



Projects & Infrastructure

Power Guide:
Côte d'Ivoire

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Introduction

This Power Guide has been prepared by ADNA and provides an overview of the energy sector in Côte d'Ivoire and more specifically of the electricity field. The aim of this guide is to provide useful information to investors and stakeholders on legal aspects of the industry, such as applicable regulatory standards and tariffs.

The State of Côte d'Ivoire holds the third largest electrical system in West Africa, exporting around 11% of its total production to Burkina Faso, Ghana,

Mali, Togo, among others. The State also benefits from a generating capacity of 2,229 MW in 2019. The power-generating capacity of the country increased by 60% between 2011 and 2019.

The energy mix in Côte d'Ivoire is mainly made up of thermal, hydraulic, and solar sources. Côte d'Ivoire has set itself the ambitious goal to reduce its fossil fuel energy consumption and achieve an energy mix composed of forty-two per cent (42%) renewable energies, in particular hydroelectric power.

Governing Law



Relevant laws, regulations, and policies:

- **Energy**

- ECOWAS Energy Protocol A-P4-1-03, 2002
- Directive C-DIR-1-06-13 on the organization of the Regional Electricity Market, 2013
- Electricity Code, 2014
- Decree No. 2016-782 on the terms and conditions of electricity concession agreements, 2016
- Decree No. 2016-783, setting the terms and conditions for the sale of electricity produced by an independent producer, 2016
- Decree No. 2016-786 setting the rules for determining and revising electricity sale and purchase tariffs, 2016

- Decree No. 2010-200 defining the rules for managing financial flows in the power sector, 2010
- Renewable Energy Development Strategy, 2016-2030

- **Public Procurement and Investment**

- Public Procurement Code, 2019
- Investment Code, 2018
- Decree No. 2018-647 setting out the terms and conditions for implementing the Investment Code, 2018
- Decree No. 2018-358 on Public-Private Partnerships, 2018

- **Environment**

- Environmental Code, 1996
 - Decree No. 96-894 establishing the rules and procedures applicable to Environmental Impact Assessments (EIA), 1996
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Institutional Framework

Community and Regulatory Bodies

ECOWAS Regional Electricity Regulatory Authority – ERERA (*in French Autorité de Régulation Régionale du Secteur de l'Électricité de la CEDEAO*)



ERERA is the regulatory authority at the regional economic community level.

Its main objectives are to regulate the cross-border power pooling among ECOWAS member states, oversee the implementation of the necessary conditions to ensure rationalisation and reliability, and contribute to implementing a regulatory and economic environment suitable for the development of the regional market.

West African Power Pool – WAPP (*in French Système d'Echanges d'Énergie Électrique Ouest Africain*)



The WAPP is entitled to promote and develop power production and transport facilities as well as to coordinate power exchange among the ECOWAS Member states.

National Electricity Regulatory Authority of Côte d'Ivoire (ANARE-CI) (*in French Autorité Nationale de Régulation du secteur de l'électricité de Côte d'Ivoire – ANARE-CI*)



ANARE-CI is the national regulator responsible for regulating Côte d'Ivoire's energy sector. Some of its functions include inter alia ensuring compliance, protecting the interests of users of the public electricity service, settling disputes in the electricity sector between operators and between operators and users, and advising the State in the regulation of the electricity sector.

Government Departments

Ministry of Petroleum, Mining, and Energy



The Ministry is responsible for coordinating and planning national energy policy, drafting, and monitoring legislation and regulations on electricity and renewable energies, managing the use of energy resources in Côte d'Ivoire, specifying tariffs applicable to the electricity sector, and setting the strategic direction for the growth of the energy sector.

The Ministry is divided into several directorates, including the General Directorate for Energy (*in French Direction Générale de l'Énergie – DGE*), which is involved in negotiations on behalf of the Ministry in respect of projects relating to the energy sector.

Ministry of Economy and Finance



The Ministry of Economy and Finance manages government assets and is responsible for financial management of state-owned assets.

Ministry of the Budget and State Portfolio



The Ministry of the Budget and State Portfolio is responsible for managing the State budget and for budgetary, tax, and customs regulations.

The Ministry of the Budget and State Portfolio and the Ministry of Economy and Finance participate in agreements with financial implications for the State. They are entitled to sign these agreements with the Ministry of Petroleum, Mining, and Energy.

Other Industry Actors

Ivorian Electricity Company (*in French Compagnie Ivoirienne d'Electricité – CIE*)



CIE is responsible for the production, transmission, distribution, export, and import of electricity in Côte d'Ivoire.

CIE distributes electricity throughout the country. As a public service concession-holder CIE is responsible for the transport and distribution of electricity and ensures the permanent, continuous, and regular supply of electricity, and equal access and treatment of electricity consumers.

Under the terms of the concession agreement, CIE produces electricity on behalf of the State using the generating facilities made available to it, particularly the hydroelectric dams of Soubré, Taabo, Ayamé 1, Ayamé 2, etc.

CIE also acts as the off-taker of the power produced by Independent Power producers (IPP) by purchasing power from those IPP and carrying out maintenance work on electrical installations.

Energy Company of Côte d'Ivoire (*in French Société des énergies de Côte d'Ivoire – CI-Energies*)



CI-Energies is a state-owned company incorporated in 2011. CI-Energies is responsible for monitoring the management of the movement of electrical energy, the project management for any work to be undertaken by the State as the conceding authority, as well as the reinforcement and renovation of the transport and rural electrification network.

Independent Power Producers - IPP

Ivorian Electricity Production Company (*Compagnie Ivoirienne de Production de l'Electricité – CIPREL*)



CIPREL is an IPP owned by the French group Eranove.

It was founded in 1994 in response to the growing needs of Côte d'Ivoire for energy. The company is historically the first IPP installed in Côte d'Ivoire and West Africa and one of the largest power producers in Côte d'Ivoire.

In 2020, CIPREL produced 31% of national electricity production.

AGGREKO



In 2010, in response to a chronic shortfall in electricity production, the Ivorian government concluded an agreement with Aggreko to lease and operate a 70 MW gas-fired power plant.

Aggreko contributed 9% of national electricity production in 2020.

AZITO ENERGY



AZITO ENERGY operates in the electricity market as an IPP.

Under the terms of a concession agreement with the State of Côte d'Ivoire, AZITO ENERGY was authorised to carry out production activities and develop a thermal power plant.

AZITO ENERGY contributed 28% of national electricity production in 2020



Concession Agreement between IPP and the State

- Production, transport, dispatching, import, export, distribution, and marketing activities are the main activities carried out by the stakeholders in the electricity sector in Côte d'Ivoire.
- The implementation of these activities is subject to the conclusion of a concession agreement with the State, represented by the Ministry of Mines, Oil, and Energy and the Ministry of Economy and Finance, with the exception of dispatching¹ activities, which are a State monopoly.
- Concession agreements govern the relationship between the State and the concession holders, in particular the rights and obligations of each party for the production, transmission, and distribution of power, as well as the power purchase conditions.
- The concession holder is selected by national or international open tender procedure. However, the open tender procedure can be waived, and the concessionaire can be selected after a restricted tender or direct negotiation.
- Concession agreements are concluded based on the following: the balanced development of the

power sector, the safety of power systems, the development of production capacity, the fair distribution of risks and benefits, and the economic, financial, and social balance of the interests of the parties.

- The IPP can sell its generated energy to the State or to a third party with the status of “eligible customer” granted by the Ministry in charge of energy.
- The sale of energy production by an IPP to an eligible customer is subject to a power purchase agreement entered into between the two parties, based on the model power purchase agreement approved by ANARE.
- Within the PPA, parties define the delivery points for the purchased power, the maximum quantity (in kWh), the delivery voltage, the tariff, the terms and conditions of invoices, as well as the effective date of the contract, its duration and the terms for termination.

Overview of the Concession Agreement negotiation procedure

The concession agreement is the framework contract between the State and the concession holder. It is generally supplemented by ancillary agreements to govern the financial, technical, and legal aspects. For example, in the context of a project to build and operate a power plant, the ancillary agreements could cover the construction of facilities associated with the

power plant, the emphyteutic lease or the acquisition of land.

The negotiation phase of the concession agreements with the State requires the intervention of notably:

- the General Directorate of Energy, which represents the Ministry of Petroleum, Mines and Energy; and the State during the negotiations;

¹ Control of the electricity network, which consists in particular of maintaining the supply-demand balance and ensuring control of the voltage plan and electricity flows on the national networks and interconnections.

- The National Steering Committee for Public-Private Partnerships (*in French Comité National de Pilotage des Partenariats Public-Privé - CNP-PPP*), which is involved in the selection of the concession holder; and
- CI-Energies, which assists the State during the negotiations (e.g., on land issues, where applicable).

Local Content Requirements

- Currently, for the project company, there are no local content requirements as regards:
 - ownership of shares by foreign investors in a project company;
 - subcontracting services to a project company;
 - employment of national employees in the project company; and
 - the community development carried out by the project company.
- However, there are various restrictions relating to land ownership by foreigners in Côte d'Ivoire which have an impact on the land ownership arrangements for power projects.
 - In addition, as part of its policy of promoting investment, the State of Côte d'Ivoire grants a tax credit of two per cent (2%) to the following project companies:
 - project companies with eighty per cent (80%) of their employees (managers and supervisory staff) of Ivorian nationality;
 - project companies that subcontract at least 25% of their services to Ivorians; and
 - project companies with at least 15% Ivorian shareholders.

Feed-in-Tariffs (FIT) System

- As part of its policy of developing the production of renewable energy, the State of Côte d'Ivoire gives priority to any project involving the production of renewable energy whose production cost is lower than the long-term marginal cost of the network.
 - the electricity is purchased for injection into an interconnected network and the installed capacity is between 0.5 and 1 MW; or
 - the electricity is purchased for injection into an isolated network and the installed capacity is between 0.02 and 0.5 MW.
- IPPs which generate at least 50% of their electricity from renewable sources can benefit from a right to purchase their electricity at feed-in-tariff for a period of 5 to 10 years. However, the right to purchase electricity at feed-in-tariff applies for the entire duration of the electricity purchase contract in the following cases:
 - Feed-in tariffs are based on the principle that the State has an obligation to purchase renewable energy for a specific period and at a specific price.
 - Feed-in tariff levels are determined according to the renewable energy source, the installed capacity and the technologies used to produce the electricity.

Credit Enhancements and Security Arrangements

- No sovereign guarantees are provided by the Government of Côte d'Ivoire. Sovereign guarantees are generally granted as part of credit agreements entered into by the State.
 - However, first demand guarantees are issued by banks on behalf of the State. Unless the parties agree otherwise, the first demand guarantees take effect on the date they are issued and can have a fixed or indefinite term.

Key Approvals/Licenses Required to be Procured.

- Approval of the Minister of Budget (following the favorable opinion of the CNP-PPP)
- Authorization to transfer capital (inbound and outbound) from the Directorate of External

Finance (in French *Direction des Finances Extérieures – DECFINEX*)

- Environmental Impact Assessment (EIA) License issued by the Ministry of Environment and Sustainable development
- Authorisation to transport equipment granted by the Ministry of Transport
- Authorisation to use communication networks granted by the Ministry for Communication and the Digital Economy
- Building permit and approval of building plans with respect to the buildings on site by the Ministry of Construction, Housing, and Urban Development
- Decree issued by the Council of Ministers approving the concession agreement

Governing Law and Dispute Resolution

- Concession agreements and PPA are governed by Ivorian law.
- Côte d'Ivoire is a party to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, 1965 (ICSID Convention) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention).
- Disputes may also be resolved through local courts or arbitration, depending on what has been agreed by the parties.
- ANARE-CI is empowered to rule on any dispute that may arise from the interpretation or performance of concession agreements in the electricity sector.

Key Information

- The official language of Côte d'Ivoire is French. To this end, agreements and related documentation must be in French.
- Concession agreements shall become effective once they have been approved by a decree issued by the Council of Ministers subject to the fulfillment of the conditions precedent provided for in the contracts.
- For tax purposes, registration duties can be charged.
- On the execution and signature of contracts, counterparts are not permitted in Côte d'Ivoire.

Power Sector Experience

ADNA has extensive as our key practice area including projects, corporate and M&A, banking and finance, and disputes. ADNA has power experience in infrastructure and energy deals in Côte d'Ivoire, Guinea, Morocco, Algeria, and other African

jurisdictions. Our presence in Africa provides us with local depth combined with international insight and creative thinking. ADNA has handled some of the largest power deals in Côte d'Ivoire.



Kapowership: Advising Keepership in connection with its negotiation with the Ivorian Parties for the provision of LNG and a Floating Storage Regasification Unit (FSRU) to reinforce the power capacity of Côte d'Ivoire.



EDF Côte d'Ivoire: Advising EDF Côte d'Ivoire in connection with a legal feasibility study in relation to a project to supply and install photovoltaic panels in the city with a capacity equal to or greater than 100 kW as part of a self-production scheme.



EDF:

- Advising EDF in connection with the supply of solar photovoltaic energy service to a major banking group in Côte d'Ivoire.



An IPP Shareholder: Advising a shareholder in an Independent Power Producer (IPP) in connection with the design, construction, operation, maintenance, and financing of four solar photovoltaic power plants with a

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- Advising EDF in connection with the framework of the design, financing, construction, and operation project, in partnership with the Ivorian company SIFCA, a biomass plant with a total capacity of 46 MW, divided into two 23 MW units, in Côte d'Ivoire.

combined installed capacity of 50 MW located in the Republic of Benin, as well as the design, construction, and financing of the facilities for connecting these power plants to the distribution network



Leading Solar IPP Sponsor: Advising a leading Independent Power Producer (IPP) specialized in Solar projects in connection with its negotiations with the Government of Côte d'Ivoire for the design, financing, construction, and operation of the 50 MW solar power plant in the Northern part of Côte d'Ivoire.



TIERI: Advising shareholders and members of the management of the TIERI group (service companies operating in energy based in Côte d'Ivoire, Burkina Faso, Mali, and Niger) in connection with the total acquisition by the French group ENGIE of the companies composed TIERI group.



Investisseurs & Partenaires (I&P) And the Shareholders of Conergies Group: Advising the investment fund managed by Investisseurs & Partenaires (I & P) and the shareholders of CONERGIES GROUP in connection with the acquisition of 49% of the shareholding of CONERGIES GROUP by EDF (Electricité de France) at the same time exiting I&P from their investment.



Fenix Engie Côte d'Ivoire: Advising Fenix Engie Côte d'Ivoire (an Engie group subsidiary) in connection with several matters, including issuing a legal memorandum dealing with the compliance under Ivorian law (including banking and financial services law) of solar panels supply and financing structure, involving micro payment installments by mobile payment.

Key Contact



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About ADNA

In June 2021, four well established African firms including Bourabiat Associés (Algeria), EMIRE Partners (Côte d'Ivoire), SD Avocats (Guinea), and BFR & Associés (Morocco), merged to create one fully integrated law firm called ADNA. ADNA is also a member of the award-winning Africa Legal Network (ALN), which provides a bridge between Anglophone and Francophone Africa. ALN has an expansive and growing coverage of jurisdictions in Africa.

ADNA is comprised of modern legal entrepreneurs that have created a strong independent and integrated law firm for Africa, spanning from North to West Africa, with a Pan African vision, wide international expertise, and an extended network.

Encompassing over 45 years of collective experience on the African continent, ADNA is eager to disrupt the status quo of the typical law firm to best serve its clients by being as ambitious as those it works with. Helping to navigate businesses and provide bespoke legal solutions.

The firm is founded on the notion of legacy. The legacy to become an institutional law firm and to help

grow and promote the next generation of African lawyers.

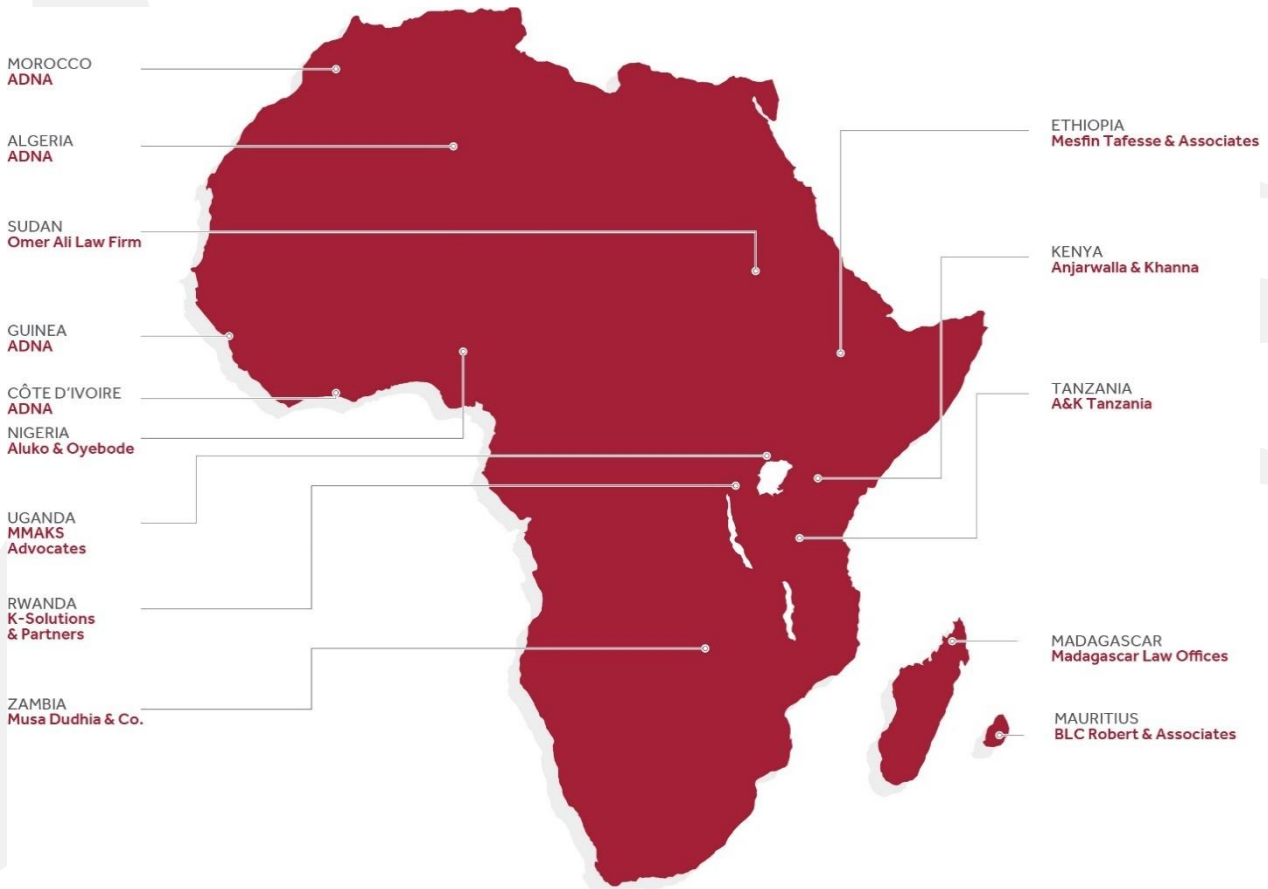
ADNA's experience extends beyond transactional work, we look after clients through every stage of the company's life cycle. We are at the forefront of developments in Africa and always strive to develop innovative structures to simplify the complexities inherent in deals in established and emerging markets on the continent. Our presence in Africa provides us with local depth combined with international insight and creative thinking.

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About ALN



ALN is an integrated alliance of the preeminent full-service corporate law firms in 14 African countries: Algeria, Côte d’Ivoire, Ethiopia, Guinea, Kenya, Madagascar, Mauritius, Morocco, Nigeria, Rwanda, Sudan, Tanzania, Uganda and Zambia. ALN also has a regional office in Dubai, UAE, which serves as a gateway to the Gulf region and beyond.

Vision

ALN seamlessly connects the African continent. It brings its global expertise, continental reach and deep local know-how to help its clients navigate the multitude of opportunities and risks in Africa, holistically combining legal, tax, regulatory and commercial advice.

Mission

ALN is dedicated to its clients’ success. ALN achieves this by providing world class legal, tax and regulatory advice in a commercial context. ALN’s lawyers are aware of the trends and events shaping the continent, deeply networked and respected in their communities as thought leaders and opinion shapers. ALN’s lawyers have a Pan African mindset, are down to earth, pragmatic, responsive, innovative and relentlessly determined.





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