



LEGAL UPDATE

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- ◆ The New Geothermal Proclamation No.981/2016

INTRODUCTION

Welcome to the tenth issue of the second volume of MTA's Legal Update. This issue of our Monthly Legal Update highlights the following topic:

- ◆ The New Geothermal Proclamation No.981/2016

Enjoy your reading!!!

The New Geothermal Proclamation No.981/2016

The Second Growth and Transformation Plan ("GTP II") of Ethiopia estimates the geothermal potential of the country to be within the range of 4,200MW to 11,000 MW. The Geothermal sector used to be governed by the Energy Proclamation No.810/2013 and by the Mining Operation Proclamation (as amended) No.678/2010. Effective from 16th September 2016, the House of Peoples' Representative has introduced a new law exclusively governing the geothermal sector of Ethiopia, Geothermal Proclamation No.981/2016 ("Geothermal Proclamation"). In this month's legal update, we will highlight the main features of the Geothermal Proclamation.

Classification of Geothermal Resources

As per the Geothermal Proclamation

Geothermal resources are classified into two:

- I. Grade I geothermal resource; means a type of geothermal resources capable of generating electric power and providing services such as direct heating and combined heat and power.
- II. Grade II geothermal resources; means a type of geothermal resources to be used for purposes such as direct heating, agricultural and industrial applications and recreational bathing and medicinal purpose, but excludes the purpose of generating electricity.



Geothermal Operation Licenses

To undertake a geothermal operation, an investor is required to obtain a geothermal operation license from the Ethiopian Energy Authority (“EEA”). A geothermal operation license is issued either directly on an application or on the basis of competition (for known geothermal resource area). EEA issues the following types of geothermal operation licenses relating to Grade I geothermal resources:

- I. **A reconnaissance License:** issued on a non-exclusive and non-competitive basis for a period of 24 month in a non-renewable basis.
- II. **Exploration License:** issued for an investor who has demonstrated its financial and technical capability and whose work program and environmental impact assessment report obtained the necessary approval from EEA. The license is issued for a period not exceeding five years. Up on the approval of EEA, the license might be renewed twice for a period of one year each.
- III. **Geothermal Well-Field Development and Use License:** is issued for a period not exceeding twenty five years. The investor, in addition to the conditions enumerated for an exploration license, has to enter in to a valid power purchase agreement. A licensee has the right to undertake power generation activities on Grade I geothermal resources, either as a standalone operation or combined with sale of used geothermal resources for direct use by government, or for self-use.

The Geothermal Proclamation does not provide the manner and details of granting a geothermal operating license on Grade II Geothermal resources. This will be regulated by future Regulation and Directive that will be enacted to implement the Geothermal Proclamation. The Minister of Water, Irrigation and Energy is preparing a draft Geothermal Regulation which is expected to be submitted to the Council of Ministers soon.

On the other hand, the Geothermal Proclamation grants the National Regional States the power to issue a geothermal operation license on Grade II geothermal resources, the temperature of which does not exceed 120 0C (one hundred twenty degree centigrade) and the volume of which does not exceed 2,000,000m³ (two million meter cube) per year.

Restrictions on Geothermal Operation Licenses

The Geothermal Proclamation provides the following list of persons which are prohibited from acquiring geothermal operation license:

- I. A person who is declared bankrupt by the court having jurisdiction;
- II. A business organization that is in liquidation, other than liquidation which forms a part of a scheme for the reorganization or merger with another business organization;
- III. A person who knowingly provided false information in its applications; or knowingly failed to provide information to the licensing authority for decision with respect to his application; and
- IV. A licensee who has knowingly provided false information or failed to provide information to EEA for the review of required reports.

Furthermore, a holder of a geothermal operation license whose license has been revoked due to fraudulent misrepresentation, or knowingly fails to provide material information required by EEA will not be granted any license for ten years.

Incentives

The licensee is allowed to import into Ethiopia duty free and tax free including VAT any consumables, equipment, machinery and vehicles required for his operations in accordance with the approved work program.

The rule against the transfer of any item without the approval of the tax authority imported free of

customs duty and taxes applies to imports relating to geothermal operations. However, the items can be re-exported free of customs duties and taxes.

Transfer of a Geothermal Operation License

A holder of a geothermal license, other than a reconnaissance license, has the right to transfer its license to another person up on the prior approval of EEA. Unlike previous laws in the natural resources sector, e.g. Petroleum Operation Proclamation No. 295/1986, the Geothermal Proclamation has provided conditions which should be fulfilled by the transferee.

Resource Area Limitations

The Geothermal Proclamation provides that, while licensing a geothermal resources area other than known geothermal resources area, the size of the geothermal resources area to be authorized is limited as follows:

- I. **For a reconnaissance license:** it shall not be more than two thousand square kilometers;
- II. **For an exploration license:** it shall not be more than two hundred square kilometers; and a licensee shall not hold more than two licenses at time
- III. **For a geothermal well field development and use license:** it shall be not more than fifty square kilometers.

Role of the EEA

The Geothermal Proclamation designates EEA, as the licensing and supervising authority for geothermal operations. EEA has powers among others to:

- issue or deny, renew, suspend, extend, revoke and terminate geothermal operations license issued on Grade I and Grade II geothermal resources operation;
- issue certificate of competency for consultancy and geothermal works in the geothermal sector;
- authorize or deny permission for the export of samples of geothermal fluids and related products;
- authorize the use and sale of geothermal by-products in consultation with the competent body;
- designate an area as a known geothermal resources area; and

- issue health safety standards, drilling code of practices, inspection guidelines, other codes and standards related to geothermal operations and supervise the implementation of same.

Government's Role

The Government may undertake a geothermal operation, by itself or in partnership with other investors. In addition to this, the Government will undertake geothermal resources exploration and development activities to provide sufficient data to the EEA to facilitate the granting of license for well-field development and use license on a competitive basis.

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