



JUL. 22

MOZAMBIQUE

NEWS

New Electricity Law

Law 12/2022 of 11 July

Law 12/2022 of 11 July (the “New Electricity Law”) has now been published and it establishes the new general organisation of the electricity sector and the legal rules for electricity supply activities.

In this note we intend to present the model resulting from this reform of the electricity sector, which seeks to adapt the legal framework to the current social, technical and financial dynamics, and to the objectives of sustainable development, energy transition and universal access to quality energy.

In general terms, the New Electricity Law is intended to:

- Extend the conditions for the opening of the electricity generation and supply market to the private sector;
- Ensure increased and universal access for all users to quality and reliable electricity, especially from renewable sources;
- Promote the continuation of the electrification of the country, reiterating the focus on things such as self-consumption, storage and mini-grids.

The New Electricity Law aims to deepen the conditions for opening the market to the private sector.

Most important amendments

Private initiative access to electricity sector activities

Law 12/2022 comes in the era of regulation and in the context of the major objectives of universal electrification and energy transition.

The current Five-Year Plan 2020-2024 established a strategy to increase renewable production capacity, by promoting public and private investments in new production infrastructures and new network availability, especially transmission.

The New Electricity Law broadens this new strategic design, in the wake of the most recent developments in the previous legal framework, including the tenders launched to build and operate hydroelectric and solar photovoltaic power plants.

MOZAMBIQUE**Hybridisation and storage are allowed, as is the sale of surplus electricity to the public network**

Thus, private access to electricity generation and supply activities is guaranteed to a greater extent and, although dependent on state concessions (including in the form of public-private partnerships), it is no longer subordinated to the overriding interests of the state. However, it is still necessary to safeguard national interests.

Renewable energies: awarding of concession by direct award

The activities of production, storage, transport, distribution and/or sale, as well as the construction, operation and management of electrical facilities require a concession.

One of the major changes introduced by the New Electricity Law concerns the simplified procedure for implementing electricity generating centres using non-hydro renewable sources.

In fact, as far as electricity production is concerned, access to the concession is differentiated according to the primary source to be used:

- *Fossil and hydro energy*: the concession is granted through a public tender;
- *Renewable energies*: the concession may be granted by direct award when it concerns electricity production using non-public domain assets, which may include energy from solar and wind sources, provided that the infrastructures in question are not located on public domain land.

Renewable energies: hybridisation

The New Electricity Law expressly opens the door to electricity production through hybrid systems by referring to the possibility of hydroelectric production on a “*simple or hybrid basis, with other renewable energy sources*”.

Storage

Energy storage is regulated for the first time. It may be autonomous or coupled with other supply activities, and it may provide system services and contribute to the balance and quality of the system.

The regulation of storage is referred to in a separate statute, so the further detailing of this legal framework has yet to be completed.

MOZAMBIQUE**Self-consumption and bilateral contracts (power purchase agreements)**

One of the most innovative provisions of the New Electricity Law states that whenever the concessionaire whose concession covers the location where a consumption facility is located is not operationally or commercially available for supply, the holder of that facility may obtain supply by itself – in self-consumption – or by a third party, for example by entering into a bilateral contract (Corporate PPA).

As under the previous law, production for self-consumption is exempt from a concession. It only requires the licensing of the electricity generating centre, but production for private use and consumption requires a concession when carried out by a third party.

Sale of surplus to the public network

The New Electricity Law establishes, for the first time, that any private use facility connected to the National Energy Network may enter into a contract for the sale of surplus electricity produced and not consumed with the National Network Manager, under terms to be regulated.

As with other provisions of the New Electricity Law, it will be necessary to wait for the regulation of this solution to know further details.

Mini-grids

The new law reiterates the focus on mini-grids as the quickest and most effective way of electrifying the largest possible area of Mozambique, especially remote communities and rural areas not supplied by the national network.

Mini-grids are integrated energy production, distribution and trading systems, which may include storage, that use mainly renewable energy, have an installed capacity not exceeding 10 MW and are not connected to the national electricity network. The national electricity network can expand to the site concerned and integrate mini-grids, but with the right to compensation of the mini-grid concession holder.

Mini-grids are subject to a concession, but some flexibility is allowed regarding the content of the contract, and an exemption from concession fees is also established. The National Electricity System Manager is responsible for ensuring and keeping up-to-date a mapping of the areas where mini-grids can be developed.

Although they had been provided for in planning instruments at least since 2018, it was only with the recent Regulation on Access to Energy in Off-Network Areas, approved by Decree 93/2021 of 10 December, that their rules became concrete. The adaptation of the Electricity Law to these developments is the missing piece of the puzzle for the legal regulation of mini-grids.

The New Law reiterates the commitment to mini-grids as a fast and effective way of electrifying remote areas

MOZAMBIQUE**Other important notes****Rates**

- The law maintains the rules under which tariffs are defined in the concession contract, but specifies the rules and principles for fixing and developing tariffs during the term of the concession contract.
- The production and network sales tariffs must reflect costs and ensure a reasonable return on investment, provided that the activity is carried out in conditions of efficiency and prudence. Moreover, it must be approved by ARENE – the Energy Regulatory Authority in accordance with the provisions of the concession contract.

Ancillary services

- Provision is made for the supply of ancillary services, which are technically indispensable functions for the technical management of the National Electricity System, to guarantee levels of security, stability and quality of service.
- The ancillary services are remunerated in order to compensate the investments made in the equipment as well as the discontinuation caused by the technique and technologies applied, in terms to be regulated.

Guarantee for decommissioning

- Prior to the start date of commercial operation, the concessionaire must open an interest-bearing account in a bank located in Mozambique, in a currency authorised by Banco de Moçambique, to be called the “Decommissioning Fund”, into which funds to cover the estimated decommissioning costs must be deposited periodically.
- The calculations and payments of the estimated decommissioning costs are prepared by the concessionaire and submitted to ARENE – the Energy Regulatory Authority, the criteria for which will be determined in a regulation.

Constituted rights

- The holders of concessions on the date of entry into force of the New Electricity Law will maintain their rights and obligations, as and for the terms on which they were granted, without prejudice to compliance with the new regime.
- Those engaging in the activity of supplying electricity without a concession or under an open-ended concession must regularise their situation in order to comply with the dictates of the new law.

Agents are obliged to regularise situations of non-granting or granting out of time.

MOZAMBIQUE

- Concessions granted under the old rules whose implementation has been delayed for any reason in relation to the approved timetables must submit new commitments to implement the project, including the respective budget, within 180 days from the date of entry into force of the New Electricity Law, under penalty of termination of the concession.

Dispute resolution

- It also allows, as under the general investment protection rules, for disputes between the State and the concessionaires involving foreign direct investment to be settled by arbitration. For this, there is a preference for the rules of the Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID), including its complementary mechanism, and the arbitration rules of the International Chamber of Commerce (ICC). ■

