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LAW AND PRACTICE:

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Law and Practice

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Concern-Dialog Law Firm is a full-service law firm founded in 1998 that provides litigation, administrative representation and legal advice to individual and corporate clients in Armenia, as well as international Arbitration and public international law services worldwide. The company's specialization includes the legal aspects in various spheres providing high-level services in corporate, competition, contract,

labour, property and tax laws; on electronic communications, media, mining, energy, gambling, banking regulatory issues, legal consulting to public entities and legislation and policy development and governmental relations, as well as defence in criminal proceedings, with emphasis on white-collar crime and victim protection.

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1. General Structure and Ownership of the Power Industry

1.1 Principal Law Governing the Ownership and Structure of the Power Industry

The Governing Laws

The RA Law on Energy is the main legal act tackling the ownership and structure of the energy sector, and the rights and obligations of the entities engaged therein. Major changes to the energy legislation are currently being made. In particular, an amendment to the Law on Energy was adopted on 07 February 2018, which will come into force on 01 July 2018 (hereafter referred to as the "Amendment") and bring significant changes to the structure of the sector and the scope of rights of engaged entities and their relations. While the changes adopted will be discussed throughout the chapter with regard to specific matters, it is noteworthy that the changes are still ongoing, as the Public Services Regulatory Commission ("PSRC"), which is the authority regulating the sector, is supposed to adjust its decisions (including regulations tackling the licensing processes, procedures and requirements of the establishment of tariffs and relations between the engaged entities) within 18 months following July 2018, so the potential developments are not fully completed.

Further acts that currently regulate the structure of the market are as follows:

- The Temporary Market Rules of the Wholesale Electricity Market ("The Market Rules"), as established by the Decision of PSRC No 344-N, dated 09.08.2017, regulate the relations of participants in the electricity wholesale market during the sale, registration, export, import, transit, transfer and swap with neighbouring countries of electric energy and power in the wholesale market in RA, and also determine non-discriminatory access to the transmission and distribution networks, etc.
- The Network Rules of the Electricity Market ("Network Rules"), as established by the decision of PSRC No 161-N, regulate the relations of the PSRC, system operator, generators, transmitter, distributor, market operator and qualified consumers within the planning of development of the electricity system, management of the system, and connection of new or reconstructed capacities to the transmission network.

The Entities Engaged

According to the law as it is in force at the time of writing, the energy sector consists of the following:

- generators;
- transmitter;
- distributor;
- system operator;
- entities providing services to the electric energy system; and

- entities conducting the import and export of electric energy.

One of the aims of the Amendment has been the diversification of the energy sector, with the broadening of the scope of licensed activities and accordingly the entities to be engaged in the sector. Besides the entities listed below, the Amendment also determines the following:

- supplier (while today the entity holding a distribution licence is authorised to buy and sell the energy);
- wholesale selling and purchasing of energy;
- qualified suppliers;
- market operator; and
- qualified consumers.

Ownership Structure

Currently, the power industry consists of an investor-owned entity carrying out the distribution of energy, a state-owned entity carrying out the transmission of energy, and state-owned entities that provide services to the market. The generation of electric energy is conducted by Armenian Nuclear Power Plant, Yerevan TPP CJSC, Hrazdan Energy Company, Vorotan HPP Cascade and Sevan-Hrazdan Cascade, as well as various entities holding licences for the generation of energy through renewable energy plants.

1.2 Principal State-Owned or Investor-Owned Entities

Electric Networks Armenia CJSC (ENA) holds the exclusive licence for the **distribution** of electric energy, and is fully investor-owned. The 100% owner of the shares of ENA is Inter RAO OJSC, a company established in Russia and head of more than 20 companies in 14 countries. Currently, pursuant to the Law on Energy, the entity holding the distribution licence is entitled to sell energy. After the Amendments to the Law, this authority will be excluded from the scope of the Distributor's authority and a new, separate type of licensed energy supply will be determined. After the amendments come into force in July 2018, a licence as a guaranteed supplier of energy will be granted to ENA for a period of seven years. After this period, the plan activities for providing a guaranteed supply of energy shall be determined by the Government of RA. Thus, at the moment the only entity authorised to sell energy to end-use consumers is the Electric Networks Armenia CJSC.

High Voltage Electric Networks CJSC holds the exclusive licence for the **transmission** of electric energy. The entity was founded by the Government of RA and is state-owned. The management of the shares of the company is carried out in the manner prescribed by the government.

Settlement Centre CJSC holds a licence for the **provision of services to the electricity market**. This entity was also es-

tablished by the Government, with 100% of its shares owned by the Government of RA. The entity has the authority to calculate the generated, delivered, imported and exported energy, and to calculate the inevitable and factual technical losses. ENA is obligated to pay service fees to the Settlement Centre for the services provided, based on the tariffs determined by the PSRC.

Electro Power System Operator CJSC also holds a licence for the **provision of services to the electricity market**. This entity was established by the Government, and its shares are fully state-owned. The Operator shall undertake the operative technical and economic control of the electric energy system, the planning and co-ordination of the system based on the concluded agreements, and other powers based on the terms of its licence and RA legislation.

1.3 Foreign Investment Review Process

In an attempt to create a hospitable environment for investors in Armenia and in pursuance international best practices, the Law on Foreign Investment has been adopted as the main source setting forth the rights, guarantees and privileges for investors.

Enterprises with foreign investment may conduct any economic activity in compliance with the legislation of RA and the charter of the entity, provided that the requisite licences and permits are obtained in the manner prescribed by RA legislation for certain activities. No investment review process or thresholds are applicable.

Most significantly, the law envisages that the legal regime governing foreign investments shall be no less favourable than the regime governing the property, property rights and investment activities of citizens, legal entities and organisations of the Republic of Armenia.

Furthermore, guarantees against amendments to legislation, nationalisation and confiscation are determined. Namely, in the event of amendments to legislation governing foreign investment, the investor is entitled to choose the applicable effective legislation, within five years of the start of the investment.

Foreign investments are not subject to confiscation or nationalisation.

The seizure of property can be applied only as an exclusive measure during a state of emergency, according to the legislation of RA, following the decision of the court, and with full compensation. The RA Law on State of Emergency provides for the temporary confiscation of weapons and ammunition, toxic, explosive or radioactive materials, and martial and educational military technologies during the state of emergency. Furthermore, pursuant to the Constitu-

tion of RA, private property may be alienated for the needs of the society and state only in exclusive cases of prevailing public interest, *in the manner prescribed by law and with prior equivalent compensation*. Accordingly, the compensation shall be paid prior to the alienation of property, and the compensation shall be equivalent. The RA Law on Alienation of Property for the Needs of Public and The State deems that the price shall be 15% higher than the market price of the property.

Foreign investors are entitled to compensation for material and moral damages (including lost profits) that result from illegal actions of the State bodies of RA, and for improper performance of their obligations established under the legislation of RA. Starting from the moment when the right to compensation has arisen till the moment of performance, an interest in the due amount of compensation shall be calculated at the current rates of deposit accounts established on the loan market of the Republic of Armenia.

Finally, foreign investors are entitled to free disposal of their profit (after fulfilling any tax obligations and payment of other envisaged fees), to use their legally obtained profit to buy foreign currency or commodities, in the manner prescribed by RA legislation, and to export their property, profit (revenue) and other means.

The investment is evaluated in a free convertible foreign currency or Armenian Drams; the foreign investor is entitled to choose. The foreign currency shall be estimated in Armenian Drams at an exchange rate no higher than the one established in the Republic of Armenia by the Central Bank of RA at the moment of investing.

Furthermore, the Law on Currency Regulation and Currency Control envisages that residents and non-residents may transfer to Armenia, deliver, import or export currency values, provided that the conditions defined by the Central Bank of Armenia regarding such activities are complied with. In order to ensure the stability of the financial system, prevent economic risks and combat money laundering, the Central Bank of RA may establish procedure and conditions for the delivery, import, export or declaration of currency values. Such procedures are not determined at the moment and, as far as is known, the Central Bank of RA has never established such procedures.

Disputes between foreign investors and the Republic of Armenia shall be referred to the competent court in Armenia. The RA Law on Commercial Arbitration duly tackles the settlement of disputes by arbitration, according to the best international practice. Moreover, Armenia is a member state to the International Chamber for Settlement of Investment Disputes (ICSID) and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The main restriction applicable is the ownership of land. In particular, the land (surface) in Armenia cannot be owned by foreign entities.

Besides the guarantees, privileges and rights of investors envisaged under the legislation of RA, Armenia has entered into 42 Bilateral Investment Treaties, which mainly determine the internationally recognised principles for the protection of foreign investors, such as the most-favoured nation and fair and equitable treatment.

Subsequently, a procedure of enforcement of investment plans within the electric energy sector has been established by PSRC under its decision No 365-N, dated 14.07.2010. In particular, Article 28(1)(h) of the Law on Energy states that the licensee may seek the PSRC's approval of the investment plans in order to obtain the latter's decision on comprising the investment in the future tariff. Resolution No 365-N determines the limited scope of the purposes that such investment plan may have, including increasing of the production powers, reforming indicators of service quality, decreasing the technological and commercial losses, the renovation of outdated equipment, increasing the level of security, environmental protection events, etc – ie, the investments of licensees that may have an effect on the tariff may be approved by the PSRC, which may at a later stage serve as grounds for the PSRC changing the tariff.

1.4 Principal Law Governing the Sale of Power Industry Assets

The Law on Energy is the principal act tackling the regulation of transactions by licensees in the power sector.

Pursuant to the Law on Energy, which is in force at the time of writing but will be amended after July 2018, any person holding a licence in the sector is prohibited from acquiring more than 25% shares of another licensee in the sector without the prior approval of the PSRC.

Moreover, any person holding more than 25% of the shares of the licensee shall not acquire more than 25% shares of an entity that has a licence for the same or different activities, nor sell more than 25% shares without the prior approval of the PSRC.

Furthermore, in order to sell or transfer in any other manner the rights over the property necessary for undertaking the licensed activities (buildings, constructions, generation powers, plants and transmission lines), the licensee shall apply to the PSRC for consent.

Entities authorised to generate electric energy in small HPPs and renewable energy power plants are entitled to conduct these activities without the prior approval of the PSRC, provided that they do not hold other licences for carrying out

licensed activities in the sector. At the same time, such entities are obliged to send a prior notification to the PSRC, 15 working days before concluding the transactions described above.

As indicated above, amendments will come into force in July 2018, bringing significant changes to the approval of transactions and the scope of transactions that require the prior approval of the PSRC. In particular, the prior consent of the PSRC must be obtained in the event of alienation of more than 25% shares or the rights toward it, or the transfer or pledge thereof, as well as in the event of alienation, transfer or pledge of shares that – irrespective of quantity – may predetermine the activities of a licensee.

The Amendment also indicates the definite grounds for rejection of a transaction by the PSRC. Particularly, the authority may reject the approval of the transaction in the following circumstances:

- if it violates the reliability or security of the energy system or the consumer interests of the internal market;
- if the entity acquiring shares does not have sufficient experience; or
- if the documents or information submitted do not correspond with the requirements determined by the PSRC.

Finally, the abovementioned exception to small HPPs and renewable energy plants has been limited: an exception to the obligation to obtain the PSRC's approval will be applicable only to the entities that hold a generation licence in energy plants with up to 30 MW capacity.

1.5 Central Planning Authority

The Authority

Electro Power System Operator CJSC holds the **system operator's** licence in Armenia, and is responsible for the following:

- ensuring the operative technical and economic regulation of the system;
- the systematic planning and co-ordination of the generation, import, export and transfer within the system, based on the concluded agreement;
- calculation of the settings of equipment of systematic importance for management and protection in the energy system, submission of those settings to the licensees, and control of the work of the equipment; and
- ensuring the simultaneous work of the electric energy system of RA in line with regional electric energy systems.

After the Amendments come into force, the scope of the operator's authorities will be amended, and the operator will be authorised and *obliged* to provide the following services to the market:

- short-term planning and regulation of the system;
- operative management of the system;
- planning of the development of the transmission network; and
- ensuring the simultaneous work of the electric energy system of RA in line with regional electric energy systems.

Long Term Plan

As indicated above, the Network Rules regulate relations between the PSRC, system operator, generators, transmitter, distributor, market operator and qualified consumers within the planning of the development of the electricity system, the management of the system, and the connection of new or reconstructed capacities to the transmission network.

As envisaged under the Network Rules, a Long Term Plan for the development of electricity networks shall be periodically adopted. The Long Term Plan shall be prepared for the first time for the period from 2020 to 2024, and shall be approved by the 1st of July, 2019. Subsequently, a Long Term Plan for a ten-year period shall be prepared for the period from 2025 to 2034, and shall be approved by the 1st of July, 2024. The Long Term Plan shall be prepared by the system operator.

The Long Term Plan is aimed at enabling the development of the electricity network with economically justified minimal expenses, provided that the reliability and security of the network are ensured. It is conducted with consideration of the requirements of the RA Law on Energy, the discussed Network Rules, Technical Regulations and indicators of the reliability and security of the electricity system.

Within the Long Term Plan, the following events and functions shall be justified:

- the construction of new installations and the decommissioning of working installations;
- the reconstruction and upgrade of installations;
- the upgrade of relay equipment and emergency automatic systems;
- changes to the transmission system topologies; and the use of new technologies.

Management of the Electricity System

With consideration to the regulations under the RA Law on Energy and the Network Rules, the system operator ensures the reliability and security of the system within the procedure of management for the regimes of the electric energy system.

The qualified generators, transmitter, distributor and qualified consumers annually submit to the system operator the schemes of electric connection of their objects of energy (plants, transmission lines, etc) as approved by their technical manager. The system operator annually verifies the

scheme of regular works of the system and presents it to the above listed entities.

1.6 Material Changes in Law or Regulation

As briefly discussed under **1.1 Principal Law Governing the Ownership and Structure of the Power Industry**, a major amendment to the RA Law on Energy has been adopted and will come into force in July this year.

The Amendment makes significant changes in the industry, diversifies the structure of the energy sector, addresses the rights and obligations of licensees, etc. The most significant changes made under the Amendment are discussed throughout the chapter with regard to specific matters.

Subsequently, another amendment recently entered into force, which tackles the generation of energy by consumers (self-consumers) and creates incentives for self-consumers; see **3.3 Principal Law and/or Policies to Encourage the Development of Alternative Energy Sources** for more detail.

1.7 Announcements Regarding New Policies

On 10th of December 2015, “The plan on pathways of long-term (by 2036) development of the energy system” was approved by the decision of the government of RA No 54. Furthermore, a concept for ensuring energy security was adopted in 2013, which indicated that energy security is a key priority in the energy sector. Following these policy papers, a number of amendments have already been adopted in the sector that are aimed at ensuring the security of the sector, creating incentives for investors, and developing a renewable energy system. As discussed throughout this paper, significant changes have already been made to the energy legislation of RA recently in order to correspond with the listed aims. However, the legislation in the sector is still developing, and further changes are still expected.

1.8 Unique Aspects of the Power Industry

The power industry is undergoing material changes and reforms due to the recent policy proposals and legislation changes, with the development of renewable energy being one of the most significant aspects. A Utility-Scale Solar Power Project is currently under way, and similar projects are planned to be implemented, as well as beneficial legislation with regard to self-consumption, creating favourable conditions for private investors to do business in renewable energy sector.

2. Market Structure, Supply and Pricing

2.1 Structure of the Wholesale Electricity Market

The Wholesale Market and its Participants

Prior to Amendments, the main legislation regulating the wholesale electricity market was the Market Rules. After the

Amendments come into force, the wholesale market will also be regulated, to some extent, under the Law on Energy.

The participants in the wholesale market in Armenia are the generators, the distributor (ENA), qualified consumers, exporters, alternative suppliers, and entities conducting flow and exchange.

Qualified consumers are the entities that are entitled to purchase energy from the distributor or alternative supplier, or to import energy for their own needs. In addition, qualified consumers:

- are legal entities or organisations without the status of legal entity that have a demand for the consumption of energy;
- are connected to the distribution line with 110 kW, 35 kW or 6(10) kW voltage; have concluded an energy sale-purchase agreement with alternative suppliers or import energy for their own needs;
- have concluded a distribution agreement with the distributor (template agreement approved by decision No 242-N of PSRC, dated 31st of August, 2016) and market operator, as well as the system operator and transmitter, if they have the right of system entry;
- have concluded a calculation service provision agreement with the distributor (template agreement approved by decision No 242-N of PSRC, dated 31st of August, 2016); and
- have a calculation system that corresponds with the requirements set by the Network Rules.

Alternative suppliers are:

- Hrazdan-5 plant;
- RazTES (Hrazdan Thermal Energy Company);
- small cogeneration plants;
- renewable energy plants based on wind, solar, thermal and biomass energy sources;
- small HPPs (excluding DzoraHPP) constructed on natural water flows and irrigation systems within the period from 1st of April to 31st of October; and
- importers.

Entities providing services to the wholesale market are the system operator, market operator and transmitter. Any participant in the market is entitled to purchase and sell energy, and to import and export in the manner prescribed under the Wholesale Market Rules and the conditions of the licences and agreements concluded between the participants.

The wholesale market consists of both the electricity market and the capacity market.

The Price

Pursuant to the Law on Energy as in force at the time of writing, the price of electric energy and (or) capacity, ther-

mal energy, and the provision of services in the sector (excluding export) is determined by the PSRC, considering the principles set out under the law. Licensees are entitled to sell electric and thermal energy or provide licensed services for a price lower than the tariffs determined by PSRC in the following circumstances:

- if the activities of the licensee are not endangered;
- if it is not aimed at obtaining a monopoly status in the market; and if it is conducted at the expense of the profit gained by the licensee.

Finally, it is noteworthy that a major change regarding this matter will be applicable after the Amendment comes into force. In particular, the Amendment sets the definition of the wholesale market and determines a new licensed activity: the wholesale sale of energy. Such licensees will be entitled to do the following in the manner prescribed under the market rules and *for non-regulated prices*:

- purchase energy from participants in the wholesale market and self-consumers;
- sell energy in the wholesale market; and
- export energy (provided that the internal consumption demand is satisfied, which shall be verified by the market operator in the manner prescribed under the market rules).

2.2 Imports and Exports of Electricity

The RA Law on Energy (as in force at the time of writing) determines the licensing of the export of electric energy. Particularly, licensees of electric energy (capacity) export are entitled to purchase electric energy (capacity) and/or export the energy (capacity) generated by themselves in the manner prescribed under the market rules and licence conditions.

A licence for the export of energy may be issued only if there is saturation in the internal market, when the export of energy does not conflict with the interests of consumers. Considering this requirement, the temporary market rules determine that only energy generated by the alternative generators may be exported.

The prices of exported electric energy (capacity) are not regulated.

Furthermore, the law in force determines the licensing of the import of electric energy. The licensee is entitled to import electric energy (capacity) and sell in the manner prescribed under the licence conditions, market rules and concluded agreements.

The PSRC determines the highest tariffs for the import of electric energy (capacity).

The swap of energy between the electricity systems of Armenia and Iran is conducted for the purpose of improving the electric energy generation regimes in Armenia and reducing costs; it does not have a commercial purpose. Interflows between the electricity systems of Armenia and Georgia are conducted for the purpose of improving the electric energy generation regimes in Armenia and reducing costs in the system.

2.3 Supply Mix for the Entire Market

In 2014, the percentages of the sources of electricity supply were as follows:

- nuclear power plant – 31.8%;
- natural gas-fired thermal power plants – 42.4%;
- large hydropower plants – 16.9%; and
- small renewables – 8.9%.

2.4 Principal Laws Governing Market Concentration Limits

There are no laws regulating market concentration limits.

2.5 Agency Conducting Surveillance to Detect Anti-Competitive Behaviour Competition Authority

The website of the State Commission for the Protection of Economic Competition provides guidance on the competition law rules, including when a concentration must be declared, and forms for the reports to be submitted by entities who hold dominant or monopoly positions.

The commission has the following aims:

- to protect and promote economic competition for the purpose of developing business and protecting consumer rights;
- creating the necessary environment for good faith and free competition;
- preventing and limiting anti-competition activities; and
- supervising the protection of economic competition.

For the implementation of these aims, the commission has the following powers:

- to supervise compliance with the legislation on the protection of economic competition;
- to consider cases of breach of the legislation and adopt decisions;
- to apply to the court with regard to cases of breach of the competition legislation;
- to participate in the development of draft legislation with regard to the development of economic competition and the state policies in the sector; and
- to participate in the conclusion of interstate agreements relating to the sector.

Restrictive Agreements and Practices

The Law on the Protection of Economic Competition prohibits restrictive agreements and practices, which are defined as those that indirectly or potentially result in the restriction, prevention or prohibition of competition, including:

- contracts and agreements between economic entities;
- direct or indirect joint actions or behaviour;
- concerted practices; and
- decisions made by unions of economic entities.

Restrictive agreements and practices relate to the following, among other things:

- the distribution or division of markets or supply sources;
- the setting of unfair prices; and
- restricting other economic entities from entering the market.

The Law on the Protection of Economic Competition sets substantial fines for the implementation of restrictive agreements and practices: a commercial entity can be fined between AMD5 million and AMD200 million. The profit gained through the implementation of restrictive agreements and practices can also be charged to the state budget. The Criminal Code of Armenia also sets out criminal liability for setting unfair monopoly prices, and for agreements and practices that restrict competition.

The regulations are applicable to foreign companies that operate in the Armenian market (for instance, by establishing an Armenian-resident company or using a permanent establishment, or by other means). If an Armenian resident commercial entity owned by a foreign company is engaged in restrictive agreements, the legal consequences may also be applicable to the foreign company, as these two entities may be regarded as a "group of persons".

Unilateral Conduct

The Law on the Protection of Economic Competition prohibits the abuse of a dominant or monopoly position, which includes the following:

- charging unreasonably high or low prices;
- obstructing competitors in the market; and
- refusing to deal with certain customers or offering special discounts to customers who buy all or most of their supplies from the dominant company.

The Law on the Protection of Economic Competition sets substantial fines for the abuse of a dominant position: an economic entity can be fined between AMD5 million and AMD200 million. The profit gained through the abuse of dominant position can also be charged to the state budget.

The regulations are applicable to foreign companies that operate in the Armenian market.

3. Climate Change Laws and Alternative Energy

3.1 Principal Climate Change Laws and/or Policies

Armenia is a Non-Annex I Party to the United Nations Framework Convention on Climate Change and a Party to the Kyoto Protocol of UNFCCC. Under Protocol Decision No 41, dated 10th of September, 2015, the Government of RA approved the Intended Nationally Determined Contributions of the Republic of Armenia under UNFCCC.

The country's NDC contains details on carbon dioxide (CO₂) contribution from the energy sector; in particular, mitigation of climate change comprises consideration of greenhouse gases, and indicates that CO₂, methane (CH₄), nitrous oxide (N₂O) and hydrofluorocarbons (HFCs) shall be defined as greenhouse gases. The emissions and absorption of such gases are calculated in CO₂ equivalent, according to "global warming potential" as defined by the IPCC Second Assessment Report.

Furthermore, Armenia recently submitted its Biennial Update Report ("BUR") containing information about greenhouse gas emissions, mitigation actions, etc. The report highlights the key role of the energy sector in achieving economic growth, national security and environmental goals. As the energy sector is dominant in Armenia's total emissions and at the same time has the highest mitigation potential, it has been the focus of the BUR while evaluating the mitigation actions.

3.2 Principal Law and/or Policies Relating to the Early Retirement of Carbon-Based Generation

There are no policies relating to the early retirement of carbon-based generation.

3.3 Principal Law and/or Policies to Encourage the Development of Alternative Energy Sources State Policy

Considering the limited supply of fuel in the country, extensive use of renewable energy resources is vital in order to ensure the energy security of Armenia. In a country that lacks its own fossil fuel reserves, a key priority has become the raising of energy efficiency and the development of local reserves of renewable energy. This was highlighted by the "Concept on Ensuring Energy Security", which was approved by the President of RA in order No NK-182-N.

One of the objectives of the concept was the creation of an attractive environment for the engagement of investment within the renewable and alternative energy sector.

On 10th of December, 2015, “The plan on pathways of long-term (by 2036) development of the energy system” was approved by the decision of the Government of RA No 54. In this plan, the market reforms have been divided into two terms: interim undertakings (by 2025), and long-term undertakings (by 2036). Mid-term market reforms included ensuring the reasonable and continuous development of renewable energy sources.

Furthermore, said document defined the Development Plan of the Energy System with minimum expenses, which is based on a reference scenario with certain requisites, including economically well-grounded use of renewable energy, whereas solar PV technologies will be limited by 70 MW and, wind plants by 200 MW, and it is expected that the explorations of thermal potential will have a positive outcome and the construction of a 30 MW thermal plant will be justified.

“Masrik-1”

Before 2014, renewable energy consisted mainly of hydro-power, but the development of solar energy is one of the main priorities today. In particular, changes in legislation have been initiated to engage development in small photovoltaic solar power plants, as well as generation by consumers. Under the Scaling-up Renewable Energy Programme Investment Plan, utility-scale solar PV was identified as a priority by Armenia. Under a grant agreement signed between the Republic of Armenia and IBRD in 2015, the Utility-Scale Solar Power Project was established. Within this Project, the tender for the Masrik-1 55 MW capacity solar PV plant was based on competitive bidding by pre-qualified companies. Recently, the financial proposals of these pre-qualified companies were opened and the company offering the lowest tariff was announced. The proposed tariff is USD0.0419 (excl VAT).

Self-Consumers

Legislative incentives have been created in Armenia in order to promote investment in self-consumption. Particularly, the RA Law on Energy determines the activities that are not subject to regulation, namely the generation of energy by solar PV plants with installed capacity up to 150 kWh *during the period of construction*. Since the amendments were made at the end of 2017, it has been determined that, by 31st of December, 2022, the activities of solar PV plants with installed capacity of up to 500 kWh will not be subject to regulation by the PSRC *during the period of construction and generation*.

Within the scope of benefits provided to residential and commercial consumers is the recent extension of capacity. In particular, activities of PV plants with installed capacity of up to 150 kWh are exempted from regulation. As a result of legislative amendments, the limit was extended to 500 kWh, allowing commercial users who have large energy

consumption to generate energy. The threshold, however, remains unchanged for individuals (physical entities), due to the limitation determined under the Tax Code of RA. Particularly, under the code, energy generation activities of solar PV plants with installed capacity of *up to 150 kWh* for self-consumption are separate from commercial activities. So, the law has opened the field for commercial users to be able to invest more and, respectively, gain more from the consumption of energy by reducing their bills, and at the same time has kept the limits for individuals whose generation of energy will not clarify as commercial activity.

4. Generation

4.1 Principal Laws Governing the Construction and Operation of Generation Facilities

The construction and operation of generation facilities are mainly addressed under the following legislation:

- the RA Law on Energy, which regulates the energy sector of Armenia and determines the requirements of licensing in the sector, including power generation licensing;
- the RA Law on Urban Development, which determines the requirements for urban development in the country (and development in rural areas as well), the scope of necessary licences and the obligations of engaged parties;
- Decision No. 374-N of PSRC on Approval of Licensing Procedure for Activities in the Energy Sector and Recognition of a Number of Decisions as Void, which determines the procedures for obtaining energy licences; and
- Decision No 596-N of the Government of the RA on Approval of the Procedure of Provision of Construction Permits and Other Documents and the Rendering of Several Decisions of the Government of the RA Void, dated 19.03.2015, which tackles the procedures for obtaining necessary construction permits.

The authorities responsible for granting the necessary permits for the construction and operation of generation facilities are the PSRC, which grants a power generation licence, and the relevant municipality (based on the location of the plant), which grants the construction and operation permits.

The PSRC is mainly authorised to grant the licence and determine the conditions of the licence, and to supervise compliance with energy regulation and conditions. The municipality is authorised to issue the architectural floor-planning task (design permit) and construction permit, and grants an operation permit after completion of the construction.

In order to obtain a licence for electric energy generation, the applicant shall submit an application to the PSRC (only legal entities may apply to the PSRC), which considers the

documents and their compliance with RA legislation and grants a licence.

Pursuant to the Law on Urban Development, the owner of immovable property or the entity entitled to modify the property (developer) when performing activities of urban development is obliged to:

- perform the construction pursuant to the law, in accordance with the architectural-construction plan based on the construction permit as approved by the relevant municipality;
- conclude agreements regarding compensation for the entities that bear damages as a result of the construction activities, both prior to commencement and during the construction;
- perform the urban development activities exclusively in accordance with the urban development documents;
- obtain an architectural-floor planning task (design permit), including technical requirements from the relevant community regarding the design of engineering infrastructure; and
- provide the expertise of their design documentation.

The head of the relevant municipality is authorised to review the documents and data, and grant a design permit. After the design documentation undergoes expertise (which is organised by the developer), the head of the municipality has the authority to grant a construction permit.

4.2 Regulatory Process for Obtaining All Approvals to Construct and Operate Generation Facilities

Engagement of the Public

Pursuant to the RA Law on Urban Development, the public shall be engaged in urban development activities for the purpose of ensuring consensus between the interests of state, public and citizens, ensuring publicity (except for the cases determined under the law).

Within urban development activities, members of the public have the following rights:

- to receive information on the planned changes to their living environment;
- to participate in discussions and present their approaches, proposals and alternative plans and projects, prior to approval of the published urban development plans;
- to conduct assessment of the published urban development plans at their own expense; and
- to appeal the actions of public officials in a judicial manner.

The engaged officials are obliged to ensure the engagement of the public in urban development activities in the manner prescribed by the Government of RA. Engagement of the

public is one of the crucial parts of the assessment, and is compulsory.

Environmental Impact Assessment

The RA Law on Environmental Impact Assessment determines the types of activities that are subject to mandatory environmental impact assessment. The activities are divided into categories A, B and C, based on the degree of impact on the environment, with category A being the highest risk category.

In the energy sector, the following activities are determined as category A:

- nuclear plants or other constructions working on a nuclear reactor;
- the generation of enrichment of nuclear fuel;
- thermal electric plants;
- plants of generation of hot water and steam with 50 MW or higher capacity; and
- hydropower plants with 30 MW or higher capacity.

The following activities are considered as category B:

- plants of generation of hot water and steam with 30-50 MW or higher capacity;
- hydropower plants with 10-30 MW capacity; and
- the extraction of geological, thermal waters and energy generation with 8 MW and higher capacity.

The following activities are considered as category C:

- the generation of biogas or energy from biogas with installed capacity of 1 MW and higher;
- hydropower plants with capacity from 1-10 MW;
- wind power plants with 8 MW and higher capacity; and
- solar plants occupying an area of 40 ha and more.

If the relevant activity falls under any of these categories, environmental impact assessment shall be conducted, in pursuance with the law, prior to commencing such activities.

Energy Licences

In order to be able to construct the plant, a power generation licence must be obtained. The following information and documents shall be considered by the PSRC prior to granting the licence:

- the business plan, which shall contain information on the purpose of the construction and the anticipated economic, social and commercial result, a general description of the construction, the market research, the main economical and technological solutions, the area of construction, the main engineering solutions, the assessment of the impact on the environment, and the efficiency of the investments;

- documents certifying the rights over the land;
- a contract signed with a planning organisation on the provision of planning and cost-estimating services, and a timetable of implementation;
- an announcement published in three newspapers with a print run of at least 2,000;
- guarantees issued by a bank, credit organisation or insurance company of RA, by which such organisation assumes an obligation to make an unconditional and undisputable transfer to the state budget of RA in the event of non-performance or improper performance of the terms and conditions of the licence by the licensee, based on a relevant resolution or a letter from the PSRC. The amount of the guarantee shall be equal to the product of the estimated power of the plant that will be constructed (represented in kilowatts) and 2.5 times the base rate of the state duty defined by the Law of the RA “On State Duty”, but not less than AMD500,000; and
- Preliminary Technical Conditions obtained from the entity holding the distribution licence (ENA).

Subsequent to the submission of the application and documents, the relevant subdivision of the PSRC verifies the completeness of the application, the correctness of the documents attached and the compliance with the Annexes of the decision, within ten working days. Within two working days of any minor defects being identified in the applications or the documents therewith, the PSRC will suggest that the applicant amends such defects, within five working days.

The application shall not be accepted for consideration if:

- the documents submitted are evidently false or distorted, or the defects (as discussed above) have not been eliminated;
- the documents do not comply with the requirements envisaged under the Law, other statutory acts or the Decision;
- the entity is not authorised to carry out the licensed activities pursuant to its charter or other legal acts,;
- granting the licence will infringe another licensee’s rights; or
- performance of licensed activities will lead to inefficient use of the natural resources of the RA.

In the event of a negative outcome to the review of the application, the PSRC will inform the applicant in writing within ten working days of the submission of the documents. After tackling the causes for the negative outcome of the review, the applicant can resubmit the documents to the PSRC.

If the review of the application is positive, the PSRC proceeds with the examination and adopts a resolution for plants using renewable resources for power generation within 25 working days, and notifies the applicant of its resolution

within one working day and sends a copy of its resolution to the applicant within five working days.

The PSRC will reject the application if:

- the documents or information provided by the applicant are incomplete or false or distorted;
- granting the licence will infringe another licensee’s rights;
- performance of the licensed activities will lead to disruption of the reliability and safety of the energy sector;
- the entity is not authorised to carry out the licensed activities pursuant to its charter or other legal acts; or,
- performance of the licensed activities will lead to inefficient use of the natural resources of the RA.

4.3 Terms and Conditions Imposed in Approvals to Construct and Operate Generation Facilities

As briefly described above, the design permit establishes mandatory design requirements considering the territorial planning documents of the municipality, including:

- the technical requirements and limitations regarding the design of engineering infrastructure; and
- the requirements for urban development, the protection of historical and cultural monuments, environmental protection, sanitation, firefighting and other requirements as determined under the legislation of RA and concerning the design of the object.

The design permit serves as grounds for the preparation of design documentation.

The construction permit establishes the developer’s right to undertake construction activities, and is granted by the authority that issues the design permit (head of municipality) after the design documentation based on the permit is approved. The permit determines the definite period during which the construction shall be conducted; the authority applies administrative penalties for any breach of this period.

The power generation licence also determines the term of construction, which may be extended by a decision of the PSRC.

Amendments to the Terms and Conditions

Amendments to the licence may be made on the initiative of the licensee or the PSRC. The licensee presents an application to the PSRC indicating the necessity for the amendments, and provides justifying documents. Amendments by the PSRC are made by the decision of the licensee, except when amendments are made for the purpose of ensuring compliance with RA legislation.

The term of the licence and the construction term of the licence may also be extended, based on the application of

the licensee. In this case, the licensee shall provide justifications for the extension. For an extension of the construction period, details about works conducted during the granted period shall be indicated, alongside the reasons for non-compliance with the initial term.

4.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

Pursuant to the RA Law on Energy, land may be acquired by priority for the purpose of the construction or reconstruction of generation capacities, transmission and distribution networks, and installations. The rationale behind this is to ensure the provision of public services with minimal costs.

As indicated above, the entity presenting an application to obtain a power generation licence shall also present documents certifying its right over the land on which the activities shall be conducted. The licensee, therefore, shall either have ownership rights toward the land or a right of use authorising it to conduct the relevant activities on the land.

Ownership of the land may be achieved through sale purchase agreements concluded with private owners or the state. Land owned by the state or community may be obtained through donation, direct sale, auction or exchange.

According to Article 65 (6), the land may be donated for charity purposes or for the performance of investment projects approved by the Government, by decree of the Government if the land is owned by the state or by consent of the Government if it is owned by the community. The purpose and conditions of the use of the land shall be defined in the decision of the Government.

The direct sale of land owned by the state is regulated in certain cases, including for the implementation of social, charity or investment projects that are approved by the Government. The direct sale is conducted based on the decision of the Government if the land is owned by the state, and by the consent of the Government if it is owned by the community. The relevant decision of the Government shall contain the conditions and amount of investment, and consequences for any breach of the land purchase agreement. The price of the sale in this case is equal to the cadastral value of the land, which depends on the location and operational purpose of the land.

4.5 Requirements for Decommissioning

As far as is known, no such regulations are available at the moment. The Market Rules refer to decommissioning rules to be adopted by the market operator, but such rules have not yet been adopted.

5. Transmission

5.1 Regulation of Construction and Operation of Transmission Lines and Associated Facilities

5.1.1 Principal Laws Governing the Construction and Operation

The scope of acts tackling this matter are listed above regarding the consideration and operation of generation facilities, under **4.1 Principal Laws Governing the Construction and Operation of Generation Facilities**. Furthermore, the Network Rules establish the requirements for the planning and operation of the transmission network.

Pursuant to the RA Law on Energy, the entity holding an electric energy (capacity) transmission licence is entitled to:

- provide a service of transmission of electric energy within the territory of Armenia;
- perform construction (reconstruction) of the transmission network; and
- transiting electric energy (capacity) through the territory of Armenia to third countries.

Currently, High Voltage Electric Networks is the only entity that holds a licence for the transmission of electric energy.

5.1.2 Regulatory Process for Obtaining All Approvals to Construct and Operate Transmission Facilities

The procedure for obtaining a transmission licence is the same as for obtaining a power generation licence, including the construction permits. The procedure and necessary documents are discussed under **4.2 Regulatory Process for Obtaining All Approvals to Construct and Operate**.

Environmental Aspects

The RA Law on Environmental Impact Assessment determines the types of activities that are subject to mandatory environmental impact assessment. The activities are divided into categories A, B and C, based on the degree of impact on the environment, with category A being the highest risk category.

The construction of electricity transmission lines of 15 km or longer, or of 220 kW or higher capacity, are classified as category A. Electricity transmission lines of 110 kW and higher capacity are considered as category B. Accordingly, the construction of such transmission lines is subject to environmental impact assessment prior to assessment.

Long Term Plan

The PSRC recently approved the Network Rules, under its decision No 161-N, dated 17.05.2017. According to these

Rules, a Long Term Plan for the development of electricity networks shall be periodically adopted. The Long Term Plan shall be prepared for the first time for the period from 2020 to 2024, and shall be approved by the 1st of July, 2019. Subsequently, a Long Term Plan for a ten-year period shall be prepared for the period from 2025 to 2034, and shall be approved by the 1st of July, 2024. The Long Term Plan shall be prepared by the system operator.

The Long Term Plan is aimed at enabling the development of the electricity network with economically justified minimal expenses, provided that the reliability and security of the network are ensured. It is conducted with consideration of the requirements of the RA Law on Energy, the discussed Network Rules, Technical Regulations and indicators of the reliability and security of the electricity system.

Within the Long Term Plan, the following events and functions shall be justified:

- the construction of new installations and the decommissioning of working installations;
- the reconstruction and upgrade of installations;
- the upgrade of relay equipment and emergency automatic systems;
- changes to the transmission system topologies; and
- the use of new technologies.

5.1.3 Terms and Conditions Imposed in Approvals to Construct and Operate Transmission Facilities

The single entity holding an electric energy transmission licence is the High Voltage Electric Networks CJSC (HVEN). The sole founder and shareholder of HVEN is the Government of RA. It acts on the basis of the licence issued by the PSRC, the RA Law on Energy, the Network Rules, and decisions of the PSRC.

5.1.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

Pursuant to the RA Law on Energy, land owned may be acquired by priority for the purpose of the construction or reconstruction of generation capacities, transmission and distribution networks, and installations. The rationale behind this is to ensure the provision of public services with minimal costs.

Subsequently, the Civil Code of RA determines that the scope of compulsory proprietary servitude may be determined for the purpose of the construction of electricity transmission lines. For the maintenance of electricity transmission lines, compulsory permanent servitude free of charge shall be determined, irrespective of the ownership of the relevant land.

Finally, land can be obtained through direct sale by the private owners and in the manner prescribed under the Land Code, as discussed above **4.4 Proponent's Domain, Condemnation or Expropriation Rights**.

5.1.5 Transmission Service Monopoly Rights

As discussed, HVEN is the only entity holding a licence for the transmission of electric energy in Armenia. However, the RA Law on Energy does not explicitly determine that the licence is exclusive (as it is in the case of distribution).

5.2 Regulation of Transmission Service, Charges and Terms of Service

5.2.1 Principal Laws Governing the Provision of Transmission Service, Regulation of Transmission Charges and Terms of Service

The RA Law on Energy envisages that the PSRC determines the tariffs for the provision of transmission services. The PSRC has determined the methods of calculating tariffs for transmission services under its decision No 167A on approving the manner of calculation of tariffs for the provision of transmission services by High Voltage Electricity Networks CJSC.

5.2.2 Establishment of Transmission Charges and Terms of Service

The Tariff

Pursuant to the relevant decision of the PSRC, the tariff of service provision is based on the principle of ensuring the necessary income. The necessary income shall be sufficient to compensate the necessary and justified expenses for the reliable, safe and continuous service provision by the transmitter, to compensate for the deterioration of the primary assets of the transmitter and the amortisation of non-material activities, and to ensure the allowed (reasonable) profit for the engaged capital.

The necessary profit (NP) is calculated by the following equation: $NP = OME + D + RP + FE - OP$:

- OME (operational and maintenance expenses) is the ongoing expenses permitted by the PSRC for a 12-month period(calculated year), which are justified and necessary for ensuring the normal activities of the transmitter, including construction costs, material costs, salaries, taxes, duties and other expenses as envisaged under the legislation of RA.
- D is the deterioration of primary assets and the amortisation of non-material assets, and is calculated in a linear manner considering the initial value (purchase price) of the

assets (which are deemed as used or useful by the PSRC) and the term of useful service. The calculation shall not include the means received from the Government of RA or created at the expense of loans and grants received by the guarantee of RA.

- RP is the allowed (reasonable) profit for the used and useful activities for the provision of services, and is calculated using the following equation: $RP = PB \times PR / 100$. PB is the base for the calculation of profit, and PR is the rate of profitability before taxes.
- FE is the necessary financial expenses for service provision.
- OP is the other profit.

Appeal of Decisions

The decisions of the PSRC may be appealed in a judicial manner. The tariffs determined by the PSRC may be appealed within seven days of the committee's decision entering into force.

If a decision of the PSRC is appealed, the court shall consider the compliance of the relevant legal act with RA legislation. In the event of a breach of legal requirements, the court will allow the PSRC to adopt a new decision on the determination of tariffs by indicating the necessity of compliance with the breached requirement, and give the PSRC the opportunity to determine a new tariff in a reasonable time. The PSRC considers the court's approach and adopts a relevant decision.

5.2.3 Open Access Transmission Service

Non-Discriminatory Access

The Market Rules and Network Rules adopted by the PSRC set the grounds for non-discriminatory access to the transmission network and conditions of access. In the manner prescribed under the Network Rules, the qualified generators, distributor (ENA) and qualified consumers are entitled to connect to the transmission network. The transmitter is obliged to provide said entities access to the network, provided that they comply with the connection requirements and technical conditions, as discussed below.

Connection to the Network

In order to connect to the transmission network, an entity shall present an inquiry to the transmitter, requesting the technical conditions for connection. Within 15 days of receiving the enquiry, the transmitter will clarify the request, develop the technical conditions based on the principle of conducting the connection works at minimal cost, and present the drafted technical conditions to the system operator. Subsequently, the system operator evaluates the impact that the relevant capacity may have on the reliability and safety of the electricity system, and together with the transmitter reviews the technical conditions from the perspective of

completeness and necessity of works for the connection of new capacity and changes in the transmission network, before submitting the final version of the technical conditions to the transmitter. Finally, the transmitter sends the final technical conditions to the entity, who is willing to connect to the network and pay the respective preliminary connection fees. If the conditions and fees are not approved by the applicant within six months, the application for connection is deemed to be cancelled.

The tariffs for connection to the transmission network are determined by the PSRC in the manner discussed under **5.2.2 Establishment of Transmission Charges and Terms of Service.**

6. Distribution

6.1 Regulation of Construction and Operation of Electric Distribution Facilities

6.1.1 Principal Laws Governing the Construction and Operation of Electric Distribution Facilities

The RA Law on Energy determines the rights granted to an entity holding an Energy Distribution Licence, including regarding the construction of distribution facilities.

Decision No. 374-N of the PSRC on Approval of Licensing Procedure for Activities in the Energy Sector and Recognition of a Number of Decisions as Void determines the procedures for obtaining distribution licences.

Under decision No 161-N, dated 17.05.2017, the Network Rules determine the Long Term Plan for the electricity network, including the construction of new facilities.

PSRC decision No 358-N dated 27.12.2006 regulates the connection of consumer systems to the distribution network, while decision No 314-N dated 27.07.2008 regulates the connection of new generation plants to the distribution network. **6.1.2 Regulatory Process for Obtaining All Approvals to Construct and Operate Distribution Facilities**

Pursuant to the RA Law on Energy, the entity holding the distribution licence has the exclusive right to:

- distribute electric energy (capacity) to consumers within certain territory of Armenia;
- construct (reconstruct) the distribution network; and
- purchase and sell electric energy (capacity), in the manner prescribed under the market rules and licence conditions.

The procedure for obtaining the distribution licence is determined under decision No. 374-N of the PSRC on Approval

of Licensing Procedure for Activities in the Energy Sector and Recognition of a Number of Decisions as Void.

The procedure for obtaining a distribution licence is the same as for obtaining a power generation licence. The procedure and necessary documents are discussed under **4.2 Regulatory Process for Obtaining All Approvals to Construct and Operate**.

6.1.3 Terms and Conditions Imposed in Approvals to Construct and Operate

Electric Networks Armenia is the only entity that holds an energy distribution licence and is governed by the RA Law on Armenia, as well as the Market Rules, Network Rules, and PRSC decisions regarding service provision conditions, tariffs, etc.

6.1.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

Please see **5.1.4 Proponent's Domain, Condemnation or Expropriation Rights**.

6.1.5 Distribution Service Monopoly Rights

Electric Networks Armenia CJSC is the single entity holding an energy distribution licence, and has exclusive rights to provide services within the territory of Armenia, as prescribed under the RA Law on Energy. The licence is granted by the PSRC, in the manner prescribed under its decisions.

6.2 Regulation of Distribution Service, Charges and Terms of Service

6.2.1 Principal Laws Governing the Provision of Distribution Service, Regulation of Distribution Charges and Terms of Service

The procedure of establishing and reviewing tariffs in the energy sector is regulated under PRSC Decision No 359-N, dated 23.10.2013.

The methodology of establishing distribution service tariffs for consumers is contained under PRSC Decision No 541-

N, dated 13.12.2017, on Approving the Methodology of the Calculation of Tariffs for the Sale of Electric Energy and the Provision of Distribution Services to Consumers by Electric Networks Armenia CJSC.

Subsequently, the PRSC Decision No 582-N, dated 27.12.2017, on determining the tariffs for the provision of distribution services by Electric Networks Armenia CJSC sets the fixed tariffs for service provision by ENA.

6.2.2 Establishment of Distribution Charges and Terms of Service

In order to determine and review tariffs, the applicant (distributor) presents an application to the PSRC with all necessary calculations and justifications. In line with presenting the application and required documents, the applicant publishes an announcement on the official website of public announcements (www.azdarar.am).

Following receipt of the application, the relevant department of the PSRC reviews the correctness and completeness of the application and documents, and reports the results of reviewing of the package to the applicant within ten working days. If the preliminary review of the application is successful, the PSRC accepts the application for its consideration.

If the tariffs are determined for the consumers, the PSRC:

- publishes the application on its official website, to enable the consumer protection entities and other interested parties to consider the application, make proposals and receive clarifications;
- publishes the calculations of its staff, in comparison with the calculations brought under the application, prior to adopting a decision on determining the tariffs; and
- organises discussions with representatives of consumer rights protection organisations and companies.

The tariffs may also be reviewed by the initiative of the PSRC, considering the results of the company's economic activities, investment plans and compliance with consumer service provision quality requirements.

If review of the tariff is initiated by the PSRC, it:

- notifies the licensee beforehand;
- requests necessary information from the licensee on its licensed activities;
- makes an announcement on its website about commencing the review process if the tariffs are determined for the consumers; and
- organises discussions with representatives of consumer rights protection organisations and companies.

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In both cases, the PSRC determines and reviews the tariffs, and adopts a relevant decision within 80 working days (25 working days for small HPPs and renewable energy plants) of receiving the application.

The procedure for appealing PSRC decisions is discussed under **5.2.2 Establishment of Transmission Charges and Terms of Service**.