The Changing Face of Energy in South Africa – Caleb McKellar, Partner at Barter McKellar

Introduction:

South Africa has a regulated electricity market wherein prices are determined by the National Energy Regulator. Eskom Holdings SOC Limited (Eskom), is owned by the South African Government and is an integrated generator, systems operator, and owner and operator of the national electricity grid. Eskom is responsible for generating the majority of the energy consumed by South Africans, an estimated 94% of South Africa's electricity, with the remaining 6% being supplied by municipal power stations and the private sector). According to the National Development Plan (NDP), between a fifth and a quarter of South Africans still have no access to the electricity grid provided by Eskom.

On 7 February 2019, President Ramaphosa (the President of South Africa) announced that Eskom would be unbundled into three separate state-owned entities, responsible for generation, distribution and transmission respectively. The need for unbundling arose as a direct result of the poor financial management and performance of Eskom. However, it must be noted that the exact timeframe of the legal separation of Eskom's generation, transmission and distribution businesses is still to be confirmed.

As part of President Ramaphosa's plan to unbundle Eskom, the Department of Mineral Resources and the Department of Energy (both state departments in South Africa) have been merged into a single department, namely, the Department of Mineral Resources and Energy (DMRE). Mr Gwede Mantashe, the previous Minister of Mineral Resources, has been appointed as the Minister responsible for this new consolidated department.

According to the Integrated Resource Plan (IRP), published in October 2019 by the Minister of Mineral Resources and Energy, South Africa remains heavily reliant on coal based energy sources. The South African power system consists of the following generation options: 38 GW (Gigawatt or the equivalent of one thousand megawatts) installed capacity from coal, 1.8 GW from nuclear, 2.7 GW from pumped storage, 1.7 GW from hydro, 3.8 GW from diesel and 3.7 GW from renewable energy.

It is clear from the IRP that a greater immediate focus has been placed to Concentrating Solar Power and Wind as alternative sources of energy in South Africa, with longer-term plans to source power from gas and dieses power sources.

Legislative framework:

In terms of the Electricity Regulation Act, No. 4 of 2006 (ERA), the National Energy Regulator of South Africa (NERSA) is required to issue rules designed to implement and provide greater practical application of the overarching plans set out in the IRP. South Africa's electricity planning is governed by the ERA together with the National Energy Act No. 34 of 2008 (NEA) and the National Energy Regulator Act No. 40 of 2004 (NERA).

Although the IRP is primarily focused on creating a sustainable supply of energy to all South Africans, the Government of South Africa has enacted further legislative

interventions which encourage the private sector to move towards a more sustainable and environmentally friendly energy usage, for example:

1. The Carbon Tax Act 15 of 2019 incentivises businesses to adopt cleaner technologies. The carbon tax will initially only apply to scope 1 emitters in the first phase (from 1 June 2019 to 31 December 2022), namely direct emissions from an owned or controlled source such as those produced by an emitter burning fossil fuels; and

2. section 12B of the Income Tax Act 58 of 1962, makes provision for a capital allowance for movable assets used in the production of renewable energy. The incentive makes allowances 100% asset accelerated depreciation in first financial year that the asset is brought online.

Renewable Energy Independent Power Producer Programme:

The Department of Mineral Resources and Energy's REIPPPP was formally launched in August 2011. According to the third quarter report of the 2019/2020 Financial Year (1 October to 31 December 2019) Investment (equity and debt) to the value of R209.7 billion, of which R41.8 billion (20%) is foreign investment, was attracted to South African REIPPPP projects.

Recent Developments:

In addition to the abovementioned interventions and more recently, Nedbank, one of the top 5 private banks in South Africa became the first bank in South Africa to list a Renewable Energy Bond on the green segment of the Johannesburg Stock Exchange. The instrument was developed by Nedbank in line with the International Climate Bonds Standard and Capital Market Association Green Bond Principles. Furthermore, despite the national lock-down in South Africa, certain renewable energy projects were given the green light to continue on 15 May 2020, as certain restrictions placed on construction and maintenance were lifted, albeit with strict safety, hygiene, sanitisation and social distancing protocols. These include, amongst others, REIPPPP projects currently under construction.

South Africa remains in its infancy stage in respect of its oil and gas exploration, with the Upstream Petroleum Resources Development Bill (*yet to be promulgated into law*), seeks to, *inter alia*, encourage investment in petroleum resources in South Africa while also "*substantially and meaningfully expand opportunities for black persons, to enter into and actively participate in the upstream petroleum sector and to benefit from the exploitation of the nation's petroleum resources*" (taken directly from the Bill).

In conclusion the South African Government is slowly moving towards placing greater reliance on sustainable energy sources.