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# Renewable Energy

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# Expert Analysis Chapter

1

**The Rise of Co-Located Renewable Projects**

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## Q&A Chapters

5

**Austria**Schönherr Rechtsanwälte GmbH:  
Benjamin Schlatter, Christoph Cudlik,  
Jutta Mayer & Sarah Wolf

14

**Brazil**Pinheiro Neto Advogados: Raphael Paciello,  
José Roberto Oliva Junior, Daniel Costa Rebello &  
André Vivan de Souza

23

**Canada**Lawson Lundell LLP: Lana Shipley, Ian Webb &  
Laura Duke

33

**Chile**Claro & Cía.: Nicolás Eyzaguirre &  
Joaquín Garnham Herrera

41

**England & Wales**Bracewell (UK) LLP: Oliver Irwin, Robert Meade,  
Nicholas Neuberger & Adam Quigley

52

**France**

DS Avocats: Véronique Fröding &amp; Stéphane Gasne

63

**Germany**POSSER SPIETH WOLFERS & PARTNERS:  
Dr. Wolf Friedrich Spieth, Niclas Hellermann,  
Sebastian Lutz-Bachmann & Marcus Liedtke

72

**Greece**Sardelas Petsa Law Firm: Panagiotis G. Sardelas,  
George E. Fragkos & Andreas P. Mastroperros

81

**Japan**Nishimura & Asahi: Sadayuki Matsudaira &  
Nobuaki Mori

89

**Malawi**Sacranie, Gow & Company: Shabir Latif, S.C,  
Hamza Latif & Omega Sambakunsi

97

**Mozambique**MDR Advogados: Tiago Arouca Mendes,  
Paula Duarte Rocha & Mónica Moti Guerra

104

**Nigeria**Pavestones Legal: Seun Timi-Koleolu,  
Aderonke Alex-Adedipe, Olawale Atanda &  
Nuratulahi Yishawu

113

**Peru**QA Legal: María Teresa Quiñones,  
Leslie Velásquez Gallo & Sebastián Li Loo

122

**South Africa**Cliffe Dekker Hofmeyr: Tessa Brewis,  
Margo-Ann Werner, Jerome Brink & Alecia Pienaar

132

**Spain**Gómez-Acebo & Pombo Abogados:  
Borja Carvajal Borrero & Ignacio Castellanos Herráiz

140

**United Arab Emirates**

Watson Farley &amp; Williams: Mhairi Main Garcia

152

**Zimbabwe**

Wintertons: Nikita Madya

# Malawi



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## 1 Overview of the Renewable Energy Sector

**1.1 What is the basis of renewable energy policy and regulation in your jurisdiction and is there a statutory definition of 'renewable energy', 'clean energy' or equivalent terminology?**

Renewable energy policy and regulation in Malawi stems from the Malawi Growth and Development Strategy III (MDGS), National Energy Policy 2018 (NEP) and the Malawi Renewable Energy Strategy 2017 (MRES).

The goal of the NEP is to establish a guiding framework including policy and strategic direction for achieving increased access to affordable, reliable, sustainable, efficient and modern energy for every person in Malawi. The NEP emphasises the importance of private sector participation in the energy sector and providing an environment conducive for such participation, in the form of direct investment, public private partnerships (PPPs), independent power producers (IPPs) or other participation vehicles. The NEP further emphasises sustainable and clean energy accessible to all. Energy efficiency is another priority area of the NEP. The objective of the NEP is to increase access to modern, clean, affordable and reliable energy.

MRES sets out the priorities and actions to achieve “Universal access to renewable electricity and a sustainable bioenergy sector” in Malawi, and specifies strategies targeting on-grid renewables, off-grid solar, clean energy mini grids, and bio energy.

The energy sector in Malawi is governed by the Energy Regulation Act, Electricity Act, and the IPP Framework. Renewable Energy is defined in the Energy Regulation Act as “*sources of energy available to mankind arising from natural processes in the interaction between the sun and the earth's surface and regularly replenished and these include the sun as the primary renewable energy resource and the secondary renewable energy resources that derive from the sun including wind energy, hydro, ocean thermal, ocean wave, ocean tidal and electricity from photovoltaic effects, biomass, geothermal, etc.*”.

**1.2 Describe the main participants in the renewable energy sector and the roles which they each perform.**

The Ministry of Energy oversees the energy sector and establishes energy policies and sets strategic direction for the sector.

The Malawi Energy Regulatory Authority (MERA) is the regulatory body mandated to grant licences for electricity generation, transmission, distribution and sale of electricity in the energy sector, as well as issuing the single buyer licence. MERA also regulates electricity tariffs, mediates and arbitrates any disputes falling under its mandate, and oversees the energy sector overall.

The Electricity Supply Corporation of Malawi Limited (ESCOM) is a state-owned entity and is the system market operator, holds the single buyer licence, is responsible for transmission and distribution, and the sale of electricity to the public. ESCOM performs the single buyer function and is mandated to enter into power purchase agreements, grid connection agreements, transmission connection agreements etc. with the IPPs.

The Electricity Generation Company (EGENCO) is a state-owned electricity generation company and is the largest generator of electricity in Malawi.

The Malawi Rural Electrification Programme (MAREP) implements the rural electrification programme and develops and updates the renewable energy master plan considering area specific requirements.

The Malawi Environment Protection Authority (MEPA) reviews the Environmental and Social Impact Assessment and grants project approval.

The Ministry of Local Government is responsible for physical planning and provision of local Authority's land rights, including any land resettlement.

The Ministry of Lands facilitates the acquisition of land for energy infrastructure development.

The National Water Resources Authority (NWRA) is responsible for regulation and management of water resources and issuance of permits for hydro power projects.

**1.3 Describe the government's role in the ownership and development of renewable energy and any policy commitments towards renewable energy, including applicable renewable energy targets.**

Firstly, the Government of Malawi, through the Ministry of Energy, is responsible for policy formulation and implementation, as well as ensuring there are effective energy legislation and policy frameworks in place. The Ministry of Energy has established an IPP framework for private sector development

in the renewable energy sector, to provide a conducive environment and framework for awarding and implementing renewable energy projects in Malawi.

The Government, through the Minister of Finance, provides sovereign guarantees to Independent Power Producers for the development of power generation projects, and is responsible for negotiating the implementation of such projects in Malawi.

The Government has, through the Malawi Revenue Authority, provided tax incentives for priority sector industries, which includes the electricity generation sector.

Through EGENCO, the Government, owns, operates and maintains hydro and solar power plants in Malawi.

Lastly, the Government also enters into PPP agreements for the development of power projects, such as the 350MW Mpatamanga Hydro Power Project. The Government has also awarded IPP projects on a Build Own Operate Transfer basis.

## 2 Renewable Energy Market

**2.1 Describe the market for renewable energy in your jurisdiction. What are the main types of renewable energy deployed and what are the trends in terms of technology preference and size of facility?**

The overwhelming majority of the electricity generation mix in Malawi is dominated by hydropower, which accounts for up to 90% of the entire electricity generation capacity of Malawi, which is mainly produced by EGENCO. However, there are other projects in the pipeline including the 350MW Mpatamanga Hydro which is a World Bank funded PPP, as well as other IPPs such as 8.5MW Mulanje Hydro (operational), 3MW Cedar Energy Hydro (operational), 41MW Mbongozi (under development), among other projects which are available under tender process, consisting of 100MW to 280MW.

Over the last five years, there has been development in solar power plants from IPPs, with the first two projects having been recently completed which are 60MW in Salima, 20MW in Golomoti with 10MW BESS, and 21MW in Nkhotakota under construction and soon to be operational – all of which were solicited IPP projects. There are further projects at various stages of development, most of which are unsolicited projects who have partnered with international developers. These solar projects have been encouraged by the Government due to the Government promoting and encouraging private sector participation through the IPP Framework, offering sovereign guarantees, offering tax incentives, as well as favourable electricity tariffs which provide for viable projects. Recently, the Government has introduced a requirement for all projects to include BESS, citing grid stability.

The Wind sector is an underdeveloped sector in Malawi, with only one project reported to be under development of 50MW as part of the first phase. There is a lack of research and data relating to potential wind sites in Malawi. Further, there are potential opportunities in the wind sector.

Coal has not been used as an energy source for electricity generation, despite the country having proven reserves. The main challenges facing Coal Power Generation is the lack of funding available due to environmental concerns on climate change. However, given the impact the climate has had on hydro, the Government may consider an IPP's investment in a coal fired power plant.

Biomass is not used in the electricity generation sector in Malawi, but remains a major source of energy for cooking, heating and brick burning which exerts pressure on the diminishing resources. There is low adoption of efficient and

alternative technologies that could reduce demand for biomass. There is no biomass energy regulatory framework.

Liquefied Petroleum Gas (LPG), Biogas and Natural Gas as alternative sources of energy for cooking, heating and electricity generation have not been fully exploited. There are, however, challenges that are hindering the uptake of these fuels. These include: lack of awareness, cultural barriers and knowledge on the existence of the fuels; high capital costs for equipment; inadequate technical expertise in; and the design and construction of the systems. There is currently no gas fired power plant in Malawi. However, the Government is open to investment in this sector, and welcomes any such projects.

EGENCO operated diesel power plants that were used as standby or emergency power supply to compliment the main hydroelectricity power-grid. EGENCO has decommissioned most of these plants due to environmental concerns as well as viability due the tariffs for diesel powered generators.

Nuclear energy has not been used for electricity generation despite the country having uranium deposits. The Government intends to formulate a capacity building programme in nuclear science in consultation with the International Atomic Energy Agency. The intention is to build adequate capacity to have the first nuclear power plant running by 2035. However, not much progress has been made.

**2.2 What role does the energy transition have in the level of commitment to, and investment in, renewables? What are the main drivers for change?**

As per the National Energy Policy of 2018, the Government of Malawi has made efforts towards the implementation of programmes, projects and activities in the energy sector with the aim of increasing access to affordable, reliable, sustainable, efficient and modern energy services for every person in the country. This policy reflects the latest developments in the energy sector and new national goals. The main driver for change to renewable energy is due to the low electrification rate of 12.4% and the demand thereof, as well as the impact of climate change which has adversely affected the country's main source of energy and hydro, which has over the years been affected by drought and flooding, as well as cyclone damage. Further, the need to reduce the use of biomass (charcoal) is another driver for change. The National Energy Policy of 2018 aims at reducing the contribution of biomass in the energy mix by promoting development and the use of renewable/sustainable energy sources, as well as diversifying the energy mix away from hydro.

**2.3 What role, if any, has civil society played in the promotion of renewable energy?**

As required by the National Energy Policy 2018, Civil Society Organizations (CSOs) have worked in collaboration with the Government of Malawi to advocate for and implement energy specific interventions notably on alternative energy and energy efficiency technologies.

**2.4 What is the legal and regulatory framework for the generation, transmission and distribution of renewable energy?**

There is no legislation specific to renewable energy in Malawi. The legal and regulatory framework for the generation, transmission and distribution of energy in Malawi is largely the same as for renewable energy, given that the energy mix in Malawi

is predominantly renewable based and the lack of energy from fossil fuels/non-renewable resources, and is governed by the Energy Regulation Act and by-laws as well as the Electricity Act, Electricity Amendment Act, and the IPP Framework, and the Rural Electrification Act.

MERA is mandated under the Energy Regulation Act 2004, together with the Energy Regulation By Laws to regulate the energy sector as well as approve energy tariffs etc. Further, the Electricity Act 2004 and the Electricity Amendment Act 2016 provide a requirement for a licence from MERA for generation, transmission, distribution, importation, exportation, system and market operation, single buyer, and distribution licence. Under the Electricity Act 2004, it was not possible for an entity to hold a single licence, and it was accepted that ESCOM held the only system and market operation licence, transmission and distribution, as well as single buyer licence. However, under the Electricity Amendment Act 2016, MERA has the power to issue further system and market operation, single buyer, and distribution licences to other applicants other than ESCOM. However, it is yet to be seen to what extent MERA will issue such licences, and how these would work in practice around ESCOM.

The IPP Framework provides interested parties with a clear understanding of how to invest in Malawi's power sector, includes structures and processes covering IPP Roles, Responsibilities and Rules of Engagement. It also covers step-by-step IPP Framework Solicitation Processes including for Solicited IPP (SIPP) procurement and Unsolicited IPP procurement (UIPP). It also provides information on the process for project evaluation, including steps such as risk assessment and due diligence, technical evaluations, tariff structures and analysis, and financial evaluation.

The Market Rules for the Electricity Market, 2016, which governs the commercial interactions between industry participants and the single buyer. Its objectives include to ensure that the Market Rules and the Grid Code work together with efficient coordination and adequate participation and to provide the framework for an efficient, transparent and reliable electricity market.

### 2.5 What are the main challenges that limit investment in, and development of, renewable energy projects?

Some of the major challenges in the development of renewable energy projects include:

- **Grid Capacity:** A major challenge in the development of renewable energy projects in Malawi is grid capacity and stability. There is a lack of capacity on the grid, which is why the Government requires BESS. Further, there is the need to upgrade the grid to allow for further development of power generation projects.
- **Foreign Exchange:** Under the Exchange Control Act and regulations, it is an offence to quote or accept quotation of prices for payment in foreign currency or demand or make payment in foreign currency, without the permission of the Minister of Finance. Permission is rarely granted. It is common practice to include a USD denominated tariff, but for payment in Malawi, the Kwacha is equivalent to USD. This is a major challenge when power projects are funded in USD but payment is made in Kwacha, and IPP's are forced to source their own foreign exchange in a market where there is a shortage.
- **High Cost of Renewable Energy:** Another major challenge is the cost of renewable energy technology in Malawi due to the lack of technology and innovation, and the limited technical capability to maintain and operate within Malawi. Further, mini grids are not always feasible,

especially during the short term, and not viable for private sector investment, unless grants and subsidies are applied.

Further challenges include investor confidence in the Government of Malawi's ability to make payments over the long tenure of the project, political instability or change in political power, effectiveness and willingness to enter into stability agreements and the enforceability thereof, as well the difficulties of enforcing a judgment against the Government of Malawi.

### 2.6 How are large utility-scale renewable power projects typically tendered?

Large utility-scale renewable power projects are tendered in line with the Public Procurement Act under the Laws of Malawi and the Independent Power Producer Framework for Malawi formulated by the then Ministry of Natural Resources, Energy and Mining in 2017. These projects are treated differently depending on whether they are solicited IPP projects or unsolicited IPP projects.

For the solicited type, the initial stage involves pre-feasibility and subsequent feasibility studies being done by the Government of Malawi. Thereafter, a request for expression of interest is issued and advertised by the Malawi Government through the single buyer, ESCOM. Candidate IPPs then submit their respective expression of interest. An initial due diligence and assessment of those that have submitted an expression of interest then follows and a shortlist for prequalified solicited IPPs is developed. A request for tender is then released to the prequalified IPPs. The IPP is then selected and awarded a project.

For Unsolicited IPPs, ESCOM as the single buyer, receives an expression of interest from the IPP. ESCOM then reviews the expression of interest and confirms that the proposed project is consistent with the current generation procurement plan and Integrated Resource Plan. If the prefeasibility is not completed then this is undertaken by the IPP. ESCOM then initiates evaluation processes for any eligible IPP it selects. IPPs without valid unique characteristic are directed to a competitive solicited process. Thereafter, initial due diligence and evaluation is carried out by ESCOM as the single buyer on the IPP. Once selected and a project is awarded to an IPP, PPA negotiations commence alongside applications for transmission connection, and MERA's approval of the PPA and tariff.

### 2.7 To what extent is your jurisdiction's energy demand met through domestic renewable power generation?

The demand for electricity in Malawi is estimated at 1,000MW. Current generation capacity is at less than 500MW consisting of approximately 380MW hydro, 80MW solar, 18.5MW biomass, and less than 20MW diesel.

## 3 Sale of Renewable Energy and Financial Incentives

### 3.1 What is the legal and regulatory framework for the sale of utility-scale renewable power?

The Electricity Act regulates the sale of power in Malawi. Power generated from EGENCO or IPPs is sold to ESCOM as the single buyer under a PPA. ESCOM as system market operator (SMO) supplies electricity to the customers in Malawi and uses the proceeds from the sale of electricity to pay IPPs/EGENCO. ESCOM as the single buyer and System Market Operator operates

independently from the Government from an operational and financial perspective.

**3.2 Are there financial or regulatory incentives available to promote investment in/sale of utility-scale renewable power?**

Under the IPP Framework for Malawi, the Government of Malawi runs Competitive Procurement with incentives/benefits to IPPs. Further, electricity generation is classified as a priority industry. Any IPPs are therefore able to apply for priority industry status and benefit from tax incentives such as import duty waivers as well as corporate tax holidays.

**3.3 What are the main sources of financing for the development of utility-scale renewable power projects?**

Most utility-scale renewable power projects are state-owned and financed by the Government of Malawi through an allocation in the national budget, donor aid and grants, including World Bank funding. IPP projects are typically funded by way of equity and debt from the development financial institutions, for example, the US International Development Finance Corporation provided debt funding on the Nkhotakota solar project in Malawi.

**3.4 What is the legal and regulatory framework applicable to distributed/C&I renewable energy?**

The National Energy Policy 2018, Electricity Act, Electricity (Amendment) Act 2016, The Malawi Electricity Grid Code, are the legal and regulatory framework applicable to distributed/C&I renewable energy.

**3.5 Are there financial or regulatory incentives available to promote investment in distributed/C&I renewable energy facilities?**

The incentives that are available are the same as those described in question 3.2 above.

**3.6 What are the main sources of financing for the development of distributed/C&I renewable energy facilities?**

The sources of finance here are the same as those stated in question 3.3 above.

**3.7 What is the legal and regulatory framework applicable to the development of green hydrogen projects?**

There is no provision for a legal and regulatory framework applicable to the development of green hydrogen projects in Malawi. Currently, there are no green hydrogen projects underway in Malawi.

**3.8 Are there financial or regulatory incentives available to promote investment in green hydrogen projects?**

There are no financial or regulatory incentives specifically for

promotion of green hydrogen projects. Green hydrogen projects would benefit under the tax incentives applicable to the power generation sector as a whole.

**3.9 What are the main sources of financing for the development of green hydrogen projects in your jurisdiction?**

There are no green hydrogen projects in Malawi as yet.

**3.10 What is the legal and regulatory framework that applies for clean energy certificates/environmental attributes from renewable energy projects?**

There is currently no provision for clean energy certificates under Malawian law.

**3.11 Are there financial or regulatory incentives or mechanisms in place to promote the purchase of renewable energy by the private sector?**

The tax incentives described in question 3.2 above are available to the private sector for generation. There are no incentives to promote the purchase of renewable energy. This could be due to the majority of the energy mix in Malawi being predominantly renewable energy.

**3.12 Is there a mandatory (or a developed voluntary) carbon emissions trading market in your jurisdiction?**

At the moment there is no mandatory or developed voluntary carbon emissions trading market in Malawi. The sitting president of Malawi, His Excellency Lazarus Chakwera in June 2023 launched the Malawi Carbon Market Initiative which is jointly managed by the Minister of Finance and Economic Affairs and the Minister of Natural Resources and Climate Change. The Malawi Carbon Market Initiative is yet to become operational.

**3.13 What is the legal and regulatory framework applicable to the development of carbon capture and storage projects?**

There is currently no specific legal and regulatory framework applicable to the development of carbon capture and storage projects in Malawi. There is a high likelihood that such framework will be developed in the near future following the establishment of the Malawi Carbon Market Initiative.

**3.14 Are there financial or regulatory incentives available to promote investment in carbon capture and storage projects?**

Currently there are no financial or regulatory incentives to promote investment in carbon capture and storage projects since the area is new and yet to become operational.

**3.15 What are the main sources of financing for the development of carbon capture and storage projects in your jurisdiction?**

Sources of financing for such projects cannot be ascertained at the moment.

## 4 Consents and Permits

**4.1 What are the primary consents and permits required to construct, commission and operate utility-scale renewable energy facilities? Does the consenting and permitting regime differ for specific types of renewable energy facilities, such as nuclear, offshore wind, battery storage, or others?**

The licensing process required for renewables in order for one to construct, commission and operate utility-scale renewable energy facilities is similar to the process for non-renewables, with minor variations in relation to the specific requirements for the energy type proposed. The general permits include: generation licence, ESIA project approval, land lease agreements, MTC Investment Certificate, water extraction permit (where required), and building approvals/permits, etc. Any other permits required depend on the nature of the project.

**4.2 What are the primary consents and permits required to construct, commission and operate distributed/C&I renewable energy facilities?**

Every private owner with a generation capacity of over 20kVA needs to register the private generation of electricity with MERA and obtain a registration certificate. This is a routine application. A generation licence is not required as the generation is for private use. However, an ESIA may be required, depending on the type and nature of the renewable energy use, e.g., the size and scale of a solar plant or mini hydro. If the electricity generation is not for private use but for sale to a commercial or industrial business, for example, a mining entity off the grid, a generation licence would be required to be obtained from MERA as well as a tariff approval from MERA under the PPA.

**4.3 What are the requirements for renewable energy facilities to be connected to and access the transmission network(s)?**

ESCOM currently owns and controls the national transmission network. A Grid Impact Assessment Study would need to be conducted followed by a Transmission Connection Agreement entered into.

**4.4 What are the requirements for renewable energy facilities to be connected to and access the distribution network(s)?**

Same as question 4.3 above.

**4.5 Are microgrids able to operate? If so, what is the legislative basis and are there any financial or regulatory incentives available to promote investment in microgrids?**

There is no legislation in Malawi specifically addressing the licensing and regulation of micro grids. The legislative framework exists for one to hold generation, transmission and distribution licences and this extends to the operation of a micro-grid. In practice, there are currently no specific incentives for the development of micro grids, except those applicable to electricity generation under the priority industry status.

**4.6 Are there health, safety and environment laws/regulations which should be considered in relation to specific types of renewable energy or which may limit the deployment of specific types of renewable energy?**

The Environmental Management Act (EMA) provides for the sustainable management of natural resources and for the protection of the environment in accordance with global commitments. Under the EMA, the Minister (responsible for environmental matters) may prescribe the types and sizes of projects which shall not be implemented unless an ESIA is carried out, and that a person shall not undertake any project for which an ESIA is required without the written approval of the Authority (MEPA), and except in accordance with any conditions imposed in that approval. Further, any other licensing authority shall not grant a permit or licence for the execution of a project unless an approval for the project is granted by the Authority (MEPA), or the grant of the permit or licence is made conditional upon the approval of the Authority (MEPA) being granted.

ESIA approval from MEPA is required as a pre-requisite to obtaining a licence from MERA.

## 5 Storage

**5.1 What is the legal and regulatory framework which applies to energy storage and specifically the storage of renewable energy?**

There is no specific legal or regulatory framework applicable to energy storage.

**5.2 Are there any financial or regulatory incentives available to promote the storage of renewable energy?**

There are no specific financial or regulatory incentives available to promote the storage of renewable energy.

**5.3 What are the main sources of financing for the development of energy storage projects in your jurisdiction?**

There is only one completed project in Malawi in which there is Battery Energy Storage System (BESS), which is the Golomoti Solar, which received grant funding of GBP2.1m from Innovate UK.

## 6 Foreign Investment and International Obligations

**6.1 Are there any special requirements or limitations on foreign investors investing in renewable energy projects?**

There are no special requirements or limitations on foreign investors investing in renewable energy projects. However, there may be limitations on tax incentives which are only applicable to projects which are majority owned by Malawian citizens. Further, MERA will only issue a licence to a company incorporated in Malawi, although there is no restriction on foreign ownership.

### 6.2 Are there any currency exchange restrictions or restrictions on the transfer of funds derived from investment in renewable energy projects?

Malawi has exchange control regulations which prohibit the use of foreign currency in local transactions, as well as controls the flow of funds into and outside of Malawi. Exchange Control approval is required, registering the equity or debt investment into Malawi to enable repatriation of principal and interest under a loan, dividends when profit is declared and paid out, and remittance of capital in the event of disinvestment. These are not specific to the renewable energy sector, but general investment into Malawi.

### 6.3 Are there any employment limitations or requirements which may impact on foreign investment in renewable energy projects?

There are no employment limitations which may impact foreign investment in renewable energy projects in Malawi, however there is a requirement to employ as many locals as possible on a best effort basis. However, there are immigration controls in place which limit the number of permits to be issued to expatriate employees.

### 6.4 Are there any limitations or requirements related to equipment and materials which may impact on foreign investment in renewable energy projects?

There are no such limitations or requirements related to equipment and materials specific to the renewable energy sector specified under the Laws of Malawi. However, it is common practice for such requirements to be incorporated in an implementation agreement requiring the IPP to use as much locally produced material equipment and supplies as possible.

## 7 Competition and Antitrust

### 7.1 Which governmental authority or regulator is responsible for the regulation of competition and antitrust in the renewable energy sector?

The Competition and Fair Trading Commission established under the Competition and Fair Trading Act is responsible for the regulation of competitions. Further, MERA is responsible for the renewable energy sector as a whole.

### 7.2 What power or authority does the relevant governmental authority or regulator have to prohibit or take action in relation to anti-competitive practices?

The Competition and Fair Trading Commission has the power to hear complaints of unfair trading practices as well as anti-competitive practices and make determinations thereafter. The Commission may also impose fines on those found to be guilty of unfair trading and anti-competitive trading practices.

### 7.3 What are the key criteria applied by the relevant governmental authority or regulator to determine whether a practice is anti-competitive?

Anti-competitive practices are deemed as such by the Competition and Fair Trading Commission if, according to the

Commission, the impugned practices fall in any of the following categories:

- (1) Any category of agreements, decisions and concerted practices which are likely to result in the prevention, restriction or distortion of competition to an appreciable extent in Malawi or in any substantial part of it.
- (2) Any acts or behaviour that limit access to markets or otherwise unduly restrain competition, or have or are likely to have adverse effect on trade or the economy in general such as:
  - (a) predatory behaviour towards competitors including the use of cost pricing to damage, hinder or eliminate competition;
  - (b) discriminatory pricing and discrimination, in terms and conditions, in the supply or purchase of goods or services, including by means of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises;
  - (c) making the supply of goods or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods or the provision of competing or other services;
  - (d) making the supply of particular goods or services dependent upon the purchase of other goods or services from the supplier to the consignee;
  - (e) imposing restrictions where or to whom or in what form or quantities goods supplied or other goods may be sold or exported;
  - (f) resale price maintenance; or
  - (g) trade agreements fixing prices between persons engaged in the business of selling goods or services, which agreements hinder or prevent the sale or supply or purchase of goods or services between persons, or limit or restrict the terms and conditions of sale or supply or purchase between persons engaged in the sale of purchased goods or services.
- (3) Colluding in the case of monopolies of two or more manufacturers, wholesalers, retailers, contractors or suppliers of services, in settling uniform price in order to eliminate competition.
- (4) Collusive tendering and bid-rigging.
- (5) Market or customer allocation agreements.
- (6) Allocation by quota as to sales and production.
- (7) Collective action to enforce arrangements.
- (8) Concerted refusals to supply goods or services to potential purchasers.
- (9) Collective denials of access to an arrangement or association which is crucial to competition.
- (10) Unjustifiable exclusion from a trade association of any person carrying on or intending to carry on in good faith the trade in relation to which the association is formed.
- (11) Making of recommendations, directly or indirectly, by a trade association, to its members or to any class of its members which relate to:
  - (a) the prices charged or to be charged by such members or any such class of members or to the margins included or to be included in the prices or to the pricing formula used or to be used in the calculation of those prices; or
  - (b) the terms of sale (including discount, credit, delivery, and product and service guarantee terms) of such members or any class of members and which directly affects prices or profit margins included in the pricing formula.



## 8 Dispute Resolution

**8.1 Provide a short summary of the dispute resolution framework (statutory or contractual) that typically applies in the renewable energy sector, including procedures applying in the context of disputes between any applicable government authority/regulator and the private sector.**

Disputes in Malawi are generally resolved by way of litigation before the High Courts in Malawi. Commercial disputes are resolved by the Commercial Division of the High Court in Malawi, comprising of judges specifically assigned to the Commercial Division.

The practice and procedure in the High Court of Malawi Commercial Division provides for mandatory mediation during the early stage of any dispute, to allow parties involved to resolve their difference, with a commercial court judge acting as mediator.

It is also common practice for local contracts and agreements to contain dispute resolution clauses specifying for disputes to be referred to arbitration under the Arbitration Act and for such arbitration to be final. MERA has the statutory power to arbitrate commercial disputes under the Energy Regulation Act and Energy Laws and is mandated to handle disputes in the renewable energy sector. Further, implementation agreements between the Government of Malawi and an IPP generally contain a dispute resolution clause referring any dispute to be resolved by way of arbitration under LCIA (London Court of International Arbitration) rules.

**8.2 Are alternative dispute resolution or tiered dispute resolution clauses common in the renewable energy sector?**

Arbitration clauses are common in the renewable energy sector. Most agreements contain an arbitration clause referring any dispute to be resolved by way of arbitration under LCIA rules. Depending on the nature of the agreement and the need for an expert to determine the dispute, the matter is referred to the International Chamber of Commerce's (ICC) International Centre for Expertise to appoint an expert.

**8.3 What interim or emergency relief can the courts grant?**

Interim or emergency reliefs that courts in Malawi grant typically include freezing injunctions, seizing injunctions and interlocutory injunctions.

**8.4 Is your jurisdiction a party to and has it ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and/or any significant regional treaty for the recognition and enforcement of judgments and/or arbitral awards?**

Malawi became the 167<sup>th</sup> party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention") on 2<sup>nd</sup> June 2021. The New York convention will come into effect once it is domesticated by local legislation sometime by the end of the Year.

Malawi also became a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States on 14<sup>th</sup> October 1966.

**8.5 Are there any specific difficulties (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against government authorities or the state?**

Under the Courts (High Court) (Civil Procedure) Rules, 2017, which are the procedural rules applied before the High Court General Division and Commercial Division, a money order, seizure and sole order, third-party debt order, charging order, or an appointment of a receiver, cannot be enforced as a judgment order against the State.

**8.6 Are there examples where foreign investors in the renewable energy sector have successfully obtained domestic judgments or arbitral awards seated in your jurisdiction against government authorities or the state?**

Given the relatively short time frame within which foreign investors have invested in the renewable energy sector, there have not been any such disputes which have been referred to arbitration or before the courts so far.

## 9 Updates and Recent Developments

**9.1 Please provide a summary of any recent cases, new legislation and regulations, policy announcements, trends and developments in renewables in your jurisdiction.**

The Government has instructed ESCOM to review dormant/non-performing PPAs and IAs and to ensure that the PPAs are in the interest of all Parties.

The Single Buyer function was recently unbundled from ESCOM into Power Market Limited. This did not succeed for very long as Power Market Limited has been dissolved and the single buyer function absorbed back into ESCOM.



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Sacranie, Gow and Company is one of the oldest law firms based in Malawi, having been formed in 1948 as a general practice firm to a predominantly corporate and commercial law firm.

Sacranie Gow and Company has developed an International African commercial and corporate practice. The firm has also developed a network of international contacts and alliances through active participation in Lex Africa and other bodies which enables the firm to bring "the world to Malawi" and "take Malawi to the world".

Sacranie, Gow and Company has established itself as a leading advisor on renewable energy projects in Malawi, advising on the first solar project in Malawi, first wind project in Malawi, as well as the first hydro power project PPP in Malawi, and continues to act for developers, EPC contractors, as well as financiers such as DFI's on the renewable energy sector in Malawi.

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