

Is Kazakhstan finally ready to attract investments into its electricity sector?



KAZAKHSTAN

By Shaimerden Chikanayev

The capacity market was finally launched on the 1st January 2019 in Kazakhstan to encourage investment for the renovation of old, as well as construction of new, power infrastructure facilities. Because of relevant amendments in the Power Law, all generating companies in Kazakhstan must maintain a specific generating capacity and, correspondingly, the participants in the wholesale power market (such as industrial consumers) have an obligation to pay for the availability of the specific generating capacity.

Any investor in the power sector of Kazakhstan, therefore, can now expect two different sources of income and compensation for expenses:

1. Proceeds from the sale of electric power in the free market under the power purchase agreements (PPAs) within price caps (such as the maximum limits to the prices that power plants can ask for the electricity they produce) approved by the Ministry of Energy, and
2. Proceeds from the sale of capacity of a power plant (such as the availability of its generating facilities to produce electricity) to a designated-by-law single offtaker under the capacity purchase agreements (CPAs), within price caps established by the Ministry of Energy.

Payments under the PPAs would cover the operating expenses of power plants, whereas payments under the CPAs shall cover the capital expenses of investments in new projects and in the modernization of existing power facilities.

The Ministry of Energy will determine annually an anticipated deficit of electric power, as well as develop and approve a promising layout of electrical capacities.

To meet the forecast deficit of electric power, if any, the Ministry of Energy will hold tenders for the construction of newly-commissioned generating plants and sign the so-called agreements for

the construction of newly-commissioned generating plants with the tender winner, fixing the commissioning date of the generating plants and the tender winner's liability for failure to perform or for improper performance according to the terms of the agreement.

Within 30 calendar days after the signing of the aforementioned agreement, the single offtaker must sign the agreement with the tender winner to purchase services to maintain the electrical capacity of the newly commissioned generating plants at a volume and on the terms specified by the Ministry of Energy.

These legal reforms shall, evidently, give impetus to new investments into the electricity sector of Kazakhstan, though there are still certain legal obstacles that may impede the process of attracting foreign direct investments.

The creditworthiness of the proposed single offtaker, in particular, is still questionable. For instance, the law is rather unclear on the enforceability of indirect state guarantee for contractual obligations of the single offtaker under the CPA as currently stipulated in the Power Law.

Moreover, current laws require CPAs and agreements for the construction of newly-commissioned generating plants to strictly follow standard forms that, apparently, can make them not bankable.

It is well known that the Ijarah (leasing) mode of financing is the predominant mode of financing used by Islamic banks to fund independent power producer projects worldwide.

Given the potential of Islamic finance to support infrastructure development in Kazakhstan and that new Kazakh President Kassym-Jomart Tokayev, who was sworn in on the 20th March 2019, said he would continue the policies of his predecessor Nursultan Nazarbayev, Kazakhstan should try to tap global Islamic finance. ☺

Shaimerden Chikanayev is a partner at Grata Law Firm. He can be contacted at schikanayev@gratanet.com.

IFN Country Correspondents

| |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AFGHANISTAN: Manezha Sukhanyar former head of Islamic banking, Maiwand Bank |
| ALGERIA: Dr Ahmed Tahiri Jouti COO, Al Maali Consultancy Group |
| AUSTRALIA: Christopher Aylward partner, Finance and Major Transactions, Madison Marcus Law Firm |
| BAHRAIN: Dr Hatim El-Tahir director of Islamic Finance Knowledge Center, Deloitte & Touche |
| BANGLADESH: M Shamsuzzaman additional managing director, Islami Bank Bangladesh |
| BRAZIL: Fábio Amaral Figueira partner, Veirano Advogados |
| CANADA: Rehan Huda managing director, Amana Canada Holdings |
| CHINA: Wafee Yeung managing director, Allalah Consulting |
| EGYPT: Dr Walid Hegazy managing partner, Hegazy & Associates |
| GERMANY: Ahmet Kudsi Arslan CEO, KT Bank |
| HONG KONG: Wafee Yeung managing director, Allalah Consulting |
| INDIA: Ali M Shervani partner, Consigliori Consultants |
| INDONESIA: Irwan Abdalloh head of Islamic Capital Market, Indonesia Stock Exchange |
| IRAN: Majid Pireh head of Islamic finance group at the Securities and Exchange Organization of Iran |
| ITALY: Stefano Padovani partner & head of banking and finance, NCTM Studio Legale Associato |
| IVORY COAST: Abbas Cherif CEO, Islamic Finance Intelligence and Management |
| JAPAN: Dr Etsuaki Yoshida project associate professor, Kyoto University |
| KAZAKHSTAN: Shaimerden Chikanayev partner, Grata Law Firm |
| KENYA: Mohamed Abdi Shariah manager Islamic Banking- Barclays Kenya |
| KUWAIT: Issam Al Tawari managing partner, Newbury Economic Consultancy |
| KYRGYZSTAN: Daniyar Mamurov consultant, Gateway Islamic Advisory |
| MALAYSIA: Ruslena Ramli head, Islamic finance, RAM Rating |
| MALDIVES: Aishath Muneeza chairman, Maldives Center for Islamic Finance |
| MALTA: Reuben Buttigieg president, Malta Institute of Management |
| MOROCCO: Dr Ahmed Tahiri Jouti COO, Al Maali Consultancy Group |
| NIGERIA: Hajara Adeola managing director and CEO, Lotus Capital |
| OFFSHORE CENTERS: Manuela Belmontes partner, Maples & Calder (Dubai) |
| OMAN: Asad Qayyum senior associate, Al Busaidy, Mansoor Jamal & Co |
| PAKISTAN: Muhammad Shoaib Ibrahim managing director & CEO, First Habib Modaraba |
| PHILIPPINES: Rafael A Morales managing partner, Morales & Lumagui |
| QATAR: Amjad Hussain partner, K&L Gates |
| RUSSIA: Dr Ilyas Zariyov member, Partnership Banking Working Group, Central Bank of the Russian Federation |
| SAUDI ARABIA: Nabil Issa partner, King & Spalding |
| SENEGAL: Abdoulaye Lam president & CEO, Global Islamic Finance & Transactions |
| SRI LANKA: Suresh R I Perera principal, Tax & Regulatory, KPMG |
| TUNISIA: Mohamed Araar General directorate of External Financing and Settlements, deputy director of Private Financing and International Relations Department, Central Bank of Tunisia |
| UAE: Anita Yadav senior director, head of fixed income research, Emirates NBD |
| UK: Suhail Ahmad founder of the Financial Network and partner, Gateway Islamic Advisory |
| IFN Correspondents are experts in their respective fields and are selected by Islamic Finance news to contribute designated short country reports. For more information about becoming an IFN Correspondent please contact sasikala.thiagaraja@redmoneygroup.com |