



Legal framework in the area of the use of renewable energy sources in Kazakhstan

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General

The Republic of Kazakhstan is among the world leaders in the variety and quantity of mineral resources. As the most significant among those for the country's economy are oil and gas, coal and other ore minerals, which is why the legal framework in these economic sectors is so well-developed, historically the government has been less focused on the development of alternative energy sources. For instance, at present the majority of power stations in Kazakhstan run on natural gas, coal or oil derivatives.

However, the recent crisis in the world economy and the awareness of the need to reduce the energy intensity of the economy and the environmental impact have led the leadership of the country to actively focus on the creation of favorable conditions for the use of renewable energy sources ("RES").

Based on the studies on these matters, the president of the Republic of Kazakhstan approved the State Program of Boosted Industrial and Innovative Development of the Republic of Kazakhstan in 2010 – 2014 (the "**Program**") on 19 March 2010. The Program confirms the significant potential of RES, such as water, wind and solar power in Kazakhstan in the short-term and medium-term perspective. In particular, according to Kazselenergo Research Institute, Kazakhstan holds first place in the world in terms of the potential of its wind power resources per capita, which, undoubtedly, has an effect on the nature of RES projects¹ currently implemented in the country. Moreover, despite the geographic position of Kazakhstan, the solar energy resources in the country are stable and acceptable thanks to its favourable climatic conditions. Studies show that the solar energy potential in the southern regions of the country is 2,500 – 3,000 sunny hours per year.

Yet, it should be noted that as of today there are relatively few alternative energy projects, which are mostly implemented in the area of wind and water power. In 2010 – 2011 the Merke HPS and the first and the only wind power station were put into operation,² and in 2012 the only power plant, which operates on solar energy started functioning.³ Following

1 http://gisee.ru/articles/foreign_politics/27653/

2 In 2010 the 1.5 MW Merke HPS-3 was put into operation. The construction of the first phase of the 1500 kW Korday WPS, Zhambyl region, in December 2011 was the first wind energy project implemented in Kazakhstan. (http://www.kt.kz/rus/energetics/v_zhambilskoj_oblasti_vvedena_v_ekspluataciju_pervaja_ocheredj_kordajskoj_vetroelektrostantsii_1153548724.html)

3 The first phase (504 kW) of the Otar solar power station, the only one in Kazakhstan, was put into operation in the same Korday region at the end of 2012 (<http://www.zakon.kz/4557624-gidrojelektrostantsija-postroennaja-na.html>)

the construction of the first large wind power station (“**WPS**”)⁴ in Yerementau, Akmola region, in 2014, several dozen of WPSs⁵ will be constructed in the southern and central regions of Kazakhstan.

The main hydropower potential is in the Almaty region. Eleven hydropower stations (“**HPS**”)⁶ are planned to be built there by 2020. In addition, HPSs will be constructed in the East Kazakhstan, Zhambyl and South Kazakhstan regions.

The Program envisages that by 2015 the share of RES in total electric power consumption should exceed 1%.⁷ The concept of the transition of the Republic of Kazakhstan to a “green economy” (the “**Concept**”),⁸ setting out the goals and objectives and the main principles and general approaches to the transition to a “green economy”, provides that the development of renewable power engineering in Kazakhstan should proceed via the construction of wind and solar power stations with the share of such power stations in total electric power generation to reach 3% in 2020 and 10% in 2030.

For the purpose of implementing the above large-scale project and achieving those goals, the state is taking active steps to make RES more attractive to investors.

The concept of RES

Under Kazakhstan law, RES mean:

- sources of energy which are renewable through natural processes, including:
 - the energy of solar radiation energy;
 - wind energy;
 - the hydrodynamic energy of water;
 - geothermal energy (the heat of soil, ground water, rivers and water bodies); and
- man-made sources of primary energy resources:
 - biomass;
 - biogas; and
 - other fuels from organic waste used in electric and/or thermal power generation.

Legislation in the area of RES use

In general, matters related to electric and thermal power transmission and consumption are regulated by the Electric Power Law.⁹ The principles of relations in the area of support for the use of RES were first set out in the RES Law.¹⁰

Certain matters in the area of the use of RES are regulated by other legislative acts, such as the Land Code,¹¹ the Water Code,¹² the CAO¹³ and the Natural Monopolies Law.¹⁴ Issues arising in the area of biofuel production and turnover are regulated by a special law.¹⁵ In addition, there are some by-laws regulating certain matters related to the use of RES.

For the purposes of further development of RES and exchange of experience with the world community, Kazakhstan has acceded to the International Renewable Energy Agency (IRENA) and ratified its charter made in Bonn on 26 January 2009.¹⁶

4 Its capacity will be 45 MW.

5 For instance, three WPSs will be constructed in 2014 – 2018 in the Almaty region; the most powerful WPS (300 MW) will be constructed in 2015 – 2020 in the Karagalinsky rayon, Actobe region; the next phases of the Korday WPS (10 WPSs of 21 MW total capacity) and the Zhanatas WPS (100 MW) will be constructed in Zhambyl region by 2015; WPSs will be operational in Karaganda, Kostanay, East Kazakhstan and Mangistau regions in 2015.

6 The largest one (60.8 MW) to be constructed on the Shelek River.

7 The current share of RES in total power generation in Kazakhstan is 0.4%. The RES share in world heat generation is 24% and 18% in electricity generation. In Russia, the share of RES in electricity generation, without large HPS, is approx. 1%, and approx. 2% in thermal power. In Belarus, the aggregate share of RES in total production is 5%; in the USA it was 11.4% in 2010 and in Germany it was 20% in 2013.

8 Approved by the Presidential Edict “Concerning the Concept of the Transition of the Republic of Kazakhstan to a ‘green economy’”, No. 577 dated 30 May 2013.

9 The RK Law “On Electric Power”, No. 588-II dated 9 July 2004 (the “**Electric Power Law**”).

10 The RK Law “On support of the use of renewable energy sources”, No. 165-IV ZRK dated 4 July 2009 (the “**RES Law**”).

11 The RK Land Code, No. 442-II dated 20 June 2003 (the “**Land Code**”).

12 The RK Water Code, No. 481-II dated 9 July 2003 (the “**Water Code**”).

13 The RK Code of administrative offences, No. 155-II dated 30 January 2001 (the “**CAO**”).

14 The RK Law “On natural monopolies and regulated markets”, No. 272-I dated 9 July 1998 (the “**Natural Monopolies Law**”).

15 The RK Law “On the state regulation of biofuel production and turnover”, No. 351-IV ZRK dated 15 November 2010.

16 The RK Law « On the ratification of the Charter of the International Renewable Energy Agency (IRENA)», No. 82-V ZRK dated 22 March 2013.

In July 2013, the RES Law and some other legislative acts were amended to modify the system of electric power procurement from RES-using producers (the “**Suppliers**”) (see below). These amendments will become effective on 12 January 2014.

Competent Authorities

In 2013, the functions of the authorized agency in the area of state support for the use of RES were transferred to the Ministry of Industry and New Technologies (the “**MINT**”); however, the MINT retained the function of supervision of the connection of RES-using facilities to the electric or thermal networks of power transmitting entities in accordance with the electric power legislation of the Republic of Kazakhstan.

Local governments are responsible for certain functions in the area of the use of RES, including the approval of construction projects in respect of facilities using RES for the generation of thermal energy to be delivered to the centralized heat supply system, and the reservation and allocation of land for the construction of RES-using facilities.

In September 2013 at the plenary session of the Eurasian Forum of Emerging Markets “Eurasia in the XXI Century: Leadership through Renovation”, the president of the Republic of Kazakhstan authorized the establishment of a separate agency for pure energy. Also, that agency was authorized to establish a fund for the support of alternative energy projects, to promote the creation of power servicing companies and to provide business entities with incentives for energy saving (including rewards for implementing energy saving

programs). As of the date hereof, there is no information on how this authorization has been implemented.

State support of RES development

For the purpose of RES development, the state has provided entities operating in this area with a broad spectrum of benefits and privileges, the most important of which are described below.

Obtaining the right to carry out activities in the area of the use of RES

Starting from 2012, the generation, transmission and distribution of electric and/or thermal power, as well as the operation of electric stations, electric grids and substations and the use of RES proper, are not licensed activities. However, the purchase of electric power for the purpose of power supply requires a license.

Use and sale of electric and thermal power

New and reconstructed RES-using facilities have a right to free and indiscriminate access to the nearest outlet of the electric or thermal grids of power transmitting organizations.

Power transmitting organizations are required to provide Suppliers with free access to the transmission of electric and thermal power through the grids, provided that the Suppliers are exempt from payments of fees for the transmission of electric and thermal power to the power transmitting organizations.

Electric power

If previously regional electric grid companies to whose electric grids RES-using facilities were directly connected were required to purchase the full amount of electricity directly from qualified power generating organizations using RES, from 12 January 2014 power will be purchased from such Suppliers by a special financial settlement center (the “**FSC**”).

In accordance with the RES Law, a power purchase contract with the FSC must be valid for 15 years.

Suppliers may, at their discretion, sell generated electric power using one of the following options:

- 1) to the FSC at a fixed tariff indexed for inflation in the procedure determined by the Government of Kazakhstan;
- 2) to customers at negotiable prices.

Suppliers selling power to customers at negotiable prices may not sell generated power through the first option.

The FSC will sell generated power to the so-called “conventional customers” (the “Conventional Customers”), which mean:

- power generating organizations using coal, gas, oil products and nuclear fuel;
- electric market participants acquiring electricity outside the Republic of Kazakhstan;
- hydro-electric power stations located in one hydro-electric power complex with capacity of over 35 MW.

Thermal power

Sale and purchase contracts in respect of thermal power generated from RES are made for a period not shorter than the pay-back period of a project for the construction of a RES-using facility.¹⁷

All thermal power generated from RES to be delivered to a centralized thermal supply system of a populated locality is acquired by the power supply organizations of such locality. Costs of thermal power generated from RES are included in the tariff of the power supply organization.

Suppliers selling thermal power are exempt from paying the thermal power transmission fees of the power transmitting organizations.

Tariffs

The amendments made in July 2013 introduced a system of fixed tariffs for the FSC's purchase of electric power from the Suppliers. Such fixed tariffs will be approved by the Government of the Republic of Kazakhstan for a period of fifteen years separately for each type of RES enjoying state support. Support is provided for a particular type of RES to power generating organizations by creating conditions for marketing generated power. Approved fixed tariffs are subject to annual indexation for inflation in the procedure determined by the Government of the Republic of Kazakhstan. As of the date hereof, no indexation procedure has been approved.

The FSC sells electric power to Conventional Customers at the RES support tariff in accordance with the area of electric power consumption. An electric power purchase contract must be executed annually.

Tariffs for thermal power are generally established subject to tariff ceilings provided for by the Natural Monopolies Law.¹⁸

Allocation of land for RES-using facilities

Land for RES-using facilities is referred to as "energy land" and allocated in accordance with the general procedure set out in the Land Code.

Land for the construction of RES-using facilities is reserved and allocated to an investor by local governments or regions, cities of republican significance and the capital city in accordance with the Allocation Plan for RES-using Facilities approved by the MINT.

In addition, in some instances, land for RES facility construction may be allocated from the water fund lands in accordance with the Water Code.

Investment preferences

In accordance with the Investment Law,¹⁹ investment preferences are granted via an investment contract made with the authorized agency (MINT) in accordance with the list of priority types of activities or the list of strategic investment projects approved by the Government of the Republic of Kazakhstan.

Priority types of activities qualifying for investment preferences include, inter alia, the generation, transmission and distribution of electricity.²⁰

An investor may be granted the following investment preferences:

- exemption from customs duties;
- government in-kind grants;
- land and property tax benefits for legal entities implementing strategic investment projects;
- industrial benefits for legal entities implementing strategic investment projects in populated localities with a low level of social and economic development.

Exemption from customs duties

Exemption from customs duties is granted to Kazakhstan legal entities implementing an investment project or a strategic investment project under an investment contract with the MINT:

- in the case of the import of production equipment and spares – for not more than five years from the date of contract registration;
- in the case of the import of spares for production equipment and raw materials – for not more than five years from the date of commissioning assets (depending on the amount of investments in assets).

The customs authority must be notified of the MINT's decision to grant an exemption from customs duties to the project within five business days.

17 The pay-back period is determined in the feasibility study and the RES facility construction project prepared by the investor and to be approved by the state sanitary and epidemiological authorities, state energy supervision authorities, local governments or another authorized agency.

18 A tariff ceiling is the maximum value of the tariff applicable to the regulated service of a natural monopoly approved for a medium-term or long-term period.

19 The RK Law "On investments", No. 373-II dated 8 January 2003 (the "Investment Law").

20 The Resolution of the RK Government «On certain matters related to the implementation of the Republic of Kazakhstan Law "On investments" No. 436 dated 8 May 2003.

Government in-kind grants

An investor may be provided with the following government land grants: land plots, buildings, structures, machinery and equipment, computing equipment, measuring and control instruments and devices, vehicles (except cars), production and other tools.

Such grants are provided for temporary free of charge use or temporary free of charge use of land with subsequent free of charge transformation into ownership or land use.²¹

The maximum size of a government in-kind grant assessed at its market value may not exceed thirty percent of the amount of investments in the fixed assets of a Kazakhstan legal entity. If such amount is exceeded, the recipient may receive the requested property by paying the difference between its assessed value and the maximum size of the government in-kind grant.

The MINT provides government in-kind grants upon an agreement with the relevant authorized agencies for state property and/or land management and local governments.

Land and property tax benefits for legal entities implementing strategic investment projects

Land and property tax benefits are provided to legal entities implementing a strategic investment project, provided that such project: (I) qualifies for priority types of activities; (II) has a "high added value"; and (III) is either designed to produce high technology products (as defined by the Government of the Republic of Kazakhstan), or if the amount of investments is higher than the threshold level (approximately US\$57 million in 2013).

The current list of strategic investment projects does not include projects of electric power generation using RES. Therefore, the inclusion of each separate project requires approval by the Government of the Republic of Kazakhstan

Partial cost refund

Partial refund of the costs of the acquisition of gas and electricity, as well as the acquisition of land and construction of facilities, may only be granted to entities implementing "strategic investment projects" in populated localities with a low level of social and economic development (as determined by the Government of the Republic of Kazakhstan).

Taxation

The Tax Code does not provide any special tax treatment or additional benefits for activities related to the use of RES. However, from 1 January 2014 R&D conducted in the area of RES will be included in the list of types of activities which meet the goals of creating a special economic zone or an "Innovative Technology Park." Hence, organizations carrying out the relevant activities in the territory of such special economic zone may be granted certain tax benefits, subject to a number of conditions.

²¹ The MINT adopts a decision to transform the provided government in-kind grant into ownership or land use upon the expiry of the investment contract subject to the investor's fulfillment of its investment obligations.



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Notes

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