



# Projects & Infrastructure

Power Guide:  
Tanzania

ONE REGION  
ONE VISION  
ONE ALN

## Introduction

This Power Guide has been prepared by ALN Tanzania| Anjarwalla & Khanna Tanzania (**ALN Tanzania**) and provides an overview of Tanzania's power sector. 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.

## Governing Law



- The Constitution of the United Republic of Tanzania of 1977 (Revised in 2005)
- **Statutes:**
  - The Electricity Act, 2008
  - The Rural Energy Act, 2005
  - The Natural Wealth and Resources (Permanent Sovereignty) Act, 2017
  - The Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act, 2017
  - The Public-Private Partnerships Act, CAP 103
  - The Energy and Water Utilities Regulatory Authority Act, CAP 414, and its corresponding amendments of up to 2022
  - The Environmental Management Act, CAP 191
- **Other laws, regulations, and policies, including:**
  - The Written Laws (Miscellaneous Amendments (No. 2) Act, 2020
  - The Electricity (General) Regulations, 2020
  - The Electricity (Development of Small Power Projects) Rules, 2020
  - The Public-Private Partnership Regulations, 2020
  - The Electricity (Electrical Installation Services) Rules, 2019
  - The Electricity (Market Operation Services) Rules, 2016
  - The Electricity (Standardized Small Power Projects Tariff) Order, 2019
  - The Electricity (Supply Services) Rules, 2019
  - The Electricity (Generation, Transmission and Distribution Activities) Rules, 2019
  - The Electricity (Procurement of Power Projects and Approval of Power Purchase Agreements) Rules, 2019
  - The Electricity (Net-Metering) Rules, 2018
  - The Electricity (Grid and Distribution Codes) Rules, 2017
  - The Electricity (Market Re-Organization and Promotion of Competition) Regulations, 2016
  - The National Energy Policy, 2015
  - The Tanzania Electricity Grid Code, 2017
  - The Tanzania Electricity Distribution Code, 2017
  - The Energy and Water Utilities Regulatory Authority (Consumer Complaints Settlement Procedure) Rules, 2020

## Institutional Framework

### The Energy and Water Utilities Regulatory Authority (EWURA)



EWURA is the regulatory agency responsible for technical and economic regulation of the electricity supply industry in mainland Tanzania. Its functions include` licensing, tariff review, enforcement of quality and reliability of supply, approving initiation of procurement of power projects, approving Power Purchase Agreements, and monitoring performance and standards in relation to quality, safety, health and environment. EWURA is also responsible for promoting effective competition and economic efficiency.

### Ministry of Energy



The Ministry is in charge of formulating and monitoring the implementation of policies on Energy, Oil and Gas. The Ministry is also responsible inter alia for Energy Resource Management; Urban and Rural Electricity Programmes; Local Content in Energy i.e., Renewable and Non-Renewable Sources of Energy.

### Tanzania Geothermal Development Company (TGDC)



TGDC is a subsidiary company of TANESCO and is wholly owned by the government of Tanzania. Its key mandate is to promote the development and generation of geothermal energy in Tanzania and to explore, drill and harness geothermal resources for power generation and direct applications.

### Tanzania Electricity Supply Company Limited (TANESCO)



TANESCO is a parastatal company that owns most of the electricity generating, transmitting, and distribution facilities in Tanzania mainland. Its key mandate is to generate, purchase, transmit, distribute, and sell electricity to Tanzania Mainland. It also sells bulk power to the Zanzibar Electricity Corporation.

### The Public-Private Partnerships Centre (PPP Centre)



The PPP Centre is established under the Public-Private Partnerships Act. Its main function is to promote and coordinate all matters relating to public-private partnership projects.

### Rural Energy Agency (REA)



REA is established under the Rural Energy Act. Its main function is to facilitate the provision of modern energy services in rural areas of mainland Tanzania.

### Tanzania Investment Centre (TIC)



TIC is a government agency that is responsible for coordinating, encouraging, promoting, and facilitating investments in Tanzania in the various sectors of the economy, including energy. The Centre assists investors in getting approvals, licenses and permits for their investments, as well as Certificates of Incentives for foreign investors who meet a capital requirement of USD 500,000 and local investors with a capital of USD 50,000.

### Fair Competition Commission (FCC)



The FCC is established by the Fair Competition Act. Its statutory mandate includes inter alia: to promote policies that enhance competition and consumer protection, and to promote and enforce compliance with the Fair Competition Act.

### National Environmental Management Council (NEMC)




NEMC is established under the National Environment Management Act and is obliged to undertake enforcement, compliance, review, and monitoring of environmental impact assessments. In light of renewable sources of energy, NEMC is tasked with promoting the use of renewable sources of energy, through incentives and promotion of policies.

### Tanzania Revenue Authority (TRA)



TRA is established by the Tanzania Revenue Authority Act. Its primary mandate is to assess, collect and account for all revenue on behalf of the central government.



## Power Purchase Agreement (PPA) Between the Independent Power Producer (IPP) or the Small Power Producers (SPPs) and TANESCO

- The operating term of a PPA is typically 20 - 25 years from the Commercial Operation Date.
- SPPs are private or state-owned undertakings that generate power with a capacity of up to 10MW. IPPs are private undertakings that generate power of a capacity greater than 10MW.
- The EWURA has developed standard PPAs for SPPs and seven (7) model PPAs (based on the nature of the power generation energy resource such as hydro, wind, coal, natural gas, solar, fuel etc.) for IPPs.
- Amounts are payable in a foreign currency to IPPs while payments under the standardised small power purchase agreements for small power projects are determined in USD but prepared and payable in Tanzania Shillings based on the selling rate of the USD at the Bank of Tanzania on the date of payment.
- A PPA typically provides for payment 30 days after receipt of the invoice by TANESCO.
- A PPA is required to be approved by EWURA, subject to the provisions of Section 25 of the Electricity Act.

## Local Shareholding and Local Content Requirements

- The TIC grants certificates of incentives entitling both local and foreign investors (who have invested a minimum capital of USD 50,000 and USD 500,000 respectively) to various fiscal and non-fiscal incentives and benefits such as derivative rights on land and reduced tax deductions.
- Generally, there are currently no restrictions in relation to local shareholding ratios for a project company that intends to set up an energy project in Tanzania. However, there are various restrictions relating to land ownership by foreigners in Tanzania which have an impact on the land ownership arrangements for power projects.
- Power projects developed under the PPP regime will endeavour to provide an opportunity for the empowerment of the citizens of Tanzania.

## Payments to TANESCO

Typically, IPPs pay liquidated damages for:

- a) Delay in commissioning the plant by the Required Commercial Operations Date; and
- b) Failing to meet contracted capacity during operations of the plant.

## Credit Enhancements

- No sovereign guarantees are provided by the Government of Tanzania.
- Partial risk guarantees and political risk insurance have been developed for the Tanzanian market by

the World Bank, Multilateral Investment Guarantee Agency (MIGA), International Development Association (IDA), Africa Development Bank (AFDB) and African Trade Insurance Agency (ATIA).

## Key Approvals/Licenses Required to be Procured

- PPA approval by EWURA is required before execution. However, small power projects (i.e., exceeding 10MW and not less than 100KW) can be concluded without the approval of EWURA.
- EWURA shall amongst other things, review and approve tariffs set in the PPA to ensure they are just and reasonable to enhance electricity consumption and for efficient business operations.
- Electricity Generation License issued by EWURA.
- Registration of contractors with the Contractor Registration Board.
- Environmental Impact Assessment (EIA) License issued by the NEMC.
- Local governments grant development permissions and approve building plans with respect to the buildings on site.

## Governing Law and Dispute Resolution

- PPAs and the Government of Tanzania memorandum of understanding, implementation agreement or government guarantee (host government agreement) are governed by Tanzanian law.
- Under the Tanzania Investment Act, foreign investors may settle disputes with the Tanzania Investment Centre (TIC) or the Government through arbitration.
- Parties are free to settle their disputes in accordance with Tanzanian arbitration laws, the International Centre for the Settlement of Investment Disputes (ICSID) or within the framework of any bilateral or multilateral agreement on investment protection agreed to by the Government of Tanzania and the government of the country from which the foreign investor originates.

## Power Sector Experience

Our Regional Projects & Infrastructure team, comprised of lawyers in Dar es Salaam and Nairobi, have worked on landmark transactions in the country and increasingly in East Africa. In particular, our firm has unique on the ground experience in infrastructure and energy deals in Tanzania and other African

jurisdictions. ALN Tanzania has strong business and regulatory relationships enabling a concise understanding of structuring a deal in light of potential economic, political and financial risks. Our Regional Projects & Infrastructure team has handled several large power deals in Tanzania



**Sumitomo Corporation:** Acting for Sumitomo Corporation, a leading global integrated trading company, in connection with the establishment of a 240 MW combined cycle power plant.



**Otto Energy:** Advising Otto Energy, a company that explores, develops, and produces oil and gas primarily in the Philippines and East Africa, in connection with its farm out of a 25% participating interest in the Kilosa-Kilombero contract area under the relevant production sharing agreement.





**Confidential:** Acting for a significant investor in the assessment of the solar power landscape in Tanzania and Zanzibar and the potential acquisition of a pipeline of power projects.



**Confidential:** Acting for a significant investor in the negotiation of a wind power project in Tanzania.



**Confidential:** Acting for a large Indian oil corporation in connection with setting up of a gas infrastructure plant in Tanzania.



**ExxonMobil:** Acting for ExxonMobil, the world's largest publicly traded international oil and gas company, in connection with the establishment of operations in Tanzania and on its farm with StatoilHydro in respect of Offshore Block 2.



**Dowans Tanzania:** Acting for Dowans Tanzania in connection with the establishment of a hydropower project in Tanzania.



**Confidential:** Advising one of the largest providers of Energy Solutions in the U.S, in connection with the construction of power lines in Tanzania.



**Government of Tanzania and TANESCO:** Acting for the Government of Tanzania and the Tanzanian utility, TANESCO, in connection with the proposed Ruhudji Hydropower project.



**Confidential:** Acting for one of the largest pension funds in Africa in connection with its investment in a 318MW combined cycle gas turbine electricity generation facility in Tanzania



**Boundary Holdco:** Acting for Boundary Holdco, a wholly owned subsidiary of Helios Investment Partners, an Africa-focused private equity firm, in connection with their acquisition of Off Grid Electric, a Cayman Islands company that installs and maintains solar power systems and for rural households and small businesses.

## Key Contacts

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## About the Firm

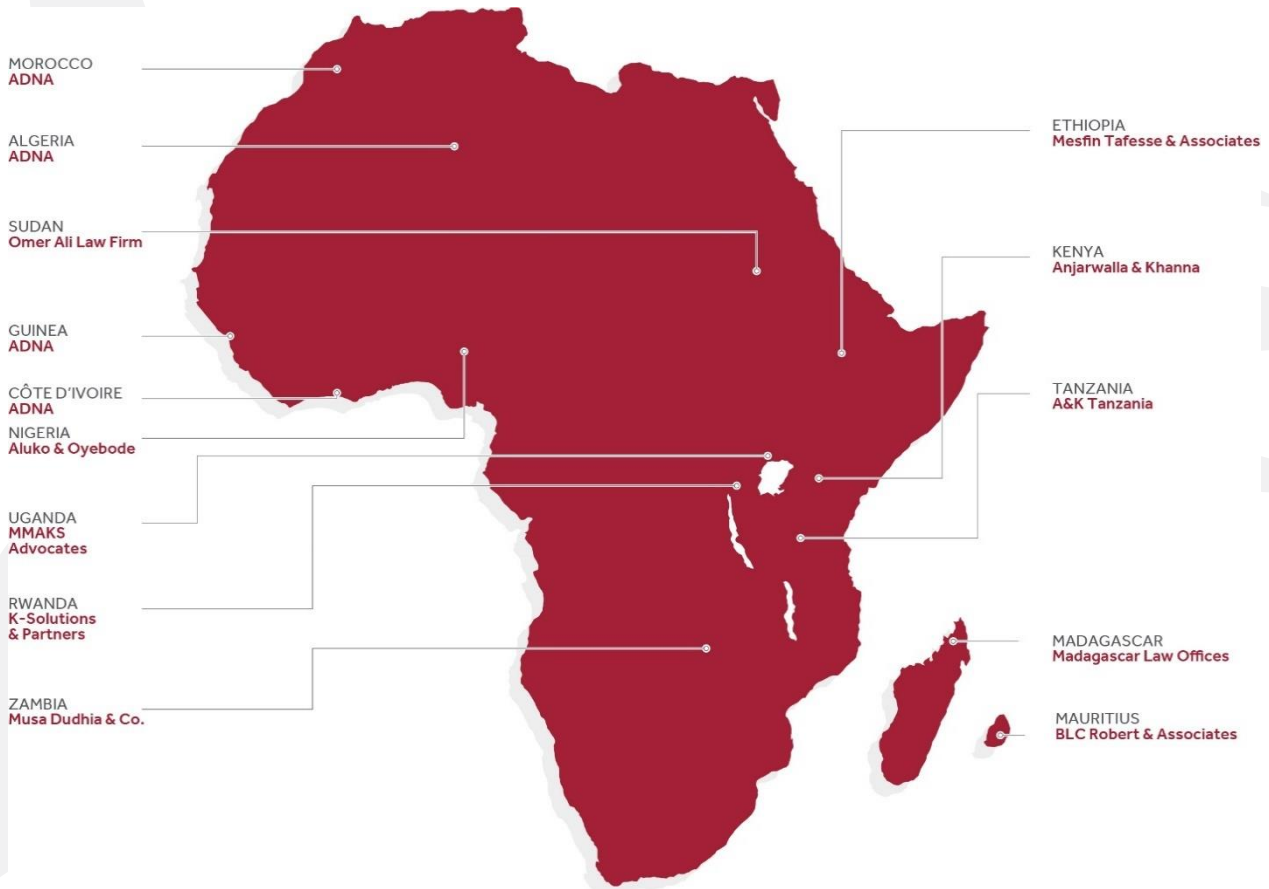
The Firm strengthens the regional offering of its four offices in Dar es Salaam, Nairobi, Mombasa, and Dubai by providing its clients with greater access to a broader pool of specialist teams and resources.

Our team of lawyers has been involved in a number of sophisticated transactions, across the spectrum of

legal areas, including corporate commercial, complex mergers and acquisitions, banking and project finance, infrastructure and projects, real estate, capital markets, insolvency and restructuring, mining, petroleum, energy and telecommunications.



## 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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