

## **Legal Aspects of Implementing Renewable Energy Projects**

### *Brief overview of the renewable energy sector in Kyrgyzstan*

Renewable energy and, in particular, solar and wind energy are relatively new sources of electricity for Kyrgyzstan. Major part of renewable energy in our country is produced by small hydropower plants. Although there are no solar or wind power plants built in Kyrgyzstan to this date, several potential solar and wind energy projects are underway, all concentrated in the Issyk-Kul region due to favorable climatic conditions (high rates of sunny days per year, high level of solar radiation and significant wind flows).

As follows from the National Energy Program of the Kyrgyz Republic for 2008-2010 and the Fuel and Energy Sector Development Strategy until 2025, approved by the Resolution of the Jogorku Kenesh of the Kyrgyz Republic No.346-IV of April 24, 2008 (the "National Energy Program"), renewable energy sources (the "RES") are currently barely used and account for less than 1% of the nation's total energy production. Unfortunately, the National Energy Program fails to pay due attention to solar or wind energy, focusing only on small HPPs, so it says nothing about the possibility and potential placement of solar and/or wind power plants in the regions of the country. Thus, according to the National Energy Program, the total hydro potential of 172 rivers and watercourses surveyed in the country, with water flow of 0.5 - 50 cubic meters per second, exceeds 80 billion kWh per year, while technically feasible potential is 5-8 billion kWh per year. Considering the power shortage during winter months growing from year to year and having reached more than 3.2 billion kWh in 2023<sup>1</sup>, the development of small HPPs and other RES projects would help solve the increasing power shortage problem.

In order to cover this deficit, Kyrgyzstan is currently negotiating with Russia and Turkmenistan on the import of electricity with the total volume of 3.2-3.5 billion kWh<sup>2</sup>. It is clear, however, that this is an urgent and temporary measure and the power deficit must be resolved as soon as possible to ensure energy security of the country.

In view of the need to take urgent action to address the energy crisis stemming from climatic challenges, low water inflow in the Naryn River basin, shortage of generation capacity in the conditions of rapidly outstripping growth of energy consumption, on August 1, 2023, an emergency situation in the energy sector of the Kyrgyz Republic until December 31, 2026 was declared by the Presidential Decree No. 178 of July 24, 2023 (the "Energy Emergency Decree"). The adoption of the Energy Emergency Decree is yet another proof of relevance and importance of the issues discussed in this article.

Before we start analyzing the issues that may arise in the process of implementing the RES projects, let us define what is meant by renewable energy in the legal sense. Article 3 of the

---

<sup>1</sup> [https://24.kg/ekonomika/274737\\_defitsit\\_elektroenergii\\_vkyrgyzystane\\_sostavlyayet\\_32\\_milliarda\\_kilovatt-chasov/](https://24.kg/ekonomika/274737_defitsit_elektroenergii_vkyrgyzystane_sostavlyayet_32_milliarda_kilovatt-chasov/)

<sup>2</sup> [https://24.kg/ekonomika/270772\\_v2024\\_godu\\_kyrgyzstan\\_importiruet\\_3milliarda\\_kilovatt-chasov\\_elektroenergii/](https://24.kg/ekonomika/270772_v2024_godu_kyrgyzstan_importiruet_3milliarda_kilovatt-chasov_elektroenergii/)

Law "On Renewable Energy Sources" of June 30, 2022, No. 49 (the "RES Law"), defines the RES as the sources of continuously replenished energy, namely:

- solar energy, geothermal energy, vacuum energy, wind energy, hydro energy;
- non-fossil and non-carbon energy, biomass energy (recovered from decomposition (fermentation) of any organic waste and/or materials); and
- waste heat energy (recovered from cooling towers, transformer substations, other industrial installations and units).

As far as hydro energy is concerned, it is important to note that under the RES Law only small HPPs (under 30 MW) are referred to the RES, whereas all other HPPs (above 30 MW) are considered as conventional sources of energy<sup>3</sup>.

#### Regulatory framework for RES in Kyrgyzstan

The RES Law is the principal act governing the RES sector. It should be noted that with effect from August 31, 2023, the amendments to the RES Law began to apply and the most important of them are described below:

- the grace period for solar and wind power plants was extended from 15 to 25 years. However, for small HPPs, the grace period remained the same as before, i.e. 15 years;
- during the grace period, the feed-in-tariff for power generated by RES shall be calculated by multiplying the tariff for power generated by RES determined by the tariff policy approved by the Cabinet of Ministers by coefficient of 1.3 (the coefficient for all RES remained the same as before, i.e. 1.3);
- the important novelty from the potential investors' point of view is that the feed-in-tariff for power generated by RES shall be subject to annual adjustment for foreign currency fluctuations in the manner determined by the Cabinet of Ministers of the Kyrgyz Republic. The current practice of applying annual adjustment for inflation shall be abolished;
- the Green Energy Fund under the Cabinet of Ministers shall compensate the National Grid of Kyrgyzstan (NESK) for the costs of purchasing power from RES producers;
- the Ministry of Energy shall be authorized to apply the descending price auction mechanism to setting tariffs for power generated by RES. This provision is something new in the KR Legislation since such tariff setting mechanisms were not practiced in the past. However, the auction procedure is not in place and has yet to be developed by the Cabinet of Ministers;
- and, finally, the Ministry of Energy shall be able to act as a signatory to the power purchase agreement jointly with the RES producer, the NESK (purchaser) and the Green Energy Fund under the Cabinet of Ministers.

#### Issues related to obtaining land rights for implementing RES projects

---

<sup>3</sup> According to Article 3.12 of the RES Law, conventional sources of energy are non-renewable energy sources, in particular, hydrocarbon raw materials (coal, oil, gas) and hydroelectric power plants with an installed capacity of 30 MW or more.

Before starting a RES plant construction project, it is necessary to obtain the rights over the land plot on which it will be built. As practice shows, obtaining the land rights is one of the main problematic issues for investors interested in implementing the RES projects in Kyrgyzstan. Let us explain briefly what this issue is about.

According to Article 29 of the Land Code of the Kyrgyz Republic of June 2, 1999 No. 45 (the "Land Code"), a competent state authority or executive body of a local self-governmental authority is authorized to grant the ownership or use rights over the land plot through public auctions. Consequently, in the primary market, the land rights can be granted through auctions, while in the secondary market, the land rights can be granted under the purchase and/or lease agreements with the land owners or users.

The Land Code contains few exceptions to this general rule. In particular, it is allowed to grant the use right over the land plot in the primary market to the private partners for the purposes of the PPP agreement without holding an auction in the manner determined by the Government<sup>4</sup>. In furtherance of this provision, there was drafted and adopted the Regulation on the procedure for granting a fixed-term (temporary) use right over a land plot to the private partners for the purposes of the public-private partnership agreement, approved by the KR Government Resolution No. 823 of December 2, 2015 (the "Resolution 823").

The Resolution 823 states that the **chargeable** grant of the temporary use right over a land plot for the purposes of the PPP agreement shall be made by a competent authority responsible for the management and disposition of a state or municipal land (i.e. local state administration (in case of a state land) or aiyl okmotu (in case of a municipal land), without holding an auction or tender, **if the allocation of the land plot to the private partner is provided for in the feasibility study of the PPP project.**

It is important to note that the Resolution 823 establishes the procedure and conditions for the chargeable grant to the private partners of the fixed-term (temporary) use (lease) right over the state or municipal lands, except the lands of forestry, water fund, specially protected natural areas, reserve, border zone, and the State Fund of Agricultural Lands and Pastures.

Also, according to the Resolution 823, the land plots may be allocated for the PPP projects for the term of the PPP agreement, which may be up to 49 years under the Law of the Kyrgyz Republic "On Public-Private Partnership" of August 11, 2021 No. 98.

#### Allocation of lands by the Green Energy Fund

The Green Energy Fund under the Cabinet of Ministers was established by the resolution of the Cabinet of Ministers in November 2022. The Fund was granted the status of the RES authority by the Resolution of the Cabinet of Ministers "On the Development of Renewable Energy Sources" No. 429 of August 28, 2023 which also approved the Regulation on the procedure for allocation of lands falling within the jurisdiction of the RES authority for the construction of renewable energy facilities. This Resolution was adopted in furtherance of the Decree of the President of the Kyrgyz Republic "On Issues of Allocation of Lands for Renewable Energy Projects" of March 23, 2023, No. 62 (the "Presidential Decree on Lands for RES Projects") and in accordance with the Energy Emergency Decree. According to both Decrees, the Cabinet of Ministers, the Ministry of Energy, and other authorities were instructed to take inventory of lands in all regions of the country and to grant to the Green

---

<sup>4</sup> Article 29 of the Land Code.

Energy Fund the right of termless use of the land plots suitable for RES projects (i.e. all lands suitable for RES projects must be transferred to the Fund).

Unfortunately, it is not clear from the Presidential Decrees and the Cabinet of Ministers Resolution No. 429 of August 28, 2023, which lands will be subject to inventory taking, i.e. what is the fate of the land plots transferred previously (before the adoption of the Presidential Decrees) to the Ministry of Energy or other state or municipal land users for termless use. It is unclear whether they can or must be transferred to the Green Energy Fund for termless use, and if so, in which way, or whether lands not transferred previously to state and municipal land users for termless use will be subject to inventory taking?

In addition, the Presidential Decree on Lands for RES, the Energy Emergency Decree and the above-mentioned Cabinet of Ministers Resolution No. 429 of August 28, 2023, ordered to take inventory of lands suitable for RES and transferable to the Green Energy Fund for termless use, but set no time limits for completing such inventory taking. At the same time, according to the Resolution No. 429 of August 28, 2023, the Cabinet of Ministers instructed local state administrations and local self-government authorities to submit, **within a month period**, the documents necessary for the conversion (transformation) of lands for consideration of the Cabinet of Ministers and, based on the results of conversion (transformation) of lands, to transfer them to the Green Energy Fund for termless use. Considering that neither the Presidential Decrees nor the Cabinet of Ministers Resolution set the time limits for taking inventory, the question arises as to what period the above-mentioned one-month term is tied to and when it starts to run. We believe that such inconsistencies will lead to delays or even failure to execute the Presidential Decrees and the Cabinet of Ministers Resolution No. 429.

Despite the incomplete process of land inventory taking and the fact that the lands have not yet been transferred to the Green Energy Fund for termless use, the Cabinet of Ministers has already approved (by the same Resolution No. 429 of August 28, 2023) the Regulation on the Procedure for Transfer of Lands Falling within the Jurisdiction of the RES Authority for the Construction of RES Plants (the "Regulation on Lands for RES"). It should also be noted that the Regulation on Lands for RES does not indicate how it will correlate with another previously adopted and effective Regulation on the Procedure for Allocation of State-Owned Land Plots, approved by the Government Resolution No. 535 of October 9, 2019 ("Resolution 535"), which also governs the issues of granting temporary use rights (via auction) over the land plots allocated to state land users for termless use for implementing the RES projects. Obviously, this situation may create conflicts in the law implementation practice when allocating lands for the RES construction projects. It is also unclear whether the Resolution 823 governing the allocation of lands for implementing the energy PPP projects will still apply or whether it will be abolished after the adoption of the Regulation on Lands for RES, given that all land suitable for RES plants will be transferred to the Green Energy Fund. We believe that in order to address these conflicts and risks, the Cabinet of Ministers should, within the shortest time possible, amend the Regulation on Lands for RES and the Resolution 535, and determine the future status of the Resolution 823 in order to clarify the specific scope of application of each of these regulatory acts.

In order to better illustrate the different legal mechanisms for land allocation contained in the Resolution 535 and the Regulation on Lands for RES, we provide a brief comparative analysis of both documents.

Thus, the Resolution 535 provides for **an auction to be held by the State Agency for State Property Management under the Cabinet of Ministers**. The auction will be won by the bidder who offers the highest price for the lease of the land plot, so the one whose price is higher will get the lease rights to the land. At the same time, **the Regulation on Lands for RES provides for a tender to be held by the Green Energy Fund**, with the selection criterion for the tender being the offering of better and more favorable conditions for the implementation of the RES project. The terms of granting land rights are also different: 5 years in the Resolution 535 (obviously, this term does not allow recouping investments in the RES project) and no term in the Regulation on Lands for RES. In the latter case, the Green Energy Fund will determine the term of use of land in its sole discretion for each investor individually, which represents an excessive discretionary power, potentially increases the risks of corruption in the bidding process and does not ensure the transparency of the process and equality of investors in the process of granting land rights for implementing the RES projects.

### Land transformation issues

The Land Code requires that in order to be used for the construction of a solar or wind power plant, the land plots must have an appropriate intended purpose (e.g. the construction and operation of a solar/wind power plant) and category (in case of a RES plant, the category must be "lands of industry, transport, communication, **energy**, defense and other purposes"). At the same time, if the allocated land plot belongs to another category, for example, agricultural land, it will be necessary to transform the land (convert from this category to the category of "energy land") in accordance with the Law of the Kyrgyz Republic "On Conversion (Transformation) of Land Plots" of July 15, 2013, No. 145 (the "Transformation Law"). Also, the transformation process itself may take quite a long time (from several months to 1 year depending on the category of land) and may entail the need for the investor to pay compensation for agricultural/forestry loss and lost profits.

At the same time, it should be noted that according to Article 5 of the Transformation Law, agricultural and forestry losses and lost profits are not subject to compensation when land is converted for the purposes of construction of small HPPs owned by the state and municipalities, construction of power transmission lines financed from the republican and local budgets, and construction of large electric power plants with reservoirs and dams by domestic investors. Thus, solar and wind power plants are not exempt from paying compensation for agricultural losses and lost profits, unlike small and large HPPs, which are exempt, despite the fact that, for example, the construction of large HPPs involves the flooding of significant areas of land and produces the negative impact on the environment and the state of land resources. The damage caused by HPPs is incommensurably higher than that inflicted by solar panels or wind farms. In our opinion, this fact is one of the gaps in the legislation governing RES, which hinders the development of RES in Kyrgyzstan.

It should be noted that in order to reduce the amounts of compensation for agricultural losses and lost profits, the Cabinet of Ministers adopted the Resolution No.75 of February 16, 2023 proposing amendments to the Government Resolution No.1 of January 5, 2016 approving the rates of compensation for agricultural losses and use of proceeds from compensation of such losses. As a result, the rates of compensation for agricultural losses are significantly reduced (by almost 10 times) in case of converting agricultural lands into lands of industry, transport, communications, energy and other use, that is, into the category which allows the use of land for the RES construction projects. Considering that the

construction of solar power plants requires significant land areas, the amount of compensation for losses calculated at previous rates would reach tens of millions of soms. In this regard, reducing the amount of compensation for agricultural losses, in our opinion, should have a positive impact on the development of renewable energy in Kyrgyzstan.

### Consequences of non-use of land

For the RES projects, there is a risk that under the RES Law, the Ministry of Energy may initiate the procedure for termination (cancellation) of the land use right in case of the use of the land plot in violation of its intended purpose or the non-use of the land plot allocated for construction of a RES plant for 3 (three) years.

A similar provision is contained in the Regulation on the Terms and Conditions of Engaging in Generation and Supply of Power Generated by Renewable Energy Sources, approved by the Cabinet of Ministers Resolution No. 583 of October 22, 2022 (the "RES Regulation"). In particular, according to Subsection 55.3 of the RES Regulation, a RES producer must complete the construction of the RES plant within 3 (three) years from the date of receipt of the land plot. Thus, the obligation to carry out the construction of the RES plant within 3 years is enshrined in law.

At the same time, the Legislation does not clearly stipulate what activity can be considered as the use of the land plot, whether it should be the actual construction or, for example, preparatory activities such as: geological and geophysical studies of the land plot, topographic survey, development, coordination and approval of project documentation for the construction of the RES plant (which together may take many months and even years) will also be considered as the use of the land plot. Nevertheless, despite the above gaps, based on the Legislation currently in force, in case of non-compliance with these time requirements (failure to use the land within 3 years), the land may be condemned from the investor. At the same time, according to Article 66 of the Land Code, land condemnation can be carried out only by court order<sup>5</sup>.

### Power purchase agreement

A power purchase agreement (the "PPA") is a very important issue for investors in the RES sector since cost recovery and project risks depend on the terms and conditions of the PPA. Despite the importance of PPAs for the development of the RES sector, there is currently no approved model PPA in Kyrgyzstan. As far as we know, the Ministry of Energy is developing a model electricity supply contract, which according to the RES Law should be approved by the Cabinet of Ministers, but it is not known when this work will be finalized.

As regards the PPA, it should be noted that the Legislation does not specify the term of the PPA, whether minimum or maximum. At the same time, the default rule applied to RES

---

<sup>5</sup> According to Article 66 of the Land Code, land condemnation is allowed in the following cases:

- 1) non-use of a land plot for its intended purpose;
- 2) condemnation (redemption) of a land plot for state and public needs;
- 3) non-use of a land plot allocated for RES construction projects for 3 years;
- 4) non-payment of land tax for the period set by the tax legislation;
- 5) non-payment of rent for a public or municipal land plot for 6 months or the period set by the agreement, etc.

producers is based on the term of the grace period established by the RES Law, which is 25 years<sup>6</sup>.

According to Articles 8 and 12 of the RES Law, during the grace period, any leftover power generated by RES plants (that is, any power not used for personal consumption and not contracted to individual off-takers) must be purchased by a power company determined by the designated authority (single off-taker) which has concluded an appropriate contract, regardless of which power company's grid this RES plant is connected to. According to Subsection 4.8 of the RES Regulation, the Ministry of Energy is authorized to determine a power company which will purchase any leftover power generated by RES plants (that is, any power not used for personal consumption and not contracted to individual off-takers). At present, pursuant to the order of the Ministry of Energy, NESK is designated as a single off-taker who will purchase power from RES producers. At the same time, if previously (before the amendments to the RES Law effective from August 31, 2023) the offtake was made at the tariff of 3 som 40 tyyn multiplied by a coefficient of 1.3 (the so-called feed-in-tariff, which is 4 som 43 tyyn per kWh), then according to the amended RES Law, NESK will purchase power from RES producer at a tariff that will be determined by the tariff policy approved by the Cabinet of Ministers multiplied by the coefficient of 1.3. In this regard, it is unclear whether the feed-in-tariff of 4.43 soms will continue to apply or whether it will change after the Cabinet of Ministers approves the tariff policy.

In addition, the introduction of the descending price auction mechanism in the RES Law, to be applied by the Ministry of Energy, also adds certain ambiguity and contradictions in the question of tariff formation, as it is not clear how the current feed-in-tariff of 4.43 soms, which according to the RES Law, all RES producer are entitled to during the grace period will correlate with the new auction mechanism, which aims to reduce the tariff in order to enable NESK to conclude PPAs with those RES producers whose electricity prices will be lower than those of competitors. At the same time, according to the RES Law, all RES producers have the right to the guaranteed purchase of electricity by NESK during the grace period. Thus, the issues raised above should be clarified by the Cabinet of Ministers in due course and as soon as possible in order to avoid conflicts in practice.

It should also be noted that the RES Law provides that tariffs for power generated by RES must be determined on a contractual basis between a producer and its consumer, i.e. free pricing can be used by agreement of the parties. At the same time, in case of selling electricity to its consumers at a contractual price, it is not required to follow the model PPA approved by the Cabinet of Ministers (the model PPA is intended only for NESK and RES producer), hence, the parties can independently draft and execute an electricity supply contract that suits them, and can determine the price of electricity at their own discretion.

### Conclusion

In view of annually increasing power shortage, particularly acute in winter, the construction of new power plants is crucial for meeting the growing demands of the population, production sector, agribusiness sector and other economic actors. Meeting the electricity demand has nowadays become a matter of national security and the key to the successful economic development of the country in the future.

---

<sup>6</sup> The term of 25 years is set only for solar and wind power plants; for small hydropower plants, the grace period is still 15 years, so for a small hydropower plant the grace period cannot exceed 15 years.

The analysis of legal aspects of implementing the RES projects provided in this article shows that despite the right steps taken by the state to create favorable conditions for investors, as evidenced by the active legislative undertakings, the establishment of the Green Energy Fund and the adoption of a number of RES regulations, there are still unresolved issues and problems that hinder investment in the development of RES and the country in general. The prompt resolution of these issues will serve the strategic interests of the country in the short- and long-term perspectives.