

17 Describe the primary types of distributed generation projects that are common in your jurisdiction.

The only type of distributed generation we have seen so far (aside from backup diesel generation, which is relatively common in Ethiopia) involves the Ethiopian government entering into a PPA with an investor to provide energy for off-grid and micro-grid projects, mainly in rural areas.

18 Have any legislative or regulatory efforts been undertaken to promote the development of microgrids? What are the most significant legal obstacles to the development of microgrids?

No framework for the promotion of micro-grids has been developed to date. Despite the lack of a framework, some communities have taken the initiative and invested in small micro-grids using a cooperative approach.

19 What additional legal considerations are relevant for distributed generation?

Not applicable.

Energy storage

20 What storage technologies are used and what legal framework is generally applicable to them?

None.

21 Are there any significant hurdles to the development of energy storage projects?

No.

Foreign investment

22 May foreign investors invest in renewable energy projects? Are there restrictions on foreign ownership relevant to renewable energy projects?

Investment by international investors in Ethiopia is strictly regulated. Investment by foreign investors in transmission and distribution using the national grid are prohibited. However, private developers are allowed to develop renewable energies in Ethiopia by obtaining a generating licence from EEA and entering into a PPA with EEP.

23 What restrictions are in place with respect to the import of foreign manufactured equipment?

As stated above, investments in Ethiopia by international investors are subject to strict regulation. However, where they are permitted to invest, investors may be permitted to import equipment (capital goods) needed for their projects free of any import duties. In general, where exemptions are not available tariff rates range from zero to 35 per cent.

Projects**24 What government authorisations must investors or owners obtain prior to constructing or directly or indirectly transferring or acquiring a renewable energy project?**

The EEA is the regulator of the electricity sector. Its powers derive principally from the Energy Proclamation. The EEA approves PPAs and has the power to grant generation licences. All foreign investments must first be approved by the Investment Commission or Ministry of Trade, as the case may be.

25 What type of offtake arrangements are available and typically used for utility-scale renewables projects?

Currently, long-term PPAs entered into by EEP.

26 How are long-term power purchase agreements procured by the offtakers in your jurisdiction? Are they the subject of feed-in tariffs, the subject of multi-project competitive tenders, or are they typically developed through the submission of unsolicited tenders?

No feed-in tariffs have been approved.

27 What government authorisations are required to operate a renewable energy project and sell electricity from renewable energy projects?

See above.

28 Are there legal requirements for the decommissioning of renewable energy projects? Must these requirements be funded by a sinking fund or through other credit enhancements during the operational phase of a renewable energy project?

In practice, these obligations remain unsettled.

Transaction structures**29 What are the primary structures for financing the construction of renewable energy projects in your jurisdiction?**

As we have seen, currently most IPPs are financed through offshore financial institutions (banks and development banks), export agencies, grants given by development organisations and some private investors as well. Foreign banks can lend to a company organised under the laws of Ethiopia only if they obtain an authorisation from the National Bank of Ethiopia, and only if the Ethiopian company cannot find adequate funding from Ethiopian banks. Authorisations to borrow funds from abroad are granted by the National Bank of Ethiopia on a case-by-case basis.

30 What are the primary structures for financing operating renewable energy projects in your jurisdiction?

Financing for operating renewable energy projects has primarily come from offshore financial institutions.

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