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Egypt: Trends and Developments

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Trends and Developments

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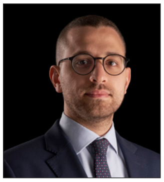
Matouk Bassiouny & Hennawy was established in 2005 and has since developed into a premier full-service business law firm in Egypt and the MENA region with offices in Algeria, Sudan, the UAE, and a country desk covering Libya. Its over 180 lawyers are trained locally and internationally in common and civil law systems and are fully conversant in English, Arabic and French. The firm's finance and projects group – headed by regional managing partner and group head of finance and projects Mahmoud S Bassiouny – represents numerous clients in the energy sector, focusing on areas such as renewable energy, oil and gas, power, nuclear power, gas pipelines, and transmission and distribution assets.

Authors

Mahmoud S Bassiouny is the regional managing partner of Matouk Bassiouny & Hennawy and heads the finance and projects practice group as well as the firm's energy and water and public procurement departments. He has over 20 years of experience in trade and project finance and in the energy and infrastructure sectors, which has earned him the trust of international commercial banks, export credit agencies and major players in the energy industry. He also has excellent working relationships with conventional and Islamic financiers working in Egypt and the region.

Nadia Abdallah is a counsel at Matouk Bassiouny & Hennawy. She has worked on several project finance deals, as well as on banking, due diligence, and general corporate and commercial matters. Nadia's practice focuses on banking, energy, project finance and mining, the establishment of corporate entities, giving advice on daily matters, organising and drafting the minutes of meetings, and drafting various contracts to meet the specific needs of clients.



Amgad Nagy is an associate in Matouk Bassiouny & Hennawy's finance and projects group. Amgad's areas of expertise cover oil and gas as well as the renewable energy field through drafting, reviewing, and negotiating power purchase agreements, EPC contracts, and other related project documents. He is also involved in the drafting and negotiation of facility agreements, finance documents, security documents, authorisation reports, and term sheets, and with the registration of joint stock companies in the depository system.

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The Development of Green Hydrogen Projects and the Relevant Regulatory Framework

Introduction

The Arab Republic of Egypt ("Egypt") is a prime location for renewable energy projects due to its sunny weather, high wind speeds, and abundance of land. For the purpose of becoming a green energy hub, Egypt has expressed its intention to increase the quantity of electricity generated from renewable resources to 42% of the total power generated by 2035; of which wind power is expected to make up 14%, hydropower 2%, photovoltaic (PV) 22%, and concentrated solar power (CSP) 4%. Under this plan, most of this capacity is expected to be delivered by the private sector.

During COP27 held in Sharm El-Sheikh in November 2022, Egypt – acting through the New and Renewable Energy Authority (NREA), the Egyptian Electricity Transmission Company (EETC), the General Authority for Suez Canal Economic Zone, and TSFE Infrastructure & Utilities Sub Fund – signed nine framework agreements with several national and international investors for the purpose of installing and operating green hydrogen and ammonia plants. Such agreements reflect the country's efforts to attract foreign investment into green hydrogen production.

Green hydrogen is hydrogen generated by renewable energy or from low-carbon power. Green hydrogen is therefore produced through a hydrogen production facility that utilises green electricity to convert desalinated water into hydrogen. Accordingly, the construction of renewable energy plants, including wind farms and photovoltaic plants, is required to feed such facility.

This article aims to provide a general overview of the legal framework applicable to renewable energy in Egypt with specific focus on the current incentives related to green hydrogen projects.

Legal framework of renewable energy

Regulatory authorities

EgyptERA: the Egyptian Electric Utility & Consumer Protection Regulatory Agency ("EgyptERA") is a public authority independent of the electric utility parties that aims to regulate, follow up, supervise and develop all matters relating to electricity, whether generation, transmission, distribution or consumption, in a manner ensuring its availability and quality. EgyptERA is competent to approve the granting, renewal, suspension and cancellation of the permits and licences required to carry out all electricity activities set forth under Electricity Law No 87 of 2015 (the "Electricity Law").

Pursuant to Article 13 of the Electricity Law, it is prohibited to undertake generation, distribution or sale of power without obtaining the relevant licence from EgyptERA.

EETC: this is a joint stock company fully owned by the state and independent of other electricity companies and electric utility parties. EETC exclusively carries out transmission activities and operation of the grid. Pursuant to Article 34 of the Electricity Law, EETC undertakes the purchase of the power necessary for assisting services, that is, the services procured from electricity production companies for safe and stable operation of the transmission network, including the provision of energy required to make up for electricity losses and to control voltage, and other alternative production capacities, etc.

NREA: this is an economic public authority with a juristic personality and it is subordinated to the Egyptian Minister of Electricity & Renewable Energy. NREA aims to improve and develop renewable energy resources in light of the state's strategy regarding the power field.

NREA has the right to execute, operate, and maintain renewable power generation projects either by itself or through third parties, for its benefit or the benefit of third parties, in addition to selling the generated power from such projects to third parties. NREA may incorporate joint stock companies solely or in co-operation with other participants, subject to the approval of the Minister of Electricity.

Contracting methods

Article 2 of the law on encouraging power generation from renewable energy, No 203 of 2014 (the "Renewable Energy Encouragement Law") lists four contracting methods:

- Bidding process by NREA – contracting is through a bidding process by NREA for the purposes of establishing renewable energy power plants. The power produced is sold to EETC taking into consideration the price suggested by EgyptERA based on a study submitted by NREA and approved by the Cabinet.
- Bidding process by EETC – contracting is through a bidding process by EETC for the building, owning, and operating of renewable energy power plants. The power produced is sold to EETC, pursuant to the conditions and process agreed between EETC and the investor.
- FiT programme – under this scheme, investors may build, own and operate renewable energy projects and sell electricity to EETC or other licensed distribution companies by virtue of a power purchase agreement, subject to the feed-in tariff for a period not exceeding 25 years, depending on the nature of the project. The state is bound by the feed-in tariff value for a period of not less than two years or until achieving the target capacity from renewable energy, whichever is earlier. In any case, the agreed feed-in tariff is fixed for the lifetime of the contract and any changes made thereto by the Cabinet only apply with immediate effect (rather than retroactively) to contracts which have yet to be entered into.
- Direct contract with the consumers – an investor may directly enter into bilateral contracts with power consumers to sell the power generated from renewable energy to such consumers, using the transmission and distribution grid, in accordance with the contracted price and duration.

Incentives related to green hydrogen projects

In light of the government's direction to attract investment into Egypt, Investment Law No 72 of 2017 (the "Investment Law") was issued, providing several incentives for projects subject to its provisions. This section sets out an overview of the incentives applicable to green hydrogen projects in accordance with the Investment Law, as well as Special Economic Zones Law No 83 of 2002 (the "SEZ Law").

Investment Law incentives

The Golden Licence

Pursuant to Article 20 of the Investment Law, the Cabinet may grant companies incorporated in order to carry out strategic or national projects relating to, among others, renewable energy activities, one approval (the "Golden Licence") for the incorporation, operation, and management of the project, including the construction permits and allocation of the real estate properties required for the project. The Golden Licence is effective without the need for undertaking any other procedure.

Cabinet Decree No 56 of 2022 (the "Cabinet Decree") lists the requirements for obtaining the Golden Licence in respect of Article 20 of the Investment Law.

Pursuant to Article 1 of the Cabinet Decree, in order for an investment project to be deemed as strategic or national in respect of Article 20 of the Investment Law, it must satisfy two or more of the following criteria:

- it must contribute to increasing exports by exporting at least 50% of its products abroad annually, within a maximum period of three years from the date of starting the activity;
- it must depend on foreign exchange transferred from abroad through an Egyptian bank for the financing of the project, in accordance with the provisions of Article 6 of the Investment Law and Article 9 of its executive regulation, as well as the standards determined by the board of directors of the Central Bank of Egypt;
- it must aim to reduce imports, localise the industry and increase the local component in its products, so that 50% or more of the raw materials and production requirements in its products are local, provided that this percentage is calculated by deducting the value of the imported components from the cost of the product;
- it must be carried out in one of the areas most in need of development, as specified in Cabinet Decree No 7 of 2020;
- it must contribute to the transfer and localisation of modern and advanced technology to Egypt, and support innovation, development and scientific research, as determined by the Minister of Communications and Information Technology, the Minister of Trade and Industry, or the Minister of Higher Education and Scientific Research, as the case may be;
- it must aim to secure strategic goods for the country and limit imports;
- it must intensively utilise national labour, in accordance with the concept stipulated under Article 11 of the executive regulation of the Investment Law; or
- it must contribute to reducing environmental impact – reducing heat and gas emissions, and improving the climate – as estimated by the competent Minister of Environmental Affairs.

Article 2 of the Cabinet Decree lists the fields in which the Golden Licence can be granted, which include the electricity and renewable energy sector, specifically green hydrogen projects, whether relating to production, transportation, storage, distribution or exportation.

General incentives

All investment projects subject to the provisions of the Investment Law enjoy the general incentives incorporated therein, except for those established under the free-zones regime.

Pursuant to Article 10 of the Investment Law, investment projects benefit from exemptions on stamp duty as well as on the authentication and notarisation fees applicable to:

- the incorporation of companies and establishments, credit facility agreements and relevant mortgages, for a period of five years from the date of registration in the commercial register; and
- the land registration contracts necessary for incorporating companies and establishments.

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It is worth noting that a unified custom tax rate of 2% is applicable to companies and establishments subject to the Investment Law with regard to all the imported machinery, equipment and devices necessary for their establishment. The unified rate applies to all imports by companies and establishments operating in public utility projects, such as the machines, equipment and devices necessary for their establishment or completion.

Special incentives

Pursuant to Article 11 of the Investment Law, projects that rely on, or produce, new and renewable energy will receive an investment incentive in the form of a 50% discount off taxable net profits, to the extent that the project is established within sector (A), being the geographic areas requiring the most development in respect of the data and statistics issued by the Central Agency for Public Mobilisation and Statistics; and a 30% discount for sector (B), covering the remaining geographical areas within Egypt. Such incentive may not exceed 80% of the paid capital of the project company and may be granted for a period of up to seven years from the starting date of operations.

However, in order for a project to benefit from the incentive listed under Article 11, the following conditions must be fulfilled:

- A new company or establishment must be incorporated to carry out the investment project.
- The incorporation of such new company or entity must be within a period of three years from the date of coming into force of the executive regulations of the Investment Law, subject to renewal for a similar three-year period. By virtue of Decree No 22 of 2020, the Cabinet has further extended the period for three years, starting from 29 October 2020.
- The newly incorporated company or entity must keep regular accounting books and if the company or establishment operates in more than one area (sector (A) or (B) elaborated above), it may benefit from the percentage prescribed for each region, provided that each region has separate accounts.
- None of the shareholders, partners or owners of establishments has provided, contributed, or used in the incorporation or establishment of the investment project enjoying the incentive, any of the material assets of a company or establishment existing at the time of enforcement of the provisions of the Investment Law, or liquidated that company or establishment during the period set out in paragraph 2 of Article 12 of the Investment Law, for the purpose of establishing a new investment project that enjoys the aforementioned special incentives.

Additional incentives

The Cabinet may issue a decree granting additional incentives to the projects listed under Article 11 of the Investment Law (which includes projects that rely on, or produce, new and renewable energy) as follows:

- allowing the establishment of special customs offices dedicated to the project's exports or imports in agreement with the minister of finance;
- the state may incur the expenses paid by the investor, in whole or in part, to connect the utilities to the real estate properties allocated for the project, upon operation of the same;
- the state may incur part of the expenses of the technical training provided for the staff;
- the refund of 50% of the value of the land allocated for industrial projects where pro-

duction starts within two years of the land delivery date; and
- the allocation of lands free of charge for some strategic activities, in accordance with the relevant rules prescribed by law.

Upon a proposal by the competent minister, the Cabinet may issue a decree to introduce new non-tax incentives whenever this is necessary.

Private free-zones regime

According to Article 33 of the Investment Law, the creation of a free zone covering a whole city must be through the issuance of a law. The Cabinet may, based on the proposal of the competent minister subject to the approval of the board of directors of the General Authority for Investment and Free Zones, create general free zones to undertake authorised projects, under any legal form, originally for the purpose of export abroad. The decree relating to the creation of the free zone will specify its location and borders. Furthermore, the Cabinet may, based on the proposal of the competent minster, approve the creation of special free zones limited to one or more projects undertaking similar activities.

Pursuant to Article 41 of the Investment Law, projects located within the free zones are not subject to the provisions of the applicable tax laws in Egypt; in fact, general free zones and private free zones are subject to certain specific fees stipulated under the Investment Law.

Special economic zones incentives

The SEZ Law empowers the board of the relevant special economic zone authority to issue the necessary licences for projects established within the Special Economic Zone (SEZ), including construction and environmental licences, as well as licences relating to the establishment and management of the public utilities and infrastructure. In addition, the SEZ Law also empowers the board with all the powers necessary to establish companies and register the same in the commercial register.

Therefore, a green hydrogen project established under the SEZ regime may enjoy several privileges including the following:

- exemption from taxes and fees relating to revenues from bonds, loans and facilities, as well as any taxes and fees arising out of a merger, demerger, or change in the company's legal form;
- exemption from taxes and customs duties on all machinery, equipment and raw material imported for the purposes of the company's activity;
- freedom to price products;
- the non-revocation of licences for real property, except according to the licence terms; and
- freedom from the need to register items imported for the practice of the activity in the importers register.

It is worth noting that as at the date of preparing this publication, a new draft law setting forth a package of specific incentives related to green hydrogen projects in Egypt has been approved by the government and is expected to be issued soon, subject to the approval of the House of Representatives and ratification by the president of the Republic.

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