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GUIDES 2022**

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South Africa

RENEWABLE ENERGY

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This country-specific Q&A provides an overview of renewable energy laws and regulations applicable in South Africa.

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SOUTH AFRICA

RENEWABLE ENERGY



1. Does your jurisdiction have an established renewable energy industry? What are the current production levels?

The renewable energy industry in South Africa has experienced significant growth in the last decade. In 2008 renewable energy made up only 0.63% of South Africa's electricity production, but by 2021, this percentage had risen to 13.7%. Coal however still accounts for 84.4% electricity production.

The launch of the Renewable Energy Independent Power Producers Procurement Programme (**REIPPPP**) in 2011 to procure renewable energy from independent power producers (**IPPs**) was a significant milestone. 127 renewable energy projects have been procured through 5 bid windows. The 92 projects procured from bid windows 1 to 4 all reached financial close, and 87 of them have already reached commercial operation. 25 projects have been appointed as preferred bidders in bid window 5 and they are expected to reach financial close during the latter part of 2022. The request for proposals for bid window 6 was released in April 2022 and bids are due in August 2022. 6323MW of electricity has been contracted from the 92 projects in bid window 1 to 4 of REIPPPP. By the end of December 2021, 71,073 GWh generated by renewable resources had been procured since the first project under REIPPPP became operational in 2013.

2. Who are the key regulators for renewables industry in your jurisdiction? How do they impact the industry?

The Minister of Mineral Resources and Energy (**Minister**) is responsible for determining the energy policy that sets out how renewable energy is to be generated and procured.

The Minister of Forestry, Fisheries and Environmental Affairs is responsible for ensuring the environmental sustainability of renewable projects and the Department of Forestry, Fisheries and Environmental Affairs (**DFFE**)

and Department of Water and Sanitation are tasked with issuing the necessary environmental permits.

The National Energy Regulator of South Africa (**NERSA**) is the mandated in terms of the National Energy Regulator Act 40 of 2004. NERSA is the custodian of the Electricity Regulation Act, 4 of 2006 (**ERA**) and is mandated with issuing licences, determining processes, settling disputes, and collecting information relating to energy regulation.

The independent power producer office (**IPP Office**) established by the DMRE, National Treasury and the Development Bank of South Africa, is mandated with securing electricity from renewable and non-renewable energy sources for the private sector. The IPP Office oversees REIPPPP.

The national utility, Eskom SOC limited (**Eskom**) is responsible for generation, transmission and distribution of power in South Africa, and it has been designated as the single buyer in terms of REIPPPP.

3. How are rights to explore/set up renewable energy projects, such as solar or wind farms, granted? How do these differ based on the source of energy, i.e. solar, hydropower, wind, geothermal and biomass?

Renewable energy resources are free, and no licences are required to explore or determine the feasibility of renewable energy projects.

Access to privately owned land on which projects will be developed is secured by purchasing or leasing the land. An environmental authorisation is required in terms of the National Environmental Management Act 107 of 1998, for the development of facilities over 10MW, excluding where such development of facilities or infrastructure is for photovoltaic installations and occurs within an urban area or on existing infrastructure. The requirements for environmental and regulatory

permitting for various renewable resources differ, with wind projects for example being subject to greater bird and bat monitoring requirements and hydropower being subject to stringent water licencing considerations.

Projects also need to secure a connection to the Eskom distribution or transmission system. Projects with a capacity larger than 100MW are required to apply for a generation licence from NERSA, whereas projects with a capacity of less than 100MW do not have to apply for a licence but may still be required to register with NERSA. South Africa does not have large scale geothermal resources to generate electricity or use for direct heat. Projects wanting to sell energy to Eskom pursuant to REIPPPP will need to meet the qualification criteria, including land access and environmental permitting criteria and be selected as a preferred bidder.

4. What does the energy split look like in your jurisdiction and how is this changing as a result of the green energy transition?

South Africa still relies heavily on coal to produce electricity, with coal accounting for approximately 84.4% of total production at the end of 2021, and renewables representing a small portion of the energy mix.

The IRP2019 states that it is intended that the production of electricity from coal will account for just 59% by 2030 (in less than 8 years' time) and that renewables will contribute to 25%.

5. Is the government directly involved with the renewables industry? Is there a government-owned renewables company?

South Africa does not have a government-owned renewables company. Government has until recently only played a limited role in developing renewable energy generation capacity through Eskom.

The Minister of Public Enterprises recently announced that Eskom intends playing a significant role in the creation of renewable electricity generation capacity and that it is establishing a 'Clean Energy Unit' that will focus on the development and establishment of renewable and alternate technology energy capacity.

Furthermore, as part of its "Just Transition Program", Eskom is embarking on a process to lease land across some of its existing generation sites in Mpumalanga province, that already have transmission connections, for the purposes of renewable energy projects. It hopes as much as 4 GW of capacity can be added over time.

6. What are the government's plans and strategies in terms of the renewables industry? Please also provide a brief overview of key legislation in the renewable energy sector?

The energy demand in South Africa is projected to more than double by 2050, which will require proportion expansion of the installed generation capacity. The aim is that by 2030, 25 GW will have to be added to installed capacity with the requisite supportive transmission and distribution network infrastructure. South Africa's recently updated National Infrastructure Plan 2050 notes the following in relation to government's plans: regularised prescheduled bi-annual bid windows are intended to procure about 5GW of renewable energy annually from IPPs; municipalities will be enabled to procure power from IPPs; there is intended acceleration of transmission and distribution infrastructure investment; and up to 1 000 MW battery storage is to be procured by 2023/4.

The regulation of the electricity supply industry is governed by the ERA. In terms of section 34 of the ERA, the Minister of Mineral Resources and Energy (**Minister**), in consultation with the NERSA, may determine that new generation capacity is needed to ensure the continued uninterrupted supply of electricity, the types of energy sources from which electricity must be generated and the percentages of electricity that must be generated from such sources, the buyer and seller of such electricity and the procurement process to be followed.

On 6 May 2011, the then Department of Energy, now known as the Department of Mineral Resources and Energy (**DMRE**) released the Integrated Resource Plan 2010-2030 (**IRP2010**) in respect of South Africa's forecast energy demand for the 20-year period. The IRP2010 had capacity allocations for electricity generated from renewable technologies and it is against these allocations that the then Minister of Energy issued section 34 determinations for renewable energy. The IRP2010 was intended to be a 'living plan' that would be periodically and regularly revised. However, the IRP was only updated and revised on 18 October 2019 (**IRP2019**).

Electricity Regulations on New Generation Capacity were published under the ERA, which came into effect from on 4 May 2011. Their objectives include the facilitation of planning for the establishment of new generation capacity and the provision of a framework for the implementation of an IPP procurement programme.

Schedule 2 of the ERA was amended in October 2021 to increase the exempted MW capacity to 100MW for

embedded generation. The draft Electricity Regulation Amendment Bill released in 2022 (**ERA Amendment Bill**) seeks to transform the electricity market to competitive multimarket electricity supply industry and it being managed by a transmission system operator. This will bring forth diverse ways to buy and sell electricity and foster competition to decrease electricity costs. The ERA Amendment Bill will allow for a trading platform where market participants may trade with each other, private power purchase agreements where registered generators enter into power purchase agreements (PPAs) with direct customers, and generators will enter into PPAs with the transmission system operator.

7. Are there any government incentive schemes promoting renewable energy? For example, are there any special tax deductions or incentives offered?

Several significant tax incentives are available to promote investment in or sale of utility-scale renewable power:

- Section 12B of the Income Tax Act 58 of 1962 (**ITA**) provides for an accelerated capital depreciation allowance in respect of solar (CSP or PV up to or more than 1 MW), hydropower (up to 30 MW), wind (no cap) or biomass (no cap) renewable energy generation assets owned or acquired by the taxpayer in terms of an instalment credit agreement and brought into use for the first time.
- As section 12B caters only for the actual plant and machinery generating the renewable energy and improvements thereon (including supporting structures like foundations), section 12U of the ITA was introduced in April 2016 to allow a specific deduction in respect of expenditure for other general supporting infrastructure such as roads, fences and the like.
- In terms of section 12N of the ITA, improvements associated with certain public sector procurement like the REIPPPP made to a property that is leased and not owned by the taxpayer, qualify for a depreciation allowance on the value of the improvement. The allowance also applies to depreciation associated with section 12B of the ITA.

A carbon tax became effective on 1 June 2019 with the promulgation of the Carbon Tax Act 15 of 2019 (**CTA**). The tax is being implemented in a phased manner, with

various tax-free allowances available during the first phase (June 2019 to December 2025). In terms of the CTA, taxpayers may utilise credits generated through eligible carbon offset projects as a means of reducing their carbon tax liability up to a maximum of 5-10%. Certain Clean Development Mechanism (**CDM**), Verified Carbon Standard or Gold Standard approved renewable energy projects are now eligible as carbon offsets under the new carbon tax regime.

To the extent applicable, the tax incentives in terms of sections 12B and 12N of the ITA referred to above will also apply to distributed renewable energy facilities. Of particular interest is that section 12B provides for an accelerated write-off of the asset of 100% in the first year, in respect of solar PV energy of less than 1 MW. Distributed renewable energy projects can also qualify as carbon offsets in terms of the CTA, which serves as an incentive to invest in such projects.

8. How have private companies outside of the renewable energy sector responded to the renewables industry? Have you seen more companies set net-zero and/or science-based targets?

The private sector has responded positively to the renewable sector in South Africa. Many large corporates, with high carbon emissions, have started programmes to invite bidders to supply renewable energy to their local operations as a mechanism to reduce their greenhouse gas emissions. Furthermore, two of the largest South African corporates have released green hydrogen plans to reach their individual net-zero goals.

9. What are the key contracts you typically expect to see in a new-build renewable energy contract?

New new-build renewable projects typically require the following contracts –

- Land access agreement between the owner of lessor of the land on which the renewable energy project is to be developed and the developer or project company;
- Financing agreements for debt and equity finance. Project finance is commonly used to finance renewable energy projects.
- Engineering, procurement and construction agreements set out the conditions and responsibilities for the design and construct an entire facility. Both fully wrapped and split EPC structures are common in the South

African market.

- Operation and maintenance agreements between the project company and a professional management company to operate and maintain the facility.
- Power Purchase Agreement between a power producer and off-taker.

10. Are there any restrictions on the export of renewable energy, local content obligations or domestic supply obligations?

Section 7 of the ERA prohibits the generation, transmission or distribution, importation or exportation of electricity without a licence unless a person is exempted in terms of Schedule 2 thereof.

11. Does the regulatory regime include any specific decommissioning obligations? How do these obligations differ across solar, hydropower, wind, geothermal and biomass?

The term “decommissioning” has been replaced with the term “closure”, which means “to take out of active service permanently or dismantle partly or wholly, or closure of a facility to the extent that it cannot be readily re-commissioned.” There is however no general legislative requirement for rehabilitation and decommissioning financial provisions under South African environmental legislation, except for mining and prospecting activities.

As part of REIPPPP, a project is required to make provision for a rehabilitation trust, or decommissioning costs bank guarantee (or a combination of the two), to ensure that the project has sufficient funds to attend to the rehabilitation, so that this burden does not fall on government.

The National Environmental Management Amendment Laws 4, which has not yet come into operation, will require a financial provision for rehabilitation, for activities such as electricity generation.

12. Could you provide a brief overview of the major projects that are currently happening in your jurisdiction?

South Africa recently published the South African Hydrogen Society Roadmap which sets out the process to decarbonise the transport sector and energy intensive industries and become a global role-play in the

production, storage and export of green hydrogen, making clear its intentions to be leader in this field.

The Minister raised the exemption threshold for self-generation facilities from 1MW to 100MW in October 2021. This unlocked significant opportunities for the private sector and will help in bringing forth additional generation capacity and alleviate pressure on the already stressed electricity grid. Further detail is provided on these developments below at 14.

13. Who are the key players that are driving the green renewable energy transition in your jurisdiction?

There are several key role players, including -

- Government in its role of policy developer, and specifically the DMRE as the competent authority to initiate and implement energy policy in South Africa, the DFFE as custodian of the environment and competent authority mandated to address climate change impacts and commitments, and the Department of Trade, Industry and Competition in establishing initiatives such as the Hydrogen Society Roadmap;
- The private sector who are, encouragingly, responding to the developments in energy regulation by actively implementing their respective net-zero strategies by developing and tendering for the establishment of utility size embedded generation renewable energy facilities;
- Civil society, including climate change and environmental activists who are actively involved in commenting, challenging, and holding accountable both government and the private sector to take measures to mitigate the impacts of climate change.

14. Please can you give a summary of the key renewable projects in the pipeline in your jurisdiction?

South Africa recently announced 25 preferred bidders under bid window 5 of REIPPPP which are set to become operational and connect to the national grid by 2024. Bid submissions under window 6 of the REIPPPP will see 1000MW of solar and 1600MW of wind generation capacity procured.

Notable distributed generation projects of up to 100MWs have recently been undertaken by large corporations such as ArcelorMittal SA, Cennergi, the subsidiary of

Exxaro; Anglo American Platinum's Mogalakwena solar facility, and the registration of the first two 100 MW projects following the October 2021 amendment of Schedule 2 of the being developed by the Sola Group for Tronox Mineral Sands.

15. What are the key issues facing the renewables industry in your jurisdiction across solar, hydropower, wind, geothermal and biomass?

Some of the key issues faced by the renewable industry include -

- Limited grid infrastructure and vast distances between which power needs to be distributed is a current. Although this is a national issue, it is being particularly experienced in the Northern Cape province which boasts excellent solar and wind resources.
- There is a developing trend of increased legal challenges to renewable projects, particularly relating to their environmental permits. Often these challenges stem from other renewable energy developers who are competing for the resources, landowners over which the facilities will be located or the transmission infrastructure will traverse, interested and affected parties such as communities or environmental interest groups, with environmental interest groups usually challenging the impacts renewable energy facilities will have on biodiversity such as birds and bats in the wind technology context, or natural resource rights holders who may have gas exploration or mineral prospecting and mining rights over the land identified for a facility.
- Regulatory uncertainty and delays associated with obtaining key regulatory permits have historically been an issue. There have however been commitments by government to address permit delay concerns specifically by allowing for expedited timeframes and increased capacity at government departments.

16. How has the consequences of the Covid-19 pandemic particularly impacted the renewables industry?

The renewables industry has not been immune to the impact of the Covid-19 pandemic.

From March 2020, the social distancing guidelines and lockdown measures, lead to delays in project construction, with many projects under REIPPPP declaring force majeure. Supply chain disruption has also affected and delayed the commissioning of new renewable projects. Restrictions on travel and border closures and prolonged lock downs sharply reduced energy demand. Increased levels of vaccination and herd immunity have seen demand increase to pre-pandemic levels.

17. How do you think the impact of foreign investment and changes in regulation will affect investment in the renewables industry?

Investor confidence in renewable energy industry in South Africa has climbed steadily over the past few years, largely because of the success of REIPPPP.

Regulatory developments such as the ERA Amendment Bill and the increase of the generation license exemption threshold to 100MW, under schedule 2 of the ERA, is likely to spur increased investment. The increase in exemption threshold to 100MW has encouraged investment in larger scale embedded-generation facilities, especially for energy intensive sectors, such as the natural resources sector. There has also been an increase in international energy developers and investors looking to enter the South African market as opportunities are becoming increasingly available. Increased investment; overall investor confidence; and the global move towards ESG-backed and green-financing transactions will go a long way to alleviate the strain on the already constrained electricity grid and bolster economic development.

18. How has your jurisdiction performed against its commitments as part of the Paris Agreement?

South is a party to the United Nations Framework Convention on Climate Change and has committed to a just transition approach to its commitments under the Paris Agreement. As part of its commitments to work towards limiting the aggregate global temperature increase to 1.5 degrees, South Africa unilaterally submitted its enhanced Nationally Determined Contributions (**NDC**) ahead of COP26. South Africa's Climate Change Bill, which has been tabled in Parliament, will be South Africa's climate change framework legislation, setting a legal basis for further action, including mandatory second and subsequent phases of the carbon budget programme, as well as the

establishment of sectoral emissions targets, which in of themselves are likely to drive heavier emitters transitioning to cleaner energy sources.

19. How has the government used COP26 as an opportunity to drive the green energy transition?

South Africa used the COP 26 platform to secure an ambitious and progressive finance and adaptation package of R131 billion from developed nations (including France, Germany, the United Kingdom, and the United States of America) to help South Africa with achieving a just and inclusive transition to green energy.

20. How is the government stepping up its commitment as a part of the COP26 agreement?

After COP 26, the President of South Africa established the Presidential Climate Finance Task Team whose mandate is to -

- analyse the offer with a view to advising cabinet on its composition, affordability, alignment with our regulatory environment, engage with partner countries; coordinate relevant government departments, development finance institutions, and the private sector; and
- oversee the development of relevant financing mechanisms and facilities to enable the flow of international climate finance to support South Africa’s just transition in the electricity, electric vehicles, and green hydrogen sectors.

It remains to be seen which key regulator will oversee the implementation of the spending of the funding raised at COP 26.

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