THE NEW ELECTRICITY LAW EXPLAINED
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On 7th of June 2015, the unified electricity law no. (87) for 2015 (the “Electricity Law”) was issued by virtue of Presidential Decree.

This paper provides an overview of how the new Electricity Law reforms the electricity market in a number of key respects:

1. allows for private sector participation, in the generation of electricity, for both locals and foreigners, by introducing a simple legal licensing regime;
2. allows for the first time for private sector participation in the distribution of electricity for both locals and foreigners;
3. introduces the concept of competitive electricity markets for the first time in Egypt by setting out the framework for market liberalization through demopolising generation and distribution activities;
4. restructures the roles of both the Egyptian Electric Utility & Consumer Protection Agency (“ERA”) and the Egyptian Electricity Transmission Company (“EETC”), and redefines their competencies and interaction with the power sector participants to ensure equality and freedom of competition;
5. codifies the fundamentals of permitting and licensing; and
6. unifies various regulations relating to the electricity sector.
The purpose of the Electricity Law is to pave the road to gradual market liberalization of the power sector in Egypt. The Electricity Law does not contemplate full market liberalization where all retail consumers have the freedom to choose their power supplier, but instead intends to maintain both a regulated market and a competitive market, at least for a period of time. Although not contemplated in the Electricity Law, we expect that the government would gradually shrink the scope of the regulated market until ultimately reaching full market liberalization. This is not expected to happen before at least eight years from now.

In order to facilitate market liberalization, the government has demonopolised the generation and distribution aspects of the supply chain in a way that should encourage real competition between sector participants. The main challenge to this of course, is that the majority of current generation and distribution facilities are state-owned through EEHC subsidiaries, which have been granted an eight-year transition period to adjust to being part of a competitive market.

In order to encourage real competition between sector participants in the generation and distribution aspects of the supply chain, the government has obligated EETC to provide equal third-party access to the national grid, while retaining control over network charges.
(i) Competitive Market (Wholesale and Competitive Retail):
Where the monopolistic system of electric utility suppliers is replaced with competing sellers, allowing qualified retail consumers to choose their supplier, but still receive delivery over the power lines of the local utility (whether distribution or transmission networks).
- In this market, qualified retail consumers can negotiate power supply deals directly with either power generation companies or “authorized suppliers” and secure the power supply via negotiated bilateral agreements. Those qualified consumers have the freedom to negotiate their power supply deals and switch between different power generation companies or “authorized suppliers.”
- “Ancillary Services” and “Stabilization Power” are also traded on this market.

(ii) Regulated Market (Retail):
Where power is supplied to non-qualified retail consumers according to standardized agreements and according to fixed tariffs approved by ERA.
- In this market, neither the non-qualified retail consumers nor the distribution companies may negotiate the power prices or the terms of the supply agreements.

It worth noting that still a lot of details in relation to the implementation mechanics are not clear, as there are executive regulations for the Electricity Law that should be issued within 6 months after the issuance of the Electricity Law. Moreover, the law only sets out the framework for the competitive market scheme, while much of the details as well as the implementation milestones and timelines will be stipulated by virtue of either Cabinet decrees or regulations issued by ERA - for more details please refer to Paragraph (6) (Implementation Transition Period) below.

Although the New Electricity Law does not explicitly state so, we expect that the competitive market will cover the industrial, commercial, and administrative uses … etc. and the regulated market will cover mainly residential and government uses.
The separation between the generation, transmission and distribution activities is still maintained under the Electricity Law but the legislator went further to unbundle the electricity business chain to open most of it to the private sector, as follows:

**3.1 GENERATION COMPANIES**

Companies licensed to generate electricity from its sources and sell it either to: (a) the Grid Operator (i.e. EETC); (b) consumers; or (c) Authorized Suppliers. Generation Companies mainly undertake the following activities:

(i) Execution of power generation projects;
(ii) Management, operation and maintenance of its power stations; and
(iii) Selling the produced power and Ancillary Services

**3.2 DISTRIBUTION COMPANIES**

Companies licensed to distribute and sell power over medium and low voltages.

**3.3 GRID OPERATOR**

EETC, which was reorganized to be a state-owned company, completely independent from all other utility participants (instead of being formerly a subsidiary of EEHC, hence vertically integrated into the supply chain). It enjoys statutory monopoly over power transmission and operation of the Grid. Competencies of EETC include, inter alia:

(i) Management, operation and maintenance of the Grid;
(ii) Power transmission through the Grid and providing connectivity to the Grid as per the prices approved by ERA – EETC must make the Grid available to all parties without discrimination;
(iii) Securing the Stabilization Power;
(iv) Securing power supply and relevant transmission, distribution and sale services for non-qualified consumers in the regulated market via purchase from power generation companies;
(v) Securing power supply for qualified consumers via interim six-month agreements as per tariffs approved by ERA

[2. Only qualified consumers]
Consumers who do not have the freedom of choosing their own supplier of electricity.

3.4 MARKET OPERATOR

The Market Operator is an autonomous unit in EETC with independent financial and administrative status that undertakes the administration of the competitive market by regulating the power supply and demand bids, and conducting the accounting and settlement in relation thereto.

3.5 AUTHORIZED SUPPLIERS

Any juristic person licensed to deal in power sale or purchase or services provision in the name and for the account of a producer, a distributor, or consumers. The concept of Authorized Suppliers is newly introduced by the Electricity Law and is still not very clear, but we believe this is close to electricity brokers in the U.S.

3.6 QUALIFIED CONSUMERS

Consumers who have the freedom of choosing their own supplier of electricity. Although the Electricity Law does not explicitly state so, we expect that qualified consumers will include the industrial, commercial, and administrative consumers.

ERA's board shall determine the criteria that must be satisfied by qualified consumers. Deals between qualified consumers and the electricity supplier (whether generation companies or authorized suppliers) will be as per the contracts and subject to the rules of commerce and settlement admitted by ERA.
RECONFIGURATION OF ERA

4.1 PRICING REGULATION

Historically, ERA's role with respect to power pricing was only monitoring-based. However, under the Electricity Law, ERA takes a more active role in this regard by setting out the appropriate rules and economic basis for the calculation of:

(a) The power tariffs to non-qualified consumers;
(b) Power exchange prices in the regulated market; and
(c) Consideration for the use of transmission and distribution networks, all within frameworks of equality, justice, and transparency.

Such rules and bases would be presented to the Cabinet of Ministers for approval and then published by ERA.

If, however, the Cabinet of Ministers sets out power tariffs for non-qualified consumers lower than the tariff adopted by ERA, the government would subsidize the applicable tariff by paying the difference to the relevant licensed parties.
The Electricity Law has reconfigured the composition of the ERA board of directors to mandatorily include the following representative on behalf of consumers:

(i) Chairman of the Egyptian Competition Authority or a delegate thereof;
(ii) Chairman of the Consumer Protection Agency or a delegate thereof; and
(iii) Chairman of the Federation of Egyptian Industries or a delegate thereof.

ERA would be responsible for setting out the conditions for admitting qualified consumers and for admitting supply contracts between qualified consumers and generating companies or authorized suppliers. Moreover, the rules of commerce and settlement in the competitive market, which will be laid down by EETC, will have to be approved by ERA in order to be effective.

Under the Electricity Law, ERA became concerned with the ratification of any change in the ownership or control of assets of a licensed entity. Any licensed entity under the Electricity Law must notify ERA prior to implementing such change.

It is not clear from the provisions of the New Electricity Law whether the notification requirement applies only to direct assignment/acquisition of the licensed company shares or assets or it extends also to a change of control over the offshore parent company of the licensed company. The executive regulations of the Electricity Law, when issued, may provide more clarity on this.

Under the Electricity Law, ERA takes a more active role in reviewing and deciding upon disputes. This concept is reflected in the current drafts of the projects agreements for the power projects that will be established under the feed-in-tariff program, where it is contemplated that ERA will establish a body for resolution and determination of electricity industry disputes. Referrals to such body will be mandatory on the relevant parties. This dispute-resolution body within ERA has not yet been created, and the regulations and procedures for its operation have not been issued yet. We expect such rules to be part of the executive regulations to the law, which should be issued within the coming few months.

ERA would be responsible for setting out the conditions for admitting qualified consumers and for admitting supply contracts between qualified consumers and generating companies or authorized suppliers. Moreover, the rules of commerce and settlement in the competitive market, which will be laid down by EETC, will have to be approved by ERA in order to be effective.
EETC was established as a private company of the electricity utility owned by EEHC with the main purpose of operating the Grid and conducting wholesale electricity deals with generation and distribution companies. Under the Electricity Law, however, EETC emerges as a state-owned company independent from any electricity companies or parties of the electricity utility (including EEHC). In addition to legal independence, EETC enjoys more active and autonomous roles in regulating the market.

With more powers and autonomy granted to EETC, this means less power and control for EEHC over the electricity utility, which is in line with the liberalization plan, with the aim of creating real competition in the utility.

In addition, the Electricity Law grants EETC flexibility to conduct its projects either by itself or in partnership with others, or to contract such projects completely to third parties.
5.1 GRID MONOPOLY

Although EETC enjoyed a natural monopoly over Grid operation since its establishment, the Electricity Law emphasizes that EETC exclusively undertakes Grid operation and electricity transmission activities.

In addition, EETC is responsible for setting out the transmission regulations in collaboration with other utility participants. Such regulations will become effective only after being approved by ERA and published in the official gazette.

EETC is also responsible for purchasing the necessary Ancillary Services and securing the Stabilization Power necessary for the proper and secure operation of the Grid.

5.2 POWER SUPPLY

Under the Electricity Law, EETC takes a more active role in securing the power supply needed for the regulated market by purchasing it from generating companies. In addition, EETC becomes responsible for purchasing electricity from the relevant licensed parties to supply the non-qualified consumers, in accordance with the prices laid down by EETC (as per ERA rules and economic basis) and approved by ERA. EETC also secures power supply to qualified consumers under interim six-month agreements as per the tariff proposed by EETC and approved by ERA.

EETC is also responsible for preparing an annual report on the power supply and additional capacities that are needed to accommodate forecasted demand capacities on medium and long terms (the "EETC Supply Report"). The EETC Supply Report is then presented to the board of ERA, and the Minister of Electricity presents the EETC Supply Report to the Cabinet of Ministers. In case the EETC Supply Report forecasts shortage in generation capacities, the Cabinet of Ministers is entitled to approve the appropriate measures to address such shortage, including permitting EETC to contract with investors for adding generation capacities and issue the necessary government guarantees thereto.

5.3 MARKET LIBERALIZATION ROLE

EETC undertakes setting out the rules of commerce and settlement in collaboration with the other market participants, and must ensure that such rules accommodate the following:

(i) Applicable mechanics and prices for power sale and purchase;

(ii) No preferential treatment between any of the producers or consumers; and

(iii) Procedures promoting efficiency and competition in power sale and purchase.

EETC also, through its Market Operator unit, manages and controls the procedures for the power sale and purchase in the competitive market in accordance with the applicable rules of commerce and settlement. As noted, the market mechanics and procedures are still not clear as the Electricity Law only sets out the generic framework leaving much of the details to be determined by the executive regulations to be issued, and the relevant EETC regulations to be approved by ERA.

5.4 IMPACT ON NEW SOVEREIGN GUARANTEES

According to law no. (14) for 2013 (the “MoF Guarantee Law”), the Minister of Finance (acting on behalf of the government) is authorized to guarantee the obligations of EEHC and its subsidiaries in relation to projects that it awards to the private sector or executes in partnership with the private sector. However, with the promulgation of the new Electricity Law, EETC was given an autonomous status as a private joint stock company fully owned by the state and independent from all electricity sector companies and participants. Accordingly, EETC is no longer a subsidiary of EEHC and consequently falls outside the scope of the MoF Guarantee Law.

In light of the above, off-take agreements of EETC will only be eligible for a MoF guarantee if such agreements are authorized by the Cabinet of Ministers to meet any capacity shortages forecasted in the EETC Supply Report, and provided that such guarantee is explicitly authorized by the Cabinet of Ministers.
The Electricity Law sets out the following transition periods for the implementation of market liberalization:

1. Eight years as of the effective date of the Electricity Law (i.e. 9th of July 2015) for EEHC and its subsidiary generation and distribution companies to implement the necessary restructuring in compliance with the law;

2. Three years as of the effective date of the Electricity Law for EETC and EEHC to make the necessary grid capacity and expansion studies; and

3. Three years as of the effective date of the Electricity Law for restructuring EETC to comply with its duties and competencies under the law.

It is also worth noting that the Ministry of Electricity shall collaborate with ERA and the concerned entities to prepare a study on opening the market gradually for competition. In parallel, ERA shall prepare a detailed report on the milestones, process, and timelines for opening the market for competition, to be presented by the Minister of Electricity to the Cabinet of Minister. Based on this report and the Minister’s recommendation, the Cabinet of Ministers shall determine and announce the timeline for applying the competitive market scheme.

It is not clear from the law what exactly EEHC shall do within the coming 8 years; yet liberalization ultimately contemplates that majority of generation capacities are to be privately owned. Our understanding from the officials involved in drafting the law is that EEHC has one of two options:

- **Operate as a Private Sector Corporation**
  
  EEHC and generation subsidiaries, being subject to market forces, will operate and decide to add capacity on a purely commercial basis without utility operation considerations.

- **Privatization of State-owned Generation Capacities**
  
  There is still no agreement within the government on this.

We understand that what is proposed initially is to offer the generation capacities that will be added imminently as part of the emergency plan to the private sector. In addition, the government will mainly rely on the private sector for new generation projects on the medium term, so that by the end of the transition period, private capacities (whether from privatized projects or new projects) will outweigh the state-owned generation capacities controlled by EEHC and its subsidiaries.
Marc Norman, Associate at Chadbourne & Parke LLC

The issuance of Unified Electricity Law no. (87) for 2015 certainly appears to be a step in the right direction to encourage greater private sector participation in Egypt’s electricity market, with a view to modernising existing electricity assets and building much needed new capacity. However, the government’s proposed methods and timeframes for implementation have yet to be confirmed and so we are very keen to see the upcoming executive resolutions.

Oman passed a similar law in 2004 (the Sector Law). The Sector Law paved the way for the progressive unbundling of a number of generation, transmission and distribution assets — and established sector-specific regulations in order to permit greater private sector participation. The Sector Law also gave more autonomy and independence to regulatory bodies and devised an effective and transparent tendering regime. Oman is now widely regarded as one of the MENA region’s most sophisticated power (and water) markets. The regulatory framework and the risk allocation model stemming from the Sector Law is so widely understood that project documents are barely marked-up by project bidders — and the obligations of OPWP, the government off-taker and single purchaser of power, are no longer backed by a government guarantee.

We are very excited to see how things pan out in the Egyptian electricity market.

Stephanie Wormser, Senior Counsel, Office of the General Counsel, European Bank for Reconstruction and Development (EBRD)

“The unified electricity law no. (87) for 2015 (the “Law”) and together with it, the partial liberalisation of the electricity market, the opening of power generation and distribution to the private sector, as well as the clarification of the mandate and powers of EPA, the Regulator and EEFC, the transmission company, are largely welcome.

However, the Law does not tackle three major policy issues in Egypt relating to the (i) security of supply, (ii) economic performance and (iii) energy efficiency.

(i) Not only a key factor to the opening of the market to competition, the security of supply has in itself been an issue in Egypt which has been suffering from electricity outages. The rapidly increasing electricity demand owing to demography and urbanisation but also the extensive use of inefficient appliances, especially air conditioning (AC), inflates demand and peak. In addition, on the supply side, the sector suffers from high generation, transmission and distribution losses (estimated at 16% minimum) as well as errors in planning and management of gas resources (e.g. the country became a net importer of natural gas in 2014) which have constrained power capacities and increased costs. Furthermore ‘depleted natural gas resources, lack of maintenance on de-stressed power plants and the government’s inability to pay its debts to foreign oil companies’ have further aggravated this trend (See http://www.middleeasteye.net/news/egyptis-power-outages-compound-559103879#sthash.8vnoTNuu.dpuf). Demand and supply crisis effect leads to regular blackouts and grid frequency instability in particular in summer, which are detrimental to the whole economy and society. Nevertheless, and as a result of some efforts of the Ministry of Electricity, EEFC and EEFC, the blackouts were significantly reduced last summer.

(ii) Economic performance needs to be improved and reform is necessary in this respect. Subsidies and cross-subsidies remain high especially for households and as such, they constitute an obstacle to market liberalisation. In addition, the loss of resources resulting from unpaid invoices is another issue which ought to be addressed since it contributes to poor economic performance.

(iii) While the Law lists some actions to enhance energy saving and energy efficiency, it remains vague on the objectives and means to implement Demand Side Management (DSM) and Energy Efficiency (EE). Despite the adoption of the National Energy Efficiency Action Plan in 2013, DSM and EE have been neglected. It may well be that the government will develop its strategy in subsequent regulation.”
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