

LEGAL ALERT

APPROVAL OF THE NEW ELECTRICITY LAW

It was recently published Law no. 12/2022, of 11 July, which approves the Electricity Law (New Electricity Law) and revokes Law no. 21/97, of 1 October (Electricity Law).

The New Electricity Law aims to adjust the legal framework of the electricity sector to the current social, technical and financial dynamics, as well as to adjust the sector to the Sustainable Development Goals (SDGs) to achieve the 2030 agenda, in order to ensure universal access to quality, efficient, viable and clean energy and to take advantage of the high and diversified potential of the energy sources that the country has, especially renewable energy, thus reducing the use of fossil energy sources and consequent emission of greenhouse gases.

The New Electricity Law introduces some new additions to the sector and among the changes made the following can be highlighted:

1. It is eliminated the reference to the National Electricity Council contained in the Electricity Law, which was extinct by Law no. 11/2017, of 8 September, which created the Energy Regulatory Authority (ARENE), which is, since then, the entity with the power to supervise, regulate, represent, inspect and sanction the activity of supply of electricity and the operation of the system and the market, as well as to ensure the protection of the rights of consumers and other stakeholders of the National Electricity System (art. 6.º of the New Electricity Law);
2. It creates the position of the Manager of the National Electricity System, which guarantees the operability and expansion of the public electricity supply service and performs the functions of *i*) System Operation - management and technical conduction of the generation of the transmission grid and of the interconnections with neighbour countries, guaranteeing the balance between generation and consumption of electricity, *ii*) Market Operation -

management and operation of contracting activities and commercial relations with the national and regional electricity market, in order to create an efficient platform for the trading of electricity and for the provision of system services, and *iii*) planning of the National Electricity System, in accordance with no. 2 of art. 8.º of the New Electricity Law and in compliance with the directives of the Council of Ministers (arts. 7.º and 8.º of the New Electricity Law);

3. The Council of Ministers will be responsible for approving the statute, defining the powers, competencies and organic structure of the Manager of the National Electricity System, which will be a legal person under Public Law, with administrative, financial and patrimonial autonomy;
4. The Energy Register is created, consisting of a database of the National Electricity System matrix or related data, which shall contain information about the activity of energy supply or provision of energy services, the respective suspension, modification, extension and extinction, as well as other data and information indicated in no. 2 of art. 9.º of the New Electricity Law;
5. The entities responsible for processing concession applications are determined. Under no. 1 of art. 11.º of the New Electricity Law, the application for the concession for the generation, transmission, distribution, commercialization, import and export of electricity shall be addressed to the Minister in charge of the energy sector and shall be processed by ARENE;
6. The award of concessions through public tender will remain the rule and will be organized, instructed and processed by ARENE; the award of concessions through direct awarding is also allowed in exceptional situations, such as the cases where public tenders are not successful or in the case of electricity generation using assets which are not of public domain, among others (art. 12.º of the New Electricity Law);
7. Express provision for determining the term of the concessions in accordance with that established under the legislation on Public-Private Partnerships, which defines, in turn, terms of duration in accordance with the economic and financial attractiveness of the undertaking, the time required for its implementation and the period for recovery of the capital invested, which may not, in any case, exceed the maximum term of 30 years, in the case of a concession contract for a greenfield project (art. 16.º of the New Electricity Law and art. 22.º of Law no. 15/2011, of 10 August);

8. The import and export of electricity must comply with the technical and operational requirements established in the National Electricity Grid Code (arts. 18.º and 19.º of the New Electricity Law);
9. Following the entry into force of Decree no. 93/2021 of 10 December, which approved the regulation on access to energy in off-grid areas, the mini-grids regime is created, defined as the integrated systems of facilities for the production, distribution and commercialization of electricity, which may include storage and using renewable energy sources, with installed power equal to or less than 10 Mw, not connected to the national electricity grid. The establishment of mini-grids involving electricity production requires a concession (art. 20.º of the New Electricity Law);
10. The activity of storage of electricity has been added to the scope of application of the law, which provides that storage may take place autonomously or integrated with energy supply activities, with the rules and standards on Energy Storage Systems to be contained in specific regulations (arts. 2.º and 21.º of the New Electricity Law);
11. Supplementary services, technically indispensable for the management of the National Electricity System, are now provided for by law and will be the object of specific regulation (art. 23.º of the New Electricity Law)
12. Consumer rights and obligations are now regulated and include, namely, the right to information and to protection against abusive clauses or conditions, as well as to compensation for damages resulting from the supply of defective goods or provision of services (art. 24.º of the New Electricity Law);
13. Specification of causes for termination of the concession, including by agreement between the parties and by the occurrence of a force majeure event which is impossible to repair or mitigate (art. 32.º of the New Electricity Law);
14. The Decommissioning Fund is created, in which the concessionaire shall periodically deposit funds to cover the estimated decommissioning costs, to be deposited in an interest-bearing bank account opened by the concessionaire in a commercial bank in Mozambique (art. 35.º of the New Electricity Law);
15. Establishment of the regime for tariffs, prices and charges applicable within the National Electricity System (arts. 39.º to 42.º of the New Electricity Law);
16. New provisions on the settlement of disputes (art. 51.º of the New Electricity Law).

In general terms, the New Electricity Law, while maintaining the general features of the organisation and operation of the National Electricity System, establishes conditions for greater and effective participation of the private sector in the supply of electricity and in the implementation of projects related to new and renewable energies, as well as greater transparency in the processes for obtaining concessions.

The New Electricity Law establishes a *vacatio legis* of 90 days, and will enter into force on 11 September 2022, revoking the Electricity Law as well as any other legislation that contradicts the new diploma.

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