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**Energy Investment Risk Assessment**

**2018**

**Questionnaire**

## What is the Energy Investment Risk Assessment?

The Energy Investment Risk Assessment (EIRA) Report is a publication of the Energy Charter Secretariat that evaluates policy, regulatory and legal risks relevant to investment in the energy sector. Results for reviewed countries will be presented in the form of individual country profiles and a comparative assessment. Other types of investment risk, such as commercial, technical and geopolitical risks are not within the scope of the publication.

## What is the main objective of the EIRA Report?

The EIRA Report assists governments to identify and eliminate risks in their regulatory and legal environment which impede the inward flow of investments. It assesses specific risks to investment in the energy sector that countries can control and limit through their own actions. This information is significant as it enables governments to undertake the required steps to make their regulatory frameworks more robust and, consequently, induce investments in the energy sector.

The secondary aim of the EIRA Report is to provide a reliable source of useful information to energy companies, investors and the financial sector on different aspects of the regulatory and legal environment in countries considered for investment.

## Main indicators and sub-indicators:

**Main indicator 1: Foresight of policy and regulatory change**

Sub-indicator 1: Communication of vision and policies

Sub-indicator 2: Robustness of policy goals/commitments

**Main indicator 2: Management of decision-making processes**

Sub-indicator 1: Institutional governance

Sub-indicator 2: Transparency

**Main indicator 3: Regulatory environment and investment conditions**

Sub-indicator 1: Regulatory effectiveness

Sub-indicator 2: Restrictions on FDI

**Main indicator 4: Rule of law (compliance with national and international obligations)**

Sub-indicator 1: Management and settlement of investor-state disputes

Sub-indicator 2: Respect for property rights

## IMPORTANT NOTES:

* ***The integrity of the findings presented in the context of the EIRA Report is contingent upon the accuracy and completeness of the answers provided in this questionnaire. Hence, the addressees are kindly requested to complement the questionnaire with the necessary information to support theirs answers.***
* ***The EIRA Report 2018 assesses policy, legal and regulatory frameworks that are in force as on 1 April 2018.***

# EIRA Questionnaire 2018

**Main indicator 1: Foresight of policy and regulatory change**

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| **Sub-indicators** | **Questions** | **Clarifications to questions** | **Additional information (kindly provide details to support your answers)** |
| **1. Communication of vision and policies** | **1. What are the key priority areas of the energy sector policy?**  1a. Energy security [Y/N]  1b. Power reliability [Y/N]  1c. Affordability – energy poverty [Y/N]  1d. Access to energy [Y/N]  1e. Investment in the energy sector[Y/N]  1f. CO2 reduction [Y/N]  1g. Renewable energy [Y/N]  1h. Energy efficiency [Y/N]  1i. Innovation [Y/N]  1j. Others issues related to the energy sector (like air quality, water quality job creation etc.). Please specify  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Y/N] | This is not an exhaustive list and countries are only expected to tick the boxes relevant to them. Countries may add priorities or goals not listed. |  |
| **2. Does the country have an energy strategy document for the key priority areas selected above (e.g. a Vision document/Roadmap)? [Y/N]** | Kindly provide details of the energy strategy (such as date when the document was endorsed). Please also provide a link to the document or send the pdf version of the document |  |
| **3. Has the country set any short term/medium term targets for the priority areas selected above? [Y/N]** | This may include any specific short/medium outcomes/targets for all energy sub sectors. |  |
| **4. Has the country set any ultimate/final outcomes for the priority areas selected above? [Y/N]** | This may include any specific final outcomes or end game for all energy sub sectors. |  |
| **5. Is there a timeframe for achieving the ultimate/final outcomes for the priority areas selected above? [Y/N]** |  |  |
| **6. Is there a binding national action plan[s] in place for implementing the priority areas selected above? [Y/N]** |  |  |
| **7. . Is the country a party to the United Nations Paris Climate Agreement? [Y/N]**  **7a. If yes, does the country’s Nationally Determined Contribution (NDC) contain details on energy sector CO2 contribution? [Y/N]** |  |  |
| **2. Robustness of policy goals/commitments** | **1. Is there a body responsible for monitoring implementation of each energy priority? [Y/N]** |  |  |
| **2. Is the monitoring body independent of the authority/ministry responsible for implementing the energy priorities areas selected above? [Y/N]** | For instance a technical/statistics body |  |
| **3. Is the monitoring body required to provide feedback to the authority/ministry responsible for implementing the energy priorities selected above? [Y/N]** |  |  |
| **4. Is there a legal provision/law that allows the government to review the energy priorities selected above, and sets out the process in which the review should be performed? [Y/N]** | Please provide relevant legal acts/provisions |  |
| **Additional remarks:**  Are there any other investment related risks in your country regarding *Foresight of policy and regulatory change*? *Please describe.* | | | |

**Main indicator 2:** **Management of decision-making processes**

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| **Sub-indicators** | **Questions** | **Clarification for questions** | **Additional information (kindly provide details to support your YES/NO answers)** |
| **1. Institutional governance** | **1. Indicate the levels of the government involved in framing legislations in the energy sector**  a. Central government [Y/N]  b. Provincial [Y/N]  c. Municipal [Y/N]  d. More than 3 [Y/N]  e. How many levels are involved in total? |  |  |
| **2. Is there a central authority responsible for the overall energy policy formulation process? [Y/N]** | Please provide the name of the institution and its website |  |
| **3. Is there a central authority responsible for the overall investment policy formulation process? [Y/N]** | Please provide the name of the institution and its website |  |
| **4. Do the energy and investment authorities consult each other while formulating polices related to their respective sectors? [Y/N]** | This includes consultation within council of ministers, working groups, etc |  |
| **5. Is there an authority responsible for the overall implementation and monitoring of the country’s NDC? [Y/N]** | Please provide the name of the institution and its website |  |
| **6. Is there a process that requires the government to periodically review the implementation of its NDC? [Y/N]** |  |  |
| **7. Has the country established a one-stop-shop investment approval authority? [Y/N]**  **7a. If yes, does it also give approval for the energy sector? [Y/N]** | Please provide the name of the institution and its website |  |
| **8. Is there a single window for all enquiries concerning investment policies and applications? [Y/N]**  **8a. If yes, does it also give information for the energy sector? [Y/N]** | Please provide the name of the institution and its website |  |
| **2. Transparency** | **1. Does the country have a law on transparency? [Y/N]** |  |  |
| **2. Do exceptions to transparency rules exist? [Y/N]**  **2a. If yes, are these exceptions clearly defined in law or regulation? [Y/N]** | Such exceptions can include national security, public interest, law and order etc. |  |
| **3. Does the country make available legal and regulatory information to the public?**  a. Yes, all the information is made available  b. Only some of information is made available  c. No information is made available | Legal and regulatory information includes enacted laws, draft laws, regulations, draft regulations.  If the information is limited, please state reasons of this answer. |  |
| **4. How is law and regulation made accessible to the public? [Y/N]**  a. Both electronically and in print  b. Only Electronically  c. Only in print  d. Available only upon request/or payment of fee | On request means investors can approach the government for hard copies |  |
| **5. Does the energy regulator make available its decisions (on tariffs, tariff methodology, market access etc.) to the public?**  a. Yes, all the decisions are made available  b. Only some decisions are made available  c. No decisions are made available |  |  |
| **6. Are energy strategy documents and national plans available in any of the UN languages? [Y/N]** | The UN languages are Arabic, Chinese, English, French, Russian and Spanish.  For the purpose of this question, unofficial translations are not relevant. |  |
| **7. Are enacted laws available in any of the UN languages? [Y/N]** | The UN languages are Arabic, Chinese, English, French, Russian and Spanish.  For the purpose of this question, unofficial translations are not relevant. |  |
| **8. Do the bodies responsible for monitoring and implementing energy priorities/objectives publish their data? [Y/N]** | This question refers to monitoring bodies referred in question 1 of main indicator 1, sub-indicator 2. |  |
| **9. Is legal information centralised?**  a. In an electronic centralised registry of laws and regulations  b. Centralised registry/official gazette in print  c. No centralisation of laws and regulations |  |  |
| **10. Is consultation between the government and the stakeholders required under any law/regulation/rule? [Y/N]** | Stakeholders may include affected public and private investors, energy agencies, local government administration, non-governmental organisations, and wider community. |  |
| **11. Is consultation between the energy regulator and the stakeholders required under any law/regulation/rule? [Y/N]** |  |  |
| **12. Are stakeholders notified and consulted in advance when new laws and regulations are enacted? [Y/N]**  a. Notified and consulted in advance  b. Notified but not consulted  c. Not notified or consulted |  |  |
| **Additional remarks:**  Are there any other investment related risks in the energy sector regarding *Management of* d*ecision making processes*? Please describe. | | | |

**Main indicator 3: Regulatory environment and investment conditions**

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| **Sub-indicators** | **Questions** | **Clarification for questions** | **Additional information (kindly provide details to support your YES/NO answers)** |
| **1. Regulatory effectiveness** | **1.** **Which institution is responsible for regulating the energy sector:**  a. A separate energy regulatory body  b. An agency under the control of the Ministry  c. A Ministry  d. Multiple ministries/agencies regulating sub-sectors separately | Hereafter referred as ‘the energy regulator’ |  |
| **2. Does the energy regulator derive its authority from a law? [Y/N]** | Please provide which legal act establishes the regulatory body and specifies the obligations of the regulatory authority. |  |
| **3. Are the functions and obligations of the energy regulator stated in a law? [Y/N]** | Please provide which legal act establishes the regulatory body and specify the obligations of the regulatory authority. |  |
| **4. Is the energy regulatory authority subject to the public control conducted by other institutions?**   1. Supreme Audit Office which is independent from the central government and/or Parliament 2. Governmental institution 3. None of the above |  |  |
| **5. Does the energy regulator(s) have a budget that is separate from the government’s budget? [Y/N]** | This means the budget is not determined by the government |  |
| **6. Does the energy regulator(s) have a dedicated budget for itself? [Y/N]** | Dedicated budget means that the energy regulator is not required to transfer or share its money with any other governmental entities |  |
| **7. Does the energy regulator(s) have the right to allocate its budget?**  a. Yes, it has full right to do so  b. Yes but it needs approval from the governmental/ministry  c. No, it cannot allocate the budget on its own |  |  |
| **8. Is there a fixed term appointment for the board of the energy regulator(s)? [Y/N]**  **8a. If so, is there a fixed term renewable more than once? [Y/N]**  **8b. Is the selection procedure of the board and its finalisation publically announced? [Y/N]** |  |  |
| **9. Does the energy regulator deal with competition issues? [Y/N]**  **9a. If no, is there a separate governmental body dealing with competition issues, including the energy sector? [Y/N]** |  |  |
| **2. Restrictions on FDI** | **1. Does the country give equal treatment to domestic and foreign investors? [Y/N]**  **1a. If yes, is this equal treatment established in law? [Y/N]** | Please provide legal acts which grants equal treatment to domestic and foreign investors |  |
| **2. Are investors in the energy sector allowed to invest in all zones or regions within the country? [Y/N]**  **2a. If no, is this applicable to domestic and foreign investors alike? [Y/N]** | This can include restrictions on undertaking activities in the Exclusive Economic Zones, special economic zones, free trade zones |  |
| **3. Is there a pre-screening or prior-authorization requirement for foreign investors in the energy sector? [Y/N]**  **3a. If yes, is it only a notification requirement? [Y/N]** | Screening mechanisms include requiring the foreign investors to show that the project is in the national interest of the host state. However, in some cases, they are automatic and amount to a simple pre-notification requirement for investors. |  |
| **4.** **Are foreign companies legally allowed to hold a majority stake in energy projects? [Y/N]** |  |  |
| **5. Are foreign investors required by law to partner with the State/State owned enterprises or local enterprises before undertaking projects in the energy sector? [Y/N]** |  |  |
| **6. Is there a limit on the employment of foreign personnel?**  a. There are no limitations [Y/N]  b. Limitation by percentage [Y/N]  c. Limitation on the number of times work permit/visa can be renewed [Y/N] |  |  |
| **7. Are foreign investors required to employ specific percentages of local work force?**  a. There are no such requirements [Y/N]  b. Yes, for the managerial level (board of directors etc.) [Y/N]  c. Yes, for the unskilled labour and non/technical administrative staff [Y/N] |  |  |
| **8. Are foreign investors required to purchase a certain percentage/value/quantity of products or services from local suppliers? [Y/N]** | Local content requirements are provisions in that require foreign investors to purchase a minimum threshold of goods (e.g. raw materials) and services (e.g. human resources) locally. |  |
| **9. Are there any currency restrictions and/or foreign exchange controls applied to foreign investors under a law or regulation? [Y/N]**  **9a. If yes, do these exchange controls include:**   * Banning use of foreign currency? [Y/N] * Limiting currency exchange to government approved exchangers? [Y/N] * Fixed exchange rates? [Y/N] |  |  |
| **10. Do restrictions on the transfer of investment related capital, payments and profits exist?**  **10a. If yes, do they apply equally on foreign and domestic investor?** | e.g. profits, dividends, interest and royalty receipts, original capital, capital  appreciation, proceeds from liquidation, payments received as compensation for property expropriation, settlement  of disputes etc., and earnings of personnel engaged from abroad in connection with an investment |  |
| **Additional remarks:**  Are there any other investment related risks in your country’s energy sector regarding *Oversight of market functioning, private sector and regulated companies*? Please describe. | | | |

**Main indicator 4: Rule of Law (compliance with national and international obligations)**

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| **Sub-indicators** | **Questions** | **Clarification for questions** | **Additional information (kindly provide details to support your YES/NO answers)** |
| **1. Management and settlement of investor-state disputes** | **1. Is the jurisdiction for hearing contractual disputes with foreign investors defined in the domestic law? [Y/N]** |  |  |
| **2. Is there a separate mechanism for appealing against regulatory decisions?**  a. Yes, appeals can be heard by the regulator in the first instance  b. Appeals can only be heard by general courts  c. There is no appeal process |  |  |
| **3. Are national courts and administrative tribunals required by law to deliver decisions within a defined time limit? [Y/N]** |  |  |
| **4. Is arbitration included in:**  a. An investment law  b. A separate arbitration law  c. As a chapter/section of the code of civil procedure  d. There is no law that refers to arbitration | BITs are not considered in this question since not all investors may be protected under a BIT |  |
| **5. Is voluntary mediation, conciliation or both included in:**  a. An investment law  b. Arbitration and mediation law  c. As a chapter/section of the code of civil procedure  d. There is no law that refers to mediation and/or conciliation | BITs are not considered in this question since not all investors may be protected under a BIT |  |
| **6. Is there an investment ombudsman to whom foreign investors can refer disputes with the government? [Y/N]** | Please provide the name of the institution and the website |  |
| **7. Do national laws allow the recognition and enforcement of foreign judgments? [Y/N]**  **7a. If yes, then are these laws equally applicable to different jurisdictions? [Y/N]** |  |  |
| **8. Do national laws and/or International Investment Agreements require exhaustion of local remedies (e.g. domestic courts) before recourse to international arbitration? [Y/N]** | Foreign investors are required to go through the administrative and judicial system of the state before initiating international proceedings directly against the State. |  |
| **9. Has the country made retroactive changes to law in the past 5 years? [Y/N]** |  |  |
|  | **10. Is the country a contracting party to:**  a. The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (‘Washington Convention’)? [Y/N]  b. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the ‘New York Convention’)? [Y/N] |  |  |
| **2.Respect for property rights** | **1. Are the criteria for ‘public interest’ as grounds for expropriation clearly stated? [Y/N]** | Please provide the legal act that specifies this criteria |  |
| **2. Does the state provide in its laws and/or its International Investment Agreements a process for determining compensation in the event of expropriation in the energy sector?**  **[Y/N]** | E.g. Determination of compensation by independent auditors |  |
| **3. Does the state provide in its laws and/or its International Investment Agreements a time frame within which compensation needs to be paid? [Y/N]** | Please provide the law which states this time frame |  |
| **4. Does the state include in its laws and/or International Investment Agreements protection against the expropriation of Intellectual Property (‘IP’) rights? [Y/N]**  **4a. Is the country a member state of the World Intellectual Property Organisation [Y/N]** |  |  |
| **5. Does the state have in its laws and/or International Investment Agreements any provisions restricting the transfer of technology in the energy sector? [Y/N]** | Please provide the law which states this restriction. |  |
| **6. Is the country a member state/contracting party to:**  a. The World Trade Organisation? [Y/N]  b. The Energy Charter Treaty? [Y/N] |  |  |
| **Additional remarks:**  Are there any other investment related risks in your country regarding *Rule of Law (compliance with national and international obligations)*? Please describe. | | | |