

Current laws and regulations governing the electricity sector, with desirable enhancements

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Outline

- I. LEGAL FRAMEWORK**
- II. DESIRABLE ENHANCEMENTS**

LEGAL FRAMEWORK

- ❖ Main applicable legislation
- ❖ New Legislation - Law 462 dated September 2, 2002 and its amendments

Decree 16878/1964

(currently applied)

- Decree 16878/1964 founded Electricity of Lebanon (EDL-Electricité du Liban) which is an autonomous state-owned power utility, with an industrial and commercial vocation, under the control of the Ministry of Energy and Water.
- **EDL** currently has the responsibility to **produce, transmit and distribute** electrical energy in Lebanon. It has monopoly over the production of energy in the Lebanese electricity sector. Few exceptions: the Litani River Authority - hydroelectric power plant owned by a public company; concessions for hydroelectric power plants; etc.

New Legislation: Law 462 dated September 2, 2002 (not yet implemented)

Reasons behind adopting the law

- The Lebanese government's wish to follow the advice given by the World Bank to regulate and restructure the electricity sector and increase the participation of the private sector.
 - Challenges currently facing the electricity sector in Lebanon: rolling blackouts and ineptitude of EDL in addressing energy shortfalls; financial deficit (EDL heavily subsidized by the Lebanese government which has a limited budget, low collection of electricity bills, etc.); EDL's infrastructure which needs to be modernized; human resources challenges; many interest groups resisting change; etc.
- > need to optimize the current electricity system, build new power plants during the upcoming years...

New Legislation: Law 462 dated September 2, 2002 (2)

❖ **Objectives of the law:**

The law aims to unbundle Lebanon's power sector and create an independent regulatory authority for the sector.

❖ **How to reach these objectives?**

Public-private partnerships/privatization.

New Legislation: Law 462 dated September 2, 2002 (3)

Main provisions:

I. Privatized Companies:

- The law provides the possibility to establish, pursuant to a decree taken by the Council of Ministers, one or more joint-stock companies “Privatized Companies” **initially fully owned by the Lebanese government or public law persons**, with the subject of performing all or a few of the **production** and **distribution** functions after obtaining a license.

Notes:

1) Shares:

Privatized Companies are subject to the provisions of the Lebanese commercial code (LCC) with the exception of article 78 of LCC which requires that 1/3 of the capital shares of Lebanese joint stock companies having as subject the exploitation of public utilities are nominative and owned by Lebanese, and only permits the transfer of such shares to Lebanese; and whatever this law does not stipulate.

- > Law 462/2002 stipulates that all the shares of a Privatized Company should be **nominative** (including in-kind contributions), **can be instantly circulated** and can be fully **owned by non-Lebanese**.

New Legislation: Law 462 dated September 2, 2002 (4)

2) Capital/ Assets & Liabilities/Registration Fees:

A decree

- Determines the capital of each Privatized Company (which can be in a foreign currency) as well as the assets and liabilities that need to be transferred; and
- Ratifies the statutes proposed by the board

3) Board of Directors (BoD):

- As long as the Lebanese Government or public law persons own the Privatized Company, the BoD is designated by the Council of Ministers.
- Following the partial or full privatization of the Privatized Company, the BoD is designated by the Privatized Company's General Assembly (without any restrictions regarding the nationality of the members of the BoD), provided the government is represented by one member at least appointed by the Council of Ministers as long as the government is participating in the capital of the Privatized Company.
- If a non-Lebanese is the President of the BoD, s/he is exempted from the obligation of obtaining a work permit.

4) Exemptions: notary public fees returning to the government; registration fees due to the commercial register; taxes and duties due for the transfer of in-kind contributions as long as its shares are totally owned by the government or any public person; from the obligation of appointing an additional auditor.

New Legislation: Law 462 dated September 2, 2002 (5)

- The government, within a period not exceeding two years as from the date of founding any privatized company, can sell a percentage of shares, not surpassing forty percent (40%), to private investors (strategic partners) expert in the field through an international tender.
- The Council of Ministers must set the date when the remaining shares owned by the Lebanese government will be sold to private investors.

New Legislation: Law 462 dated September 2, 2002 (6)

II. National Electricity Regulatory Authority (NERA):

- Established to organize and control the electricity affairs;
- Constituted of a president and 4 full-time members of Lebanese nationality, appointed for a non-renewable or extendable five years period by a decree taken in the Council of Ministers upon the proposal of the Minister;
- Enjoys legal personality and technical, administrative, and financial independence;
- Has the ability to issue licenses effective for fifty years through public tenders or offerings for the purpose of producing and distributing electricity;
- Makes accessible to the public all data, documents, records and statements as well as publishes a statement of its assets/liabilities and the summary of its budget in the Official Gazette and at least two local daily newspapers at the end of each fiscal year.

New Legislation: Law 462 dated September 2, 2002 (7)

III. Independency principles of electricity production, transmission and distribution activities

- The activities to the production, transmission and distribution of electricity are independent functionally, administratively and financially from each other.
- Such independence should not prevent EDL, after being converted into one or more privatized companies, from being able to perform more than one of the three activities.

Amendments to Article 7 of Law 462/2002: (NERA replaced by the Council of Ministers)

- **Law 775 dated November 11, 2006:** Empowered the Council of Ministers to grant temporary permits and licenses to produce electricity upon the proposal of the Minister of Energy and Water, for only one year (i.e. until NERA is established).
- **Law 288 dated April 30, 2014:**
Empowered the Council of Ministers to grant temporary permits and licenses to produce electricity upon the proposal of the Minister of Energy and Water as well as Minister of Finance, **for two years** (i.e. until NERA is established).
-> The Ministry of Energy and Water did not grant any permits or licenses until Law 54/2015.
- **Law 54/2015:** Extended the application of Law 288/2014 until 30/4/2018.

The pass from Legislation to Law

- EDL is still functioning in compliance with Decree 16878/1964.
- Law 462/2002 was never implemented (NERA was never constituted).
- The implementation of law 462/2002 by 2018 in accordance with the provisions of law 54/2015 is crucial. It will allow:
 - the establishment of NERA (an independent entity);
 - the collaboration between the public and private sector in the production of energy; and
 - the diversification of the providers of electricity in Lebanon.

DESIRABLE ENHANCEMENTS

- Put in place a mechanism to execute the provisions of Law 288/2014 and Law 54/2015 in order to allow private entities to build factories for the production of renewable energy.
- Issuing laws encouraging the production of renewable energy (Feed-in Tariff); increasing efficiency in using energy sources and energy (Energy Efficiency law).
- Establishing laws encouraging investments in the renewable energy sector by providing exemptions from taxes.
- Diversification of energy sources strategy (e.g. replacing fuel by renewable energy resources such wind, solar, hydro resources, etc.)

THANK YOU - QUESTIONS

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