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Electricity Project & Regulation

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DOMINICAN REPUBLIC

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1. What are the principal power sources in your jurisdiction?

According to a recent report of the Coordinating Agency of the National Interconnected Electrical System of the Dominican Republic (OC-SENI), the most used sources for power generation are: (i) fuel oil # 6, 43.88 per cent; (ii) natural gas 22.30 per cent; (iii) 19.47 per cent coal; (iv) fuel oil and gas (combined cycle) 4.32 per cent; and (v) the rest of the energy is generated by renewable sources of energy such as wind and solar generation power facilities, which have gained some ground as part of a government strategy to diversify the country's energy matrix.

2. What are the current trends affecting the energy mix in your jurisdiction?

Some of the trends affecting the energy matrix in the Dominican Republic are as follows.

In recent years, interest in renewable energy sources has increased. Currently, there are 12 renewable energy projects injecting energy into the system or in the final phase of construction with entry into operation projected no later than 2020. This increase interest in renewable energy is diversifying the energy mix. These projects use different renewable sources for power generation, being wind and solar generation the main ones, and with less participation, biomass and solid waste. According to data from the OC-SENI, approximately 10.03 per cent of the energy generation in the country is from renewable sources, with a contribution of 439MW to the system in 2019, and by the beginning of 2020, a contribution of 614.91MW is expected. Additionally, a procurement process to purchase approximately 250MW of energy from renewable source appears to be scheduled to be launched at the outset of 2020.

The Dominican Republic has prioritised the conversion of plants that use fuel oil as a source for the generation of energy to natural gas. For such purposes, the Executive Branch granted a special power, through Decree No. 62-18, to the executive vice president of the Corporación Dominicana de Empresas Estatales (CDEEE), which has already concluded negotiations for the conversion of at least 730 megawatts of plants located in the eastern region of the country. The energy companies that decide to convert their plants to natural gas will be benefited with a power purchase agreement (PPA) for terms of between seven and 10 years.

The projected final entry into operation of Punta Catalina Thermoelectric Power Plant, which is composed of two power units of 376MW each, for a total of 752MW. The power plant will generate energy from coal, and the project includes all the support facilities required to operate. The first unit is currently in the testing phase.

A growing interest in electric mobility from public and private sectors, which has attracted the interest from investors for the approval of the rules that will govern and allow the development of this sector. In addition, there is currently a bill on energy efficiency pending review and approval by Congress.

In the past year we have observed the interest of private equity trying to invest in the energy sector, specifically in the renewable energy sources project.

3. What are the current forecasts for electricity demand in your jurisdiction?

The electricity demand for 2018 was 2,396.78GWh. According to the prospective study of the energy demand of the Dominican Republic 2010–2030 made by the National Energy Commission (CNE) and the Bariloche Foundation, the forecast for average electricity growth is around 3.5 per cent per year.

4. Is there an open electricity market in your jurisdiction? Are any activities in the electricity market reserved for the government only? Are private entities allowed to build and operate power plants and transmission and distribution lines?

Yes, there is an open electricity market in the Dominican Republic. Energy generation is an activity that private entities can undertake, whether national or foreign. Currently, 86 per cent of the energy generation capacity is in private hands (excluding self-generation) and the remaining 14 per cent is public property, in the understanding that the Dominican Republic maintains control of the hydroelectric resources of the country. This data excludes the Punta Catalina Thermoelectric Power Plant, which is state owned, although the government plans to partially or fully sell the project once it starts operating.

Regarding the transmission system, this activity is under the total responsibility of the public company ETED (Empresa de Transmisión Eléctrica Dominicana), which carries out procurement processes for contracting private companies (national and international) for the construction, operation and maintenance of transmission networks and electricity substations.

Likewise, there are three main companies (EDENORTE, EDESUR and EDEESTE) that are responsible for the distribution and commercialisation of energy, which are owned by the government, and demand 88 per cent of the total energy. The rest of the energy is served by the isolated systems, private companies that operate under special conditions within the National Interconnected Electric System (SENI), which allows them to generate and distribute energy within their concession areas, located in Dominican Republic tourist poles. The distribution companies also contract private companies to build distribution lines.

Finally, OC-SENI, which is a state company, runs and operates the national dispatch centre, responsible for the integrated operation of the electricity system.

5. What types of market participants may operate in the market? Must they provide payment guarantees to back their obligations in the market? What type of security is acceptable?

Both private and public entities can participate in the market. According to Law 125, the market participants can only carry out one of the following market activities: the generation or the distribution. The generation, except for hydro which is public, and distribution activities can be carried out by private agents. The transmission is reserved to the Dominican State and it is carried through the ETED.

In practice, however, the distribution is in the hands of the Dominican State, which repurchased all the shares of the three mayor distribution companies with concession to distribute energy on most of the Dominican Republic. Exceptionally, there are isolated systems where private

entities carried out the generation and distribution of the geographical area granted under concession.

The request for guarantees may exist in certain scenarios and depending on the contracts with generators which can be required to provide a performance bond for the timely construction of the power plant and delivery of energy under PPA.

6. What is the role and function of the regulator? Would you describe the regulator as being independent?

The General Electricity Law No. 125-01 (Law 125) creates the Superintendence of Electricity (SIE) as a decentralised institution of the Dominican State with legal personality of public law, its own assets and the capacity to acquire property, exercise rights and contract obligations, under the provisions of Law 125.

The SIE is the regulatory entity of the Dominican electric sub-sector and has the obligation to oversee compliance with the applicable legal framework. In such capacity it is empowered to establish, modify and complement the technical standards related to the quality and safety of electrical installations, equipment and appliances, in the development of generation, transmission, distribution and commercialisation of electricity. It is also responsible for the establishment of tariffs, tolls subject to regulation of prices and concessions.

Additionally, the SIE can apply the corresponding sanctions in case of non-compliance with technical standards. Its instructions must be abided by the electricity companies of the subsector and can adopt the measures it deems necessary for the public's safety and intended to protect the rights of electricity concessionaires and consumers.

We also have the following regulating entities:

- the CDEEE, which is the administrator of all the public companies in the energy sector. The CDEEE carries out procurement processes for long-term energy purchases by distribution companies, and signs and approves PPAs for renewable energy projects;
- the Ministry of Energy and Mines (MEM), in charge of the energy and mining sector;
- the CNE, in charge of energy planning and policies; the OC-SENI in charge of the planning and operation of the market; and
- The Dominican Electricity Transmission Company (ETED), a state power company whose objective is to operate the National Interconnected Electric System (SENI) to provide high-voltage electric power transport services to the entire national territory.

7. Is there an open market for off-takers in your jurisdiction or are there restrictions on the sale of electricity?

In the Dominican Republic, electric companies that wish to exploit the generation or distribution of electricity business require a concession or permit granted by the Executive Power. For the purchase of energy there are two markets: (i) long-term energy purchase contracts is the market for electricity purchase and sale transactions based on supply contracts agreed to be submitted to a procurement process; and (ii) The spot market: is the short-term electricity purchase and sale transaction market, not based on forward contracts or taking into account the short-term marginal cost of energy and the marginal cost of power.

In addition to the above, there are the unregulated users (UNRs) who are those whose monthly energy demand exceeds the limits established in the law and can buy it directly from generating companies and isolated systems, which produce their own energy.

8. If the sale of power is to a public utility as offtaker, are such entity's payment obligations backed-up or guaranteed by the government?

The purchase and sale of energy is not supported by any type of sovereign guarantee. The conditions are agreed contractually between the parties, and in case of breach of contract by the Dominican state, the parties should follow the dispute resolution mechanism provided for in the contract.

9. Does the market have an independent system operator? If so, what are the ISO's tasks and duties?

The Coordinating Body of the National Interconnected Electric System (OC-SENI) was created to coordinate the operations of the electricity generation, transmission and distribution companies that belong to the National Interconnected Electrical System (SENI) of the Dominican Republic. Law 125 establishes that the electric generation, transmission, distribution and commercialisation companies, as well as self-producers and co-generators must coordinate the operation of their facilities to provide the best service at the least cost and for the latter purpose, they must be part of the OC-SENI. The OC-SENI has its own legal personality and has been incorporated as a non-profit association under the provisions of Law 125.

10. How are electricity rates set and what cost components affect such rates?

The generators are not subject to tariffs or rates in their sales of power. They are free to set the prices for their products based on competitive prices established by the market according to their source of production.

Law 125 foresees the application of a technical tariff that reflects the real costs of generation, transmission and distribution. However, in practice, the government introduced an applied rate, which is published periodically by SIE and is below the technical tariff levels foreseen on Law 125.

The current rate scheme differs in the segments of the population depending on the total consumption of each consumer, so that those with fewer resources pay less for their electricity service and have subsidised electricity rate. As a result, one segment of consumers subsidises another that has a differentiated rate.

There have been three increases to the applied rate, in 2002, 2009 and 2011; but these increases don't reflect the real costs of production, so the rate is still below the real costs.

11. What approvals are required to build and operate a power project? Are these easy to obtain? Please describe the salient features of the relevant licence conditions and the grounds for revocation. What levels of fines can be imposed for failure to comply?

A final concession is required for the exploit of electrical generation works; to that end, some of the requirements include:

- A request to the President of the Dominican Republic, via the SIE;
- corporate documents of the company, duly certified (mainly the by-laws; the last shareholders' meeting and current Mercantile Registry);
- Power granted to the legal representative of the company to act on its behalf in the SIE;
- Documents that reflect the financial background of the company;
- Registration at the National Taxpayer Registry (RNC);
- Documents that guarantee ownerships or rights use of the land where the project is going to be;
- Description of the project and the electrical works;
- Geo-referenced cadastral survey plan, in UTM coordinates, prepared by a collegiate Surveyor;
- Description of the civil works of the project;
- Technology to be used, particularly types and compositions of fuels;
- Project life time and production capacity;
- Documentation about facilities, easements, rights of way and how they will be obtained;
- Description of transmission electrical works (if applicable);
- No objection certificate from the Transmission Company (ETED) to the requested connection point (if applicable);
- Electrical studies, which must contain short circuit analysis, load flow, stability and otherthings;
- Work execution schedule;
- Environmental licence issued by the Ministry of Environment and Natural Resources accompanied by the environmental impact study; and
- Payment of the administrative fee (approximately US$10,000) for the study and evaluation of the request.

If all the necessary requirements are met, the SIE should grant a favorable recommendation to the Executive Branch to issue the corresponding concession. In practice, this concession process usually takes about two years.

In terms of the fines that could be imposed owing to: (i) failure to provide the service in the manner provided in the concession agreement; (ii) carry out the works without coordination with the authorities; or (iii) to initiate or finish the work outside the stipulated deadlines; which are established in the concession agreement and vary according to the value of the energy project and could result in a revocation of the concession.

12. Is the government or the ISO conducting public auctions to award long-term power purchase agreements to public and private offtakers? Are the auctions open to any source of power, or are they focused on specific sources and technologies?

Law 125 requires that public auctions shall be made to award long-term PPAs. In the past, the government has held public tenders for the purchase of long-term energy directed to private companies (whether national or international) or any type of association between them. These public auctions have been targeting conventional sources of power generation since renewable sources PPAs have been granted directly to the concessionaire by CDEEE as per the terms of applicable law. However, as previously indicated, it is expected that a procurement process for long-term purchase of energy from renewable sources will be launched soon.

13. What percentage of the country's power output comes from renewable power sources and does your jurisdiction have any specific targets or milestones for renewable energy projects?

Approximately 10.5 per cent of the total generation of energy in the country is from renewable sources. The Dominican Republic's goal is to reach the production of 25 per cent of renewable energy of the total energy demand by 2025.

14. Is there a different regulatory regime for renewable energy projects? Are there any government programmes that foster the development of these projects?

Yes, there is a different regulatory regime for renewable energy project; which is Law No. 57-07 on the Incentives for the Development of Renewable Sources of Energy and its Special Regimes (Law 57). Law 57 purpose is to promote the development of a more sustainable and clean energy matrix in the Dominican Republic. To that end, said law establishes various incentives, including: (i) tax benefits and exemptions; (ii) priority on the dispatch of energy to the system through the OC-SENI; and (iii) the direct execution of long-term PPAs by CDEEE.

15. Are there any tax incentives for power projects and, in particular, for renewable power projects?

Yes, renewable energy projects have the following tax incentives:

- Exemption from all types of import taxes on equipment and accessories necessary for the production of energy from renewable sources.
- Reduction of taxes on financing paid abroad, which originally amounted to 10 per cent of the total amount of interest and has been reduced to 5 per cent for project development loans.

Additionally, there are fiscal incentives for energy self-producers. Any person, regardless of their activity, who substitutes their energy consumption by adopting renewable sources, may deduct from their income tax up to 40 per cent of the investment in renewable energy generation equipment, in a period of three years.

16. Are there any investment vehicles or structures that permit the maximisation of investment in a power company, such as tax equity, master limited partnerships, real estate investment trusts (REITs) or yield cost?

No, in the Dominican law there is no corporate vehicle that allows a maximisation of investment in a power company.

17. Are there any governmental subsidies, benefits (other than tax-related) or incentives for investment in power projects and, in particular, renewable power projects?

Yes, there is a programme of net metering for renewable energies under Law 57, where residential and commercial users who instal self-generation renewable energy facilities for their own consumption, are compensated for the excess energy they inject into the system on their monthly bill. If there is a balance at the end of the year in favor of the client, the distributor must pay 80 per cent of that balance in cash to the client.

18. Are there any capital controls or other regulations in your jurisdiction that prevent investors from repatriating investments in a power project?

No, there are no restrictions that would prevent investors from repatriating investments in a power project. In general terms, the Dominican Republic grants foreign investors the same rights as domestic investors, and as such, the investor's dividends and capital investments can be repatriated after complying with payment of applicable taxes.

19. Is there a market for emission reduction certificates or clean energy certificates in your jurisdiction?

Yes. The certificates or bonds for reduction of emissions (carbon sequestration) are established in Law No. 57-07; according to this regulation, the certificates that can be exchanged under the Kyoto Agreement and that may be derived from renewable energy projects, will belong to the owners of said projects for the commercial benefit of the same. These certificates will be issued by the competent body that evaluates the emissions reduced by said projects, according to the official protocols of the Clean Development Mechanisms (CDM) established or to be established by the Ministry of the Environment with the other relevant institutions. In practice, however, these certificates are not widely used in the Dominican Republic, although there has been a recent interest to create the conditions to access to these certificates.

20. Which renewable power sources have been most successful in your jurisdiction and what is the medium to long-term outlook for them?

Hydro has been somewhat traditionally relevant in the Dominican Republic energy mix. Recently, wind and solar energy are playing a preponderant role in the success of renewable energies in the Dominican Republic. Medium and long-term prospects are good, especially for the development of solar projects. Additionally, an impulse in the development of energy projects using solid waste and biofuels is expected.

21. Are there any non-regulatory factors that affect the development and financing of power projects in your jurisdiction, such as social, environmental, political or security concerns or rights of third parties?

Yes, the most common non-regulatory issues that potential developers of projects and investors face are:

- real-estate issues, including the need to negotiate easements in case of having to build a transmission line;
- social problems with the locals who often claim their rights as owners of affected real state; and
- problems with the collection of excessive tariffs by the municipalities.

22. Are subsurface rights separate from land rights? If so, what factors must a project take into consideration in determining whether an owner of subsurface rights could create issues for a project?

No, under Dominican law, subsurface rights are not separated from land rights; however, all the salt mines, mines, underground and thermal waters, possible hydrocarbon deposits, quarries and deposits of all kinds that are in the subsurface belongs to the Dominican state and cannot be privately owned. Therefore, if a private company is going to develop a power generation project that is based on the use or consumption of these subsurface resources, it must obtain a concession from the Dominican state that specifically allows said exploitation.

23. How are wheeling tariffs set and are there any differences based on the power source and technology used? Is there a postage-stamp wheeling tariff in your jurisdiction?

Wheeling or transmission tariffs charged by ETED are established by the SIE annually. Under the law, the transmission tariffs must cover investment costs as well as administration, operation and maintenance costs of the national transmission network necessary to meet demand growth under conditions of reliability and quality. Likewise, the tariffs of the added value of distribution (VAD) that the distribution companies charge to the users, is determined by the SIE, under the same parameters used to determine the transmission rates.

24. Are there any open access rules for transmission? If so, how is access determined? Are there private transmission lines to which open-access rules don't apply?

Yes, ETED must provide access to the transmission grid to all market participants on a non-discriminatory basis, subject to such participant's payment of the wheeling fees and compliance with technical rules. There are private transmission and distribution networks that are subject to the rules of open access and owners must guarantee access to third parties in a mandatory manner, after reaching agreement on the payment of tolls.

25. Are cross-border power exchanges regulated?

No, to this date, the Dominican Republic does not regulate cross-border exchanges of energy, in the understanding that this activity is not carried out with any other country.

26. Are merchant power projects financeable in your jurisdiction?

Yes. In general, in the Dominican Republic most, if not all, power generation projects that have been financed to this date have secured in advance power purchase agreements with at least one buyer. We are not aware of any power generation project that has been built and financed relying solely on sales to the spot market.

27. What are the biggest obstacles in obtaining debt financing for renewable power projects?

Most financers will pay particular attention to the following factors in deciding whether or not to finance a project:

- the reputation and experience of the project sponsor;
- whether or not the project company has secured a power purchase agreement or other long-term contract for a significant part of the plant's capacity with the energy buyers and the solvency and energy payment capacity of the purchasers;
- the type of technology used by the project and its particular order of dispatch;
- acceptable debt to equity ratios for the project;
- the quality and track record of the engineering, procurement and construction contractor; and
- high risk perception, particularly if there is any litigation involving the project. That being said, at this juncture, the biggest concerns for financing removable energy projects is the lack of a long-term PPA contract with a solvent purchaser.

28. What are currently the most significant obstacles to the growth of the electricity market in your jurisdiction?

From a technical standpoint:

- a transmission system that can transport all the energy that can be generated without operational restrictions must be developed;
- compliance with the expansion plans of the grids to guarantee access to new projects developed in the future;
- defining the areas where the new energy projects are going to be installed, since currently there are different studies being carried out by multilateral organisations and regulatory bodies of the sector, which create uncertainty in that regard; and
- establish the technologies or sources that the Dominican state requires to be used for the development of new projects.

From a regulatory perspective:

- specifying the competences among the regulatory institutions to avoid duplication of functions and inconsistency in the interpretation of the regulations;
- implementing a one-stop project to obtain all permits and comply with the deadlines established in the regulations for issuing permits;
- eliminate the requirement of provisional concession for removable energy projects as a prerequisite to obtain a definitive concession and thus harmonise the process as concessions from conventional sources are processed; and

- substitute the concession regime for administrative authorisation that does not require the need for presidential approval, making the process more expeditious.

Regarding the land and land use of the projects:

- improve the registration processes of property rights and advance in the sanitation of lands in rural areas to eliminate the duplicity of apparent owners and prevent the invasion of lands by opportunists;
- define a criteria applicable to all local governments and municipalities for the land use permit and how they would reach agreements in cases where a project covers territories of different jurisdictions with respect to the collection of municipal tariffs; and
- approval of the territorial zoning bill that classifies the territory and defines competences and improvements in real estate processes for the granting of permits and the bill on land use that will regulate the process to grant use of the surface.

From a financial point of view:

- modernise the regulation of the stock market to simplified investments by way of the securities market to this sector;
- approve the guarantee and secured transactions bill of law that facilitates financing, mainly by local banks;
- establish processes and policies regarding the contracting and granting of PPAs and launch any and all the auction processes;
- compliance with the conditions established in the PPA contracts; and
- create conditions that enable energy projects to benefit from the regular financing mechanisms applicable to other businesses.

29. What are the biggest growth areas in the electricity market in your jurisdiction?

The biggest growth areas in the power market are renewable energy, specifically solar and wind energy; also, the conversion of power generation projects that use fuel oil to natural gas.

30. Please describe any recent trends observed in your jurisdiction affecting the structuring of investments and financings in power projects.

There is a great interest from international investors to invest in energy projects in the Dominican Republic; however, since it is yet to be defined when the next procurement for the purchase of energy will be, the technologies or sources of energy requirements, in which areas of the country and the sizes of the projects, investors may look elsewhere to invest in renewable energy projects. Investments are usually channelled by equity acquisitions and equity finance acquisition; project finance and debt acquisition finance. In some cases, local banks have been reluctant to do project finance for renewable energy projects; they preferred corporate financing or a hybrid; but multilateral credit agencies have made syndicated project finance loans to those type of projects.

31. How actively involved are foreign and local development banks and multilateral agencies in the financing of power projects in your jurisdiction? Are there any non-traditional sources of financing available to project sponsors?

Currently, development banks and multilateral organisations in the financing of energy projects are very active and interested in the financing of renewable energy projects in our jurisdiction, so project sponsors customarily do not access non-traditional sources of financing.

32. Are debt offerings on the capital markets becoming a more common tool in your jurisdiction to refinance construction financing?

Debt offerings on the capital markets are beginning to become a common source of refinance construction financing.

33. Are power purchase agreements in your jurisdiction denominated in local currency or US dollars?

Power purchase agreements are denominated in US dollars, therefore, foreign investors in the Dominican Republic need not be concerned with convertibility or exchange control risks.

34. Are there regulatory limitations on foreign investment in, or control of, electric generation, transmission or distribution assets?

No, there are no restrictions on the foreign ownership of electricity companies or assets.

35. How active in your jurisdiction is the M&A market for power assets?

M&As, particularly acquisitions, are very active in the power assets market. In recent years, power generation renewable projects have been developed or purchased by:

- large and mid-size international energy groups, whose core business is the energy sector;
- international private equity energy firms that have teamed up with either local investors or investors described for the purchase of power generation projects;
- exclusively by local investors; or
- some suppliers of equipment that have taken a stake (usually a minority one) in the project. Equity shares in power generation projects are regularly sold and purchased by local and international investors with some restrictions.

36. What are the most common dispute resolution mechanisms under local law-governed power purchase agreements in your jurisdiction?

The most common dispute resolution mechanism under local law-governed power purchase agreements is mediation and arbitration.

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