

# ARMENIA

---

## **LAW AND PRACTICE:**

**p.3**

*Contributed by Concern-Dialog Law Firm*

The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

# Law and Practice

Contributed by Concern-Dialog Law Firm

## Contents

<b>1. General Structure and Ownership of the Power Industry</b>	<b>p.4</b>	<b>4. Generation</b>	<b>p.10</b>
1.1 Principal Laws Governing the Structure and Ownership of the Power Industry	p.4	4.1 Principal Laws Governing the Construction and Operation of Generation Facilities	p.10
1.2 Principal State-owned or Investor-owned Entities	p.5	4.2 Regulatory Process for Obtaining All Approvals to Construct and Operate Generation Facilities	p.11
1.3 Foreign Investment Review Process	p.5	4.3 Terms and Conditions Imposed in Approvals to Construct and Operate Generation Facilities	p.12
1.4 Principal Laws Governing the Sale of Power Industry Assets	p.6	4.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights	p.12
1.5 Central Planning Authority	p.7	4.5 Requirements for Decommissioning	p.13
1.6 Recent Material Changes in Law or Regulation	p.7	<b>5. Transmission</b>	<b>p.13</b>
1.7 Announcements Regarding New Policies	p.7	5.1 Regulation of Construction and Operation of Transmission Lines and Associated Facilities	p.13
1.8 Unique Aspects of the Power Industry	p.7	5.2 Regulation of Transmission Service, Charges and Terms of Service	p.14
<b>2. Market Structure, Supply and Pricing</b>	<b>p.7</b>	<b>6. Distribution</b>	<b>p.15</b>
2.1 Structure of the Wholesale Electricity Market	p.7	6.1 Regulation of Construction and Operation of Electricity Distribution Facilities	p.15
2.2 Imports and Exports of Electricity	p.8	6.2 Regulation of Distribution Service, Charges and Terms of Service	p.16
2.3 Supply Mix for the Entire Market	p.8		
2.4 Principal Laws Governing Market Concentration Limits	p.8		
2.5 Agency Conducting Surveillance to Detect Anti-competitive Behaviour	p.8		
<b>3. Climate Change Laws and Alternative Energy</b>	<b>p.9</b>		
3.1 Principal Climate Change Laws and/or Policies	p.9		
3.2 Principal Laws and/or Policies Relating to the Early Retirement of Carbon-based Generation	p.9		
3.3 Principal Law and/or Policies to Encourage the Development of Alternative Energy Sources	p.9		

**Concern-Dialog Law Firm** was founded in 1998 and provides client-oriented legal advice as well as litigation and representation services. The firm currently has a team of over 60 professionals, including experienced attorneys, lawyers and other specialists, and it has 20 years of hands-on experience in working with individuals and corporate clients. The practice belongs to the American Chamber

of Commerce in Armenia, German Business Association in Armenia, French-Armenian Chamber of Industry and Commerce, and the Armenian-British Business Chamber. Concern-Dialog was one of the first companies in Armenia to implement partnership principles (non-formal) of decision-making and it is completely employee-owned.

### Author



**Lilit Karapetyan** joined the team at Concern-Dialog in March 2017 and has been a senior associate at the firm since March 2019. Lilit qualified in international commercial law and was a member of the Concern-Dialog team consulted by an

investor from Germany on building and operating a 1MW Solar PV Plant in Armenia. She currently assists the local adviser of MASRIK-1 Utility Scale Solar Photovoltaic Project in Armenia and advises clients from Armenia and overseas on energy law-related matters.

## 1. General Structure and Ownership of the Power Industry

### 1.1 Principal Laws Governing the Structure and Ownership of the Power Industry

#### The Governing Laws

The Law of the Republic of Armenia on Energy (the Law) is the main legal act tackling the ownership and structure of the energy sector and the rights and obligations of entities engaged in the sector.

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

- the Temporary Market Rules of the Wholesale Electricity Market (Market Rules), as established by the Decision of the Public Services Regulatory Authority (PSRC) No 344-N, dated 9 August 2017. The Market Rules regulate the relations of participants in the electricity wholesale market during the sale, registration, export, import, transit transfer, and swap with neighbouring countries of electrical energy and power in the wholesale market in the Republic of Armenia (RA), as well as determine non-discriminatory access to the transmission and distribution networks, etc; and
- the Network Rules of the Electricity Market (Network Rules), as established by the decision of PSRC No 161-N. The Network Rules regulate relations between PSRC, the system operator, generators, transmitter, distributor, market operator and qualified consumers within planning of the development of the electricity system, management of

the system, and the connection of new or reconstructed capacities to the transmission network.

#### The Entities Engaged

An amendment to the Law, effective since 1 July 2018, saw major changes being adopted in the energy sector of the country. Diversification of the sector was one of the main goals of this amendment. The scope of licensed activities and the range of engaged entities were significantly changed and broadened.

The Law defines the participants of the energy market as entities that participate in the wholesale and retail marketing of energy in accordance with the Law and Market Rules. The entities engaged in the energy market of the country are the entities holding a licence for:

- energy (power) generation;
- supply of energy;
- wholesale sale and purchase of energy;
- transmission of energy;
- distribution of energy;
- operation of the energy system;
- operation of the energy market; and
- consumers, including qualified consumers.

#### Ownership Structure

Currently, the power industry consists of an investor-owned entity carrying out distribution of energy, a state-owned entity carrying out transmission of energy, as well as state-owned entities that provide services to the market. Electrical

energy is generated by the 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**

Electrical energy is generated by the Armenian Nuclear Power Plant, Yerevan TPP CJSC, Hrazdan Energy Company, Vorotan HPP Cascade and Sevan-Hrazdan Cascade, as well as various entities holding licences.

High Voltage Electric Networks CJSC holds the exclusive licence for the transmission of electrical energy. The entity was founded by the government of RA and is state-owned. The shares of the company are managed in the manner prescribed by the government.

### **Distribution and Supply of Energy to End-use Consumers**

The Electric Networks Armenia CJSC (ENA) holds the exclusive licence for distribution of electrical energy in RA. The entity is fully investor-owned. The 100% owner of the shares of ENA is Inter RAO OJSC, a company established in Russia that has over 20 companies in 14 countries.

Article 38 of the Law determines the scope of authority of the entities holding a licence for energy distribution. In particular, these entities have the exclusive right to distribute energy and operate the distribution system in a certain territory of RA, as well as the right to construct (reconstruct) a distribution system. The Law prohibits the entity from holding a licence to carry out activities related to the generation of electrical energy, as well as activities related to the supply of energy. In the meantime, an exclusion from this limitation is the right of the distributor to carry out the activities of a guaranteed supplier, which has the authority described below.

The guaranteed supplier is granted the right and obligation to supply energy to all the consumers that do not get the services of other suppliers. The qualified supplier is entitled to purchase energy in the wholesale energy market, as well as from self-consumers, and/or import energy, and sell the surplus to the participants in the wholesale market.

The concept of qualified supplier was adopted under the amendments to the Law in 2018. It was determined in the transitional provisions that the licence for guaranteed supplier of energy would be granted to ENA for a period of seven years. After this period, the plan for providing a guaranteed supply of energy will 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.

### **Other Entities Engaged in the Power Industry**

Settlement Center CJSC holds a licence for the provision of services to the electricity market. This entity was also established by the government of RA and 100% of the shares of the company are owned by the government. The entity is authorised to calculate the generated, delivered, imported and exported energy, as well as the inevitable and factual technical losses. For the services provided, ENA is obliged to pay the Settlement Center service fees based on the tariffs determined by the PSRC.

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

### **1.3 Foreign Investment Review Process**

The Law on Foreign Investment is the main source of Armenian legislation setting out the rights, guarantees and privileges of investors, including investors carrying out activities in the power industry.

The law allows entities with foreign investment to conduct any economic activity in compliance with the legislation of RA and the charter of the entity, subject to compliance with the licensing requirements. Investors are not bound to undergo any review processes, meaning that no pre-screening of investors is required.

### **Incentives for Foreign Investors**

The Law on Foreign Investment creates favourable conditions for foreign investors and mostly recognises the internationally valid incentives for foreign investors, with certain limitations to the scope of their rights.

The legal regime governing foreign investments may not be less favourable than the regime governing the property, property rights and investment activities of citizens, legal entities and organisations of RA. Furthermore, guarantees against amendments to legislation related to nationalisation and confiscation are determined. Namely, in the event of amendments to legislation governing foreign investment, the investor is entitled to choose that the legislation effective at the time of investment be applicable, within five years starting from the time of the investment. Foreign investments are not subject to confiscation or nationalisation.

Seizure of property can only be applied during a state of emergency according to Armenian law, at the decision of the court and with full compensation. The RA Law on State of Emergency determines that during a state of emergency temporary confiscation of weapons and ammunition, toxic,

explosive or radioactive materials, martial and educational military technologies is allowed. Furthermore, pursuant to the constitution of RA, private property may be alienated for the needs of society and the state, only in exclusive cases of prevailing public interest, in the manner prescribed by law and with prior equivalent compensation. Accordingly, compensation shall be paid prior to alienation of property and the compensation shall be equivalent, meaning that, pursuant to the RA Law on Alienation of Property for the Needs of the Public and the State, 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 profit) that have resulted from illegal actions of state bodies of RA, as well as improper performance of their obligations established under the legislation of RA. Starting from the time when the right to compensation arises until the point at which it is paid, interest in the due amount of compensation will be calculated at the current rates of deposit accounts established on the loan market in RA.

Finally, the foreign investor is entitled to free disposal of their profit (after payment of tax obligations and other envisaged fees), to buy foreign currency or commodities, in the manner prescribed by RA legislation, to export their property, profit (revenue) and other gains.

### **Dispute Settlement**

Any disputes between foreign investors and RA are referred to the competent court in Armenia. The RA Law on Commercial Arbitration duly tackles settlement of disputes by arbitration in accordance with best international practice. Moreover, Armenia has been a member state of the International Chamber for Settlement of Investment Disputes (ICSID) since 1992, and is also a member of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

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

### **Endorsement of Investment Plans in the Energy Sector**

Subsequently, a procedure of endorsement of investment plans within the electrical energy sector was established by the PSRC under its Decision No 365-N, dated 14 July 2010. Particularly, 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 including the investment in the future tariff. Resolution No 365-N determines the scope that such an investment plan may have, including increasing production powers, reforming indica-

tors of service quality, decreasing technological and commercial losses, renovation of outdated equipment, increasing the level of security, environmental protection events, etc.

This means that the investment plans of licensees approved by the PSRC serve as grounds for the PSRC to change the tariff.

### **1.4 Principal Laws 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. The process for consenting to transactions involving the sale of shares or assets of the companies in the energy sector is controlled by the recently adopted Decision of PSRC No 39-N, dated 27 February 2019 (referred to as 'the procedure').

The consent of the PSRC must be obtained prior to the alienation, transfer or pledge of shares exceeding 25% of the shares of the licensed entity. Moreover, the alienation, transfer or pledge of shares of a licensed entity that provide the opportunity to predetermine the decisions of the licensed entity (irrespective of the number of shares) are also subject to the PSRC's prior approval. Limitations are also applicable to the alienation, transfer or pledge of the main assets necessary for conducting licensed activities. In this case, as well, the prior consent of the PSRC is necessary.

An exclusion to the cited rules applies to entities holding licences for the generation of energy in plants with installed capacity of up to 30 MW, which do not need to obtain the consent of the PSRC in order to conclude the above-described transactions.

### **The Procedure for Obtaining the Consent of the PSRC**

The application submitted to the PSRC must include:

- details of the person or entity with whom the licensed entity is going to conclude the transaction;
- the material terms and conditions of the transaction;
- details of the size of the share to be acquired in the charter capital of the licensee, as well as details about the right to vote granted by the share to be acquired;
- documents certifying the rights to the shares or the property; and
- documents certifying the necessary experience of the entity concluding the transaction.

Within ten days following the receipt of the application, the PSRC must check the accuracy and completeness of the submitted documents and where there is full compliance with the procedure and the law, accept the application into consideration. Where inaccuracies are indicated, the PSRC must, within two days, propose that the applicant eliminate the indicated errors and submit the documents to the register within five working days. The PSRC may also refuse

to accept the application into consideration and notify the applicant about such decision within ten days following the receipt of the application.

As a mandatory stage of granting consent, the PSRC shall share the application with the staff of the prime minister in order to obtain the position of the government of Armenia with respect to the implications of the transaction for national security and state interests of Armenia. Where the government evaluates that the anticipated transaction harms or may harm the national security or state interests of Armenia, the staff of the prime minister will share the position of the government with the PSRC within 20 working days.

Following receipt of the government's position, the PSRC must, within 10 working days, adopt a decision on consenting to the transaction or rejecting the application. The PSRC is allowed to determine mandatory conditions for the transaction.

The decision of the PSRC on consenting to the transaction indicates that the transaction shall be concluded within six months, unless the licensee has substantiated that more time is necessary.

The law allows the PSRC to reject granting consent to such transactions, if:

- the transaction violates, or may violate, the reliability or security of the energy system or the interests of the consumers of the internal market; or
- the entity acquiring shares does not have sufficient experience; or
- the documents or information submitted do not correspond with the requirements determined by the PSRC; or
- the transaction may damage the national security or state interests of the country as evaluated by the government of Armenia.

### **1.5 Central Planning Authority**

The entity holding the system operator's licence in Armenia is the Electro Power System Operator CJSC. The system operator is entitled and obliged to provide the services of the system operator in the electrical energy system with the following exclusive authority:

- short-term planning and regulating of the electrical energy system;
- operative management of the system;
- planning the development of the transmission system; and
- ensuring the simultaneous operation of the electrical energy system of RA in line with regional electrical energy systems, as well as other non-exclusive rights determined under the market rules.

### **1.6 Recent Material Changes in Law or Regulation**

As discussed throughout this chapter, a significant change to the Law on Energy as well as respective other acts were adopted in early 2018. The amendments brought major changes to the energy sector of Armenia: diversification of the market being one of the ultimate goals of the amendment. New market participants were determined, diversification of the market into wholesale and retail markets, as well as the creation of a level playing field for new participants were central to the amendments. Significant changes for self-consumers, including the implementation of incentives, were adopted.

Additionally, further changes, such as the establishment of the procedure for consenting to transactions concluded in the power sector (discussed in detail in the sections above), was undertaken under these amendments.

### **1.7 Announcements Regarding New Policies**

On 10 December 2015, 'The plan on pathways of long-term (by 2036) development of the energy system' was approved by the government of RA, Decision No 54. Furthermore, a concept to ensure energy security was adopted in 2013, indicating that energy security is a key priority in the sector. Following these policies, a number of amendments have already been adopted aimed at ensuring the security of sector, creating incentives for investors, and developing a renewable energy system. As discussed above, significant changes have recently been made to the energy legislation of RA in order to meet the listed aims. However, the legislation in the sector is still developing and further changes in this regard are expected.

### **1.8 Unique Aspects of the Power Industry**

The power industry is going through material changes and reforms due to the recent policy proposals and legislation changes. Development of renewable energy is one of the most significant aspects. With an existing Utility-Scale Solar Power Project, and similar projects to be implemented, as well as beneficial legislation with regard to self-consumption, favourable conditions have been created for private investors to do business in the renewable energy sector.

## **2. Market Structure, Supply and Pricing**

### **2.1 Structure of the Wholesale Electricity Market The Governing Laws**

The wholesale electricity market is principally governed by the Law of the Republic of Armenia on Energy (the Law). Furthermore, the Market Rules adopted in line with the Law are the main regulators of the market.

The Law determines the matters to be tackled under the Market Rules, namely:



- the structure of the wholesale market;
- the principles of the activities of the wholesale market;
- the procedures for registration of participants;
- the rules for conducting sale and purchase in the wholesale market;
- the rules for import and export of electrical energy;
- the rules for submission of applications and offers in the wholesale market;
- the procedure for concluding direct agreements, day-before agreements and markets;
- the procedure for registration and payment of electricity, power and system services;
- the requirements for transparency and data maintenance in the wholesale market; and
- the rules and procedures for accelerating the efficiency of the retail market.

### **The Structure of the Market and Its Participants**

The sale and purchase of energy is conducted in the wholesale and retail markets based on concluded agreements. The wholesale market includes the electrical energy market and capacity market. The participants of the wholesale energy market are entitled to sell and purchase energy in the wholesale market, as well as import energy in accordance with the requirements of the Law, Market Rules, conditions of the licence and relevant agreements.

The participants of the wholesale market are:

- the entities holding a licence for wholesale sale and purchase;
- suppliers;
- guaranteed suppliers; and
- qualified consumers.

### **The Price**

The Law (as amended in 2018) determines that the following shall not be regulated in the electrical energy market:

- the price of electrical energy sold to the consumers by the suppliers (except for the services of guaranteed supply);
- the price of the sale and purchase (including import and export) of the energy by the entities holding a licence for wholesale sale and purchase; and
- the price of the sale of energy (capacity) by the entities holding a licence for generation of energy (capacity) after satisfaction of the needs of the internal market.

In the meantime, the Law determines that ensuring the relevant conditions for economic competition in the non-regulated part of the electrical energy market is guaranteed.

### **2.2 Imports and Exports of Electricity**

Both the import and export of electricity are permitted under Armenian law.

The right to export electricity is granted to the entity holding the licence for the wholesale sale and purchase of energy, as well as other participants in the wholesale market. The generators are allowed to export energy as well. The general rule applicable to export is that there should be saturation of the internal market, so that the export of energy does not contradict with the interests of local consumers.

Energy can be imported by participants of the wholesale market.

### **2.3 Supply Mix for the Entire Market**

According to information published by the Energy Agency of Armenia, the principal sources in the Armenian energy system produced the following amounts of electricity in 2018:

- nuclear power plants – 25.57%;
- thermal power plants – 43.43%;
- hydro power plants (HPPs) – 17.48%; and
- small power plants (including small HPPs, solar and wind power plants) – 13.51%.

### **2.4 Principal Laws Governing Market Concentration Limits**

No such regulations have been defined.

### **2.5 Agency Conducting Surveillance to Detect Anti-competitive Behaviour**

It is a general principle of the electricity market that, in the non-regulated sector, ensuring compliance with relevant conditions of competition is guaranteed.

#### **The Competition Authority**

The competition authority is the State Commission for the Protection of Economic Competition. Its website gives guidance on the competition law rules, including:

- when a concentration must be declared; and
- forms for reports to be submitted by entities that hold dominant or monopoly positions.

The commission has the following aims:

- protection and promotion of economic competition for the purpose of the development of business and the protection of consumer rights;
- creation of the necessary environment for good faith and free competition;
- prevention and limitation of anti-competition activities; and
- supervision of protection of economic competition.

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

- supervising compliance with legislation on protection of economic competition;
- considering cases of breach of legislation and adopting decisions;
- submitting claims to the court with regard to cases of breach of competition legislation;
- participating in drafting legislation with regard to the development of economic competition and state policies in the sector;
- participating in the conclusion of interstate agreements relating to the sector; and
- other powers relating to the aims of the commission.

#### **Restrictive Agreements and Practices**

The Law on the Protection of Economic Competition prohibits restrictive agreements and practices, which the law defines as those that indirectly result or might 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:

- distribution or division of markets or supply sources;
- setting 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 implementation of restrictive agreements and practices must also be paid into 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 Armenia-resident company or using a permanent establishment, or by other means). If an Armenia-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. The abuse of a dominant position includes:

- 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 also 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 the UNFCCC. Under Protocol Decision No 41, dated 10 September 2015, the government of RA approved the Intended Nationally Determined Contributions of the Republic of Armenia under the UNFCCC.

Armenia’s NDC contains details on the energy sector’s carbon dioxide contribution. Particularly, mitigation of climate change comprises consideration of greenhouse gases and indicates that carbon dioxide, methane, nitrous oxide and hydrofluorocarbons (HFCs) shall be defined as greenhouse gas. The emission and absorption of these gases are calculated in their carbon dioxide 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 plays a dominant role 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 mitigation actions.

#### **3.2 Principal Laws and/or Policies Relating to the Early Retirement of Carbon-based Generation**

The firm is not aware of any such regulations in RA.

#### **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, improving energy efficiency and developing local reserves of renewable energy are a key priority. This was highlighted by the 'Concept on ensuring energy security' 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 sector of renewable and alternative energy.

On 10 December 2015, 'The plan on pathways of long-term (by 2036) development of the energy system' was approved by the Decision No 54 of the government of RA. In this plan, market reforms have been divided into two terms – interim undertakings (by 2025) and long-term undertakings (by 2036). Mid-term market reforms include ensuring the reasonable and continuous development of renewable energy sources.

Furthermore, this document defines the Development Plan of the Energy System with minimum expense, based on a reference scenario with certain requisites, including economically well-grounded use of renewable energy, whereas solar photovoltaic (PV) technologies will be limited to 70 MW, wind plants to 200 MW, and if, as expected, explorations of thermal potential have a positive outcome, construction of a 30 MW thermal plant will be justified.

### **Masrik-1**

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

### **Self-consumers**

Legislative incentives have been created in Armenia in order to promote investment in self-consumption. The RA Law on Energy, in particular, determines activities that are not subject to regulation, namely, generation of energy by solar PV plants with installed capacity of up to 150 kWh during the period of construction. Since the amendments made at the end of 2017, it has been determined that by 31 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 an installed capacity of up to 150 kWh are exempted from regulation and, as a result of recent legislative amendments, this limit was extended to 500 kWh, allowing commercial users with large energy consumption to generate energy. The threshold, however, still remains unchanged for individuals (physical entities), due to the limitation determined under the Tax Code of RA. Under this code, the generation of energy by solar PV plants with installed capacity of up to 150 kWh for self-consumption is exempted from commercial activities. In this way, 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 is not classified as commercial activity.

## **4. Generation**

### **4.1 Principal Laws Governing the Construction and Operation of Generation Facilities**

The main licences/permits necessary for the construction and operation of generation facilities are the relevant energy licence granted by the PSRC and a construction/operation permit granted by the relevant municipality.

Construction and operation of generation facilities are mainly tackled under:

- the RA Law on Energy, which regulates the energy sector of Armenia, as well as determining the requirements of licensing in the sector, including power generation licensing;
- the RA Law on Urban Development, which determines the requirements for urban development (and governs development in rural areas), as well as determining the scope of the necessary licences and obligations of engaged parties;
- 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, which determines the procedures for obtaining energy licences; and
- Decision No 596-N of the government of RA on Approval of the Procedure of Provision of Construction Permits and Other Documents, and the rendering of several decisions of the government of RA as void, dated 19 March 2015, which tackles the procedures for obtaining the necessary construction permits.

The authorities responsible for granting the permits necessary 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 supervise compliance with energy regulation and conditions. The municipality is authorised to issue the architectural floor-planning task (design permit) and construction permit and, after completion of the construction grants, an operation permit.

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

##### Energy Licence

In order to be able to construct a generation plant, a power generation licence must be obtained. The procedure for obtaining such a licence is regulated under the Law on Energy as well as Decision No 374-N of the PSRC. The procedure for obtaining such a licence is described below.

Information and documents considered by the PSRC prior to granting a licence:

- the business plan, which comprises 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 economic and technological solutions, the area of construction, the main engineering solutions, the assessment of the impact on the environment, the efficiency of the investments;
- documents certifying the rights of the applicant over the land;
- a contract signed with a planning organisation on provision of planning and cost-estimating services and a timetable of implementation;
- an announcement published on the website of official notifications of RA – [www.azdarar.am](http://www.azdarar.am);
- guarantees – the entity that is aiming to obtain a power generation licence must submit a guarantee issued by a bank, by which the latter assumes an obligation to make an unconditional and indisputable 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 (in kW) of the plant that will be constructed and 2.5 times the base rate of the state duty defined by the Law of 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 will, within 10 working days, verify that the application and the documents attached are complete and correct, and comply with the annexes of the decision. If minor defects are identified in the application or the documents, the PSRC will, within two working days after noting these deficiencies, suggest that the applicant amends and completes the application and documents within five working days.

In the event of a negative outcome to the review of the application, the PSRC shall inform the applicant in writing within 10 working days following the submission of the documents. After tackling the causes of the negative outcome of the review, the applicant may resubmit the documents to the PSRC.

In the event of a positive outcome to the review of the application, the PSRC shall proceed with the examination and adopt a resolution for plants using renewable resources for power generation within 25 working days, then notify the applicant of its resolution within one working day and send a copy of its resolution to the applicant within five working days.

The PSRC will reject the application if:

- the documents do not comply with the requirements envisaged under the Law, other statutory acts or the Decision; or
- granting of the licence will infringe the rights of other licensees; or
- implementation of licensed activities will hinder the reliability or safety of the energy market of RA, or will lead to inefficient use of the natural resources of RA, or breach the rights of consumers in the market; or
- the applicant does not have the right to carry out the licensed activities under the Law, other legal acts or its charter, or if the applicant is insolvent or bankrupt; or
- the annual cap for licences for the generation of electrical energy in plants using renewable energy resources with installed capacity of up to 30 MW has been reached; or
- the applicant has failed to obtain the consent of the relevant body authorised by the government of RA for generation of electrical energy with installed capacity of 30 MW or above.

##### 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 the state, public and citizens, ensuring publicity (except for cases determined under the law).

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

- to receive information on the planned changes to their living environment;
- prior to approval of published urban development plans, to participate in discussions, and present their approaches, proposals and alternative plans and projects;
- get expert advice on the published urban development plans at their own expense; and
- where necessary, to appeal the actions of public officials before the Armenian courts.

It is the obligation of engaged officials 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 (category A being the highest risk category).

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

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

The following activities are considered as category B:

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

The following activities are considered as category C:

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

In the event of relevant activity falling under any of these categories, an environmental impact assessment, in pursuance with the law, shall be conducted prior to commencing these activities.

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

#### **Design Permit**

This establishes mandatory design requirements considering the territorial planning documents of the municipality, including:

- technical requirements and limitations regarding the design of engineering infrastructures; and
- requirements of urban development, protection of historical and cultural monuments, environmental protection, sanitation, fire fighting and other requirements 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.

#### **Construction Permit**

This establishes the developer's right to undertake construction activities. The construction permit is granted by the authority which issues the design permit (head of the municipality) after the prepared design documentation based on the permit is approved. The permit determines a defined period during which construction shall be conducted and, in the event of a breach of this time period, the authority may apply administrative penalties.

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

#### **Amendments to the Terms and Conditions**

Amendment to the licence may be made by the initiative of the licensee as well as the initiative of the PSRC. To do this, the licensee must present an application to the PSRC indicating the necessity for amendments and including justifying documents. Amendments by the PSRC are made by the decision of the licensee, except for cases where 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 being extended. In this case, the licensee must bring the justifications for extension. For extension of the construction period, details about the work conducted during the initial term, as well as the reasons for non-compliance with the initial term, shall be indicated.

### **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 construction or reconstruction of generation capacities, transmission and distribution networks, and installations reconstruction. The rationale

behind this is ensuring the provision of public services at minimal cost.

As indicated in **4.2 Regulatory Process for Obtaining All Approvals to Construct and Operate Generation Facilities** above, an entity presenting an application to obtain a power generation licence, must also present documents certifying its right over the land on which the activities shall be conducted. The licensee, therefore, must either have ownership rights over the land or 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. The land owned by the state or community may be obtained through donation, direct sale, auction or exchange.

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

Direct sale of land owned by the state is regulated in certain cases allowing for the implementation of social or charity or investment projects approved by the government. A direct sale is conducted based on the decision of the government, if the land is owned by the state, or by the consent of the government, if the land is owned by the community. The relevant decision of the government shall comprise the conditions and amount of the investment, and consequences for breach of a landpurchase 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**

No such regulations with respect to decommissioning of generation facilities appear to be available at the moment.

## **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 of Transmission Facilities**

The scope of acts tackling this matter is listed above in **1.1 Principal Laws Governing the Structure and Ownership of the Power Industry**. Furthermore, the Network rules establish the requirements for planning and operation of the transmission network.

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

- provision of the service of transmission of electrical energy within the territory of Armenia;
- construction (reconstruction) of the transmission network; and
- transiting electrical energy (capacity) through the territory of Armenia to third countries.

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

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

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

#### **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 (category A being the highest risk category).

Construction of electricity transmission lines of 15 km or more, of 220 kW and higher capacity, are classified as category A. Furthermore, electricity transmission lines of 110 kW and higher capacity are considered as category B. Accordingly, construction of such transmission lines is subject to an environmental impact assessment prior to expertise.

The single entity holding an electrical 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, Network rules and decisions of the PSRC.

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

According to the RA Law on Energy, entities holding a transmission licence are entitled to:

- provide services of transmission of electricity (capacity); and
- construct (reconstruct) transmission facilities.

The entity holding the transmission licence shall be run in the manner prescribed under the market rules and concluded agreements.

### 5.1.4 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 construction or reconstruction of generation capacities, transmission and distribution networks, and installations reconstruction. The rationale behind this is ensuring the provision of public services at minimal cost.

The RA Law on Alienation of Property for the needs of society and the state determines that the eminent domain may pursue the purpose of ensuring the implementation of energy projects that are of state and municipal, or inter-municipal, importance. Compensation for alienated property is proportional: in the meaning of said law, proportional value is equal to the market value of the alienated property plus 15%.

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

### 5.1.5 Transmission Service Monopoly Rights

HVEN is the single entity that holds the licence for transmission of electrical energy in Armenia. At the same time, it is not explicitly determined under the RA Law on Energy 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 provision of transmission services. The PSRC has determined the methods of calculation of tariffs for transmission services under its Decision No 167A, on approving the manner of calculation of tariffs for provision of transmission services by High Voltage Electric 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 of the transmitter. The necessary income must be sufficient to compensate the necessary and justified expenses for the reliable, safe and continuous service provision by the transmitter, as well as compensate the deterioration of primary assets of the transmitter and the amortisation of non-material assets, and ensure the allowed (reasonable) profit for the engaged capital.

The necessary profit (NP) is calculated by equation:

$$NP = OME + D + RP + FE - OP$$

where OME is the necessary expenses for operation and maintenance. The operational and maintenance expenses comprise the ongoing expenses permitted by the PSRC for a 12-month 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 amortisation of non-material assets. The value of deterioration of primary assets and amortisation of non-material assets 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 does not comprise the actives 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 actives for provision of services. Reasonable profit is calculated by the following equation:

$$RP = PB \times PR/100$$

where PB is the base for 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 court. The tariffs determined by the PSRC may be appealed within seven days, following the day when the committee's decision has come into force.

If a decision of the PSRC is appealed, the court will consider the compliance of the relevant legal act with RA legislation. In the event of a breach of requirements of law, the court may offer the PSRC the opportunity to adopt a new decision on



the determination of tariffs in a reasonable time by indicating the necessity of compliance with the breached requirement. The PSRC then 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 the 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 access to the network to these entities, 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, the entity must present an enquiry to the transmitter, requesting the technical conditions for connection. Within 15 days following receipt of 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 will evaluate the impact that the relevant capacity may have on the reliability and safety of the electricity system and, together with the transmitter, review the technical conditions to check they are complete and to identify what work needs to be done for connection of the new capacity. The transmitter then sends the final version of the technical conditions and information about the respective preliminary connection fees to the entity that has requested to connect to the network. If the conditions and fees are not approved by the applicant within six months, the application for connection is deemed as cancelled.

## 6. Distribution

### 6.1 Regulation of Construction and Operation of Electricity Distribution Facilities

#### 6.1.1 Principal Laws Governing the Construction and Operation of Electricity Distribution Facilities

The main legal acts governing the construction and operation of distribution facilities are the Law on Energy and the Law on Urban Development. The former sets the grounds for the scope of a licence entitling the relevant entity to construct and operate distribution facilities (distribution licence). The latter sets the general rules for undertaking any construction activities in Armenia, including construction of the distribution network. The distribution licence is

granted by the PSRC and the construction permit is granted by the relevant municipality.

A number of subsequent decisions adopted by the PSRC govern the operation and construction of distribution facilities, including:

- 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, which determines the procedures for obtaining distribution licences;
- the Network Rules under Decision No 161-N, dated 17 May 2017, which determine the long-term planning of the electricity network, including the construction of new facilities;
- Decision No 358-N of the PSRC, dated 27 December 2006, which regulates connection of consumer systems to the distribution network; and
- Decision No 314-N of the PSRC, dated 27 July 2008, which regulates the connection of new generation plants to the distribution network.

#### 6.1.2 Regulatory Process for Obtaining Approvals to Construct and Operate Distribution Facilities

The RA Law on Energy determines the following right of the entity holding a distribution licence, namely:

- the exclusive right to distribute energy to consumers and operate the distribution network in a certain territory of RA; and
- the right to construction of the distribution network.

Therefore, a distribution licence must be obtained by the relevant entity in order to be entitled to construct and operate distribution facilities. The procedure for obtaining this licence is regulated under Decision No 374-N of the PSRC. The procedure for obtaining a distribution licence, including the requirements for engagement of the public, are described in **4.2 Regulatory Process for Obtaining All Approvals to Construct and Operate Generation Facilities**, above.

#### 6.1.3 Terms and Conditions Imposed in Approvals to Construct and Operate

As described in **6.1.2 Regulatory Process for Obtaining Approvals to Construct and Operate Distribution Facilities** above, the entity holding a distribution licence has:

- the exclusive right to distribute energy to consumers and operate the distribution network in a certain territory of RA; and
- the right to construction of the distribution network.



Except for the guaranteed supply of energy, the entity is prohibited from carrying out activities to generate or supply electricity. Currently, ENA holds a distribution licence and also acts as the guaranteed supplier, which entitles and obliges it to deliver energy to end-users who do not purchase energy from other suppliers.

### 6.1.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

This is discussed in 5.1.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights, above.

### 6.1.5 Distribution Service Monopoly Rights

Electric Networks Armenia CJSC is the single entity holding an energy distribution licence in RA. It has exclusive rights to provide these 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 establishment and review of tariffs in the energy sector is regulated under Decision No 359-N of the PSRC, dated 23 October 2013.

The method of establishing distribution service tariffs for consumers is envisaged under Decision No 541-N of the PSRC, dated 13 December 2017, on approving the methodology of calculation of tariffs for the sale of electrical energy and the provision of distribution services to consumers by Electric Networks Armenia CJSC.

Subsequently, Decision No 582-N of the PSRC, dated 27 December 2017, on determining the tariffs for 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 the tariffs, the applicant (distributor) should present an application to the PSRC with all the necessary calculations and justifications. At the time of presenting the application and required documents, the applicant must make an announcement in this regard, which is published on the official website of public announcements ([www.azdarar.am](http://www.azdarar.am)).

Following receipt of the application, the relevant department of the PSRC reviews the application and documents to ensure they are correct and complete, and responds to the applicant on the results of the review of the application within 10 working days. If the preliminary review of the application is successful, the PSRC will accept the application into consideration.

Where the tariffs are determined for the consumers, the PSRC will:

- publish the application on its official website, in order to give consumer protection entities and other interested parties the opportunity to consider the application, make proposals and receive clarifications;
- publish the calculations of the PSRC's staff, in comparison with the calculations brought under the application, prior to adopting a decision on determining the tariffs; and
- organise discussions with representatives of consumer right protection organisations and companies.

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

Where the review of the tariffs is initiated by the PSRC, it will:

- notify the licensee prior to the review;
- request the necessary information from the licensee on its licensed activities;
- make an announcement on its website that it is commencing the review process, in cases where tariffs are determined for consumers; and
- organise discussions with representatives of consumer right protection organisations and companies.

In both cases, the PSRC will review and determine the tariffs and adopt a relevant decision within 80 working days (25 working days in the case of small HPPs and renewable energy plants) following the receipt of application.

### Concern-Dialog Law Firm

1 Charents str., Office 207  
Yerevan  
0025  
Republic of Armenia

Tel: +374 60 27 88 88  
Email: [info@dialog.am](mailto:info@dialog.am)  
Web: [www.dialog.am](http://www.dialog.am)



The procedures for appealing the decisions of the PSRC are discussed in **5.2.2 Establishment of Transmission Charges and Terms of Service**, above.