



Alternative Energy & Power 2019

□ Last Updated August 07, 2019

Zimbabwe

Law and Practice

Law and Practice

Close All ^



Author



Nikita Madya

(/author/details/2144/TmlraXRhIE1hZHlh)

Wintertons (<https://chambers.com/law-firm/wintertons-global-2:2144>) has an **Alternative Power and Energy** team made up of two partners and two associates with expertise in greenfield energy projects, solar projects (including off grid projects) and coal-fired generation. The team offers assistance right from a project's inception and helps clients to navigate the regulatory terrain, assisting with licensing, connection to the grid, and power purchase negotiations with the government controlled off-takers and throughout the development phase. The team also helps with due diligence work for financiers and EPC contractors intending to be involved in energy projects in Zimbabwe.

▼ 1. General Structure and Ownership of the Power Industry

▼ 1.1 Principal Laws Governing the Structure and Ownership of the Power Industry

In Zimbabwe, the Ministry of Energy and Power Development is responsible for the power industry. Its major function is to develop an effective legislative framework for the energy sector.

The Zimbabwe Energy Regulatory Authority ("ZERA") is responsible for the direct regulation of the power industry, and was established in 2011 by the Energy Regulatory Authority Act [Chapter 13:23] ("the ERA Act"). ZERA took over the responsibilities of the Electricity Regulatory Commission, which was established under the Electricity Act [Chapter 13:19] ("the Electricity Act") and was previously responsible for the regulation of the electricity sector in Zimbabwe.

The generation, transmission, distribution and supply of power is principally regulated by the Electricity Act, as read together with the ERA Act. The regulations under the Electricity Act for the licensing of the power generation, transmission, distribution and supply of electricity

were passed in 2008 as the Electricity (Licensing) Regulations 2008, published as Statutory Instrument 103/2008. They were further amended by Statutory Instrument 55/2015 (“the Licensing Regulations”).

To ensure the provision of electricity in rural areas, the government set up the Rural Electrification Fund Act [Chapter 13:20] (“the REF Act”), with the aim of facilitating the rapid and equitable electrification of rural areas. A government agency called the Rural Electrification Agency (“REA”) was established under the REF Act, and its operations are funded through the Rural Electrification Fund (“REF”). REA is responsible for the construction of the grid network infrastructure in rural areas, and the Zimbabwe Electricity Transmission and Distribution Company (Private) Limited (“ZETDC”) collects the levy and operates and maintains the developed infrastructure.

At present, the generation, transmission, distribution and supply of power in Zimbabwe is principally done by a wholly government-owned parastatal called ZESA Holdings Limited, whose operations are conducted through subsidiary companies with distinct but interlinked responsibilities. The Zimbabwe Power Company (Private) Limited (“ZPC”) owns the power generation assets and is responsible for the generation of power. ZETDC owns the assets for the distribution, transmission and supply functions. ZESA Enterprises is responsible for providing support functions to the power generation, transmission and distribution entities.

The industry includes investor-owned registered Independent Power Producers (“IPPs”), with a total of 60 IPPs being licensed to date to carry out generation activities. Only 15 are operational, with the majority of them operating on a small scale contributing a total of 131.2 MW of energy supply to the national grid by June 2019. Some of the IPPs are off grid and generate power for own use. A number of the licensed IPPs are at various stages of development.

The major applicable legislation is as follows:

- the [Electricity Act](http://www.parlzim.gov.zw/acts-list/electricity-act-13-19) (www.parlzim.gov.zw/acts-list/electricity-act-13-19) (Chapter 13:19);
- the [Energy Regulatory Authority Act](http://archive.kubatana.net/docs/legisl/energy_reg_authority_act_3_2011_110610.pdf) (http://archive.kubatana.net/docs/legisl/energy_reg_authority_act_3_2011_110610.pdf) [Chapter 13:23];
- the [Electricity \(Licensing\) Regulations](http://www.zera.co.zw/images/Electricity-Licensing-Regulations_103_2008_cm1.pdf) (www.zera.co.zw/images/Electricity-Licensing-Regulations_103_2008_cm1.pdf) – SI 103 of 2008;
- [SI 55 of 2015 Electricity Licensing Regulations Amendment](http://www.zera.co.zw/images/SI_55_of_2015_Electricity_Licensing_Regulations_Amendment.pdf) (www.zera.co.zw/images/SI_55_of_2015_Electricity_Licensing_Regulations_Amendment.pdf); and
- Electricity (Net Metering) Regulations, 2018.

▼ 1.2 Principal State-owned or Investor-owned Entities

ZESA Holdings Limited and its two subsidiaries, ZPC and ZETDC, own and operate the generation, transmission and distribution facilities in Zimbabwe. REA is responsible for the development of the power infrastructure in rural areas.

Investor-owned companies that own and operate generation facilities include Kupinga Renewal Energy, Green Fuel, Riverside Solar Power Station (Pvt) Ltd, Distributed Power Africa and UK-based PGI Group Limited, which owns the Nyamingura Mini Hydro Station, Dura Power Station, Pungwe A Power Station, Pungwe B Power Station, Pungwe C Power Station, Hauna Power Station and Riverside Power Station through its various subsidiaries. There are other companies that produce power for their own consumption, including Nottingham Estate (1.5 MW), Hippo Valley Estates (33 MW) and Triangle Estates (45 MW).

▼ 1.3 Foreign Investment Review Process

The Zimbabwe Investment Authority (“ZIA”) is the country’s investment promotion body, set up to promote foreign direct investment, local investment and the government’s decentralisation policy. According to the Zimbabwe Investment Authority Act [Chapter 14:30] (“the ZIA Act”), any person wishing to invest in Zimbabwe may obtain an investment licence from the ZIA, and the investment must be undertaken in accordance with the terms of that licence. Non-residents are not permitted to hold shares in a company without approval from the Reserve Bank.

Until March 2018, the Indigenisation and Economic Empowerment Act [Chapter 14:33] restricted foreign shareholding in local companies to a maximum of 49%, with locals holding 51%. This was changed with effect from 14 March 2018, with the passage of the Finance Act 1/2018, which amended the Indigenisation and Economic Empowerment Act by removing the 51% indigenous shareholding requirement in local companies. This is now reserved for entities or businesses involved in the extraction of diamonds or platinum; there is no limit on foreign shareholding in entities involved in the power industry.

The power industry is accorded the same investment protections as other sectors of the economy. The Constitution of Zimbabwe protects private property and prohibits the expropriation of property without compensation. Section 71 of the Constitution of Zimbabwe provides that every person has the right in any part of Zimbabwe to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of all forms of property, either individually or in association with others. The compulsory acquisition of property is only allowed where the law permitting it is of general application, and where the deprivation is necessary in the interest of defence, public safety, public order, public morality, public health or town and country planning, or to develop or use that or any other property for purposes that are beneficial to the community. The person affected is required to be given reasonable notice by the acquiring authority, to be paid fair and adequate compensation before the property is acquired or within a reasonable time after the acquisition, and, if the acquisition is contested, to apply to a competent court before the acquisition of the property or no later than 30 days after the acquisition for an order confirming the acquisition. Additionally, any person whose property is acquired is entitled to apply to a competent court for the determination of matters relating to the acquisition, including the amount of compensation to which they are entitled. These rights do not apply where agricultural land is involved, in which case agricultural land compensation is provided for improvements only.

Zimbabwe has also signed bilateral investment promotion and protection agreements (“BIPPA”) with several countries for the reciprocal protection of investments. Additional protections are also available under these agreements. The specific protections vary from country to country.

Access to domestic courts is guaranteed under the Constitution of Zimbabwe. Additionally, Zimbabwe adopted (with amendments) the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985, to give effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted in New York on 10 June 1958. Accordingly, foreign investors are free to resort to international arbitration, and awards from such arbitration proceedings are recognised and enforced in Zimbabwe.

Zimbabwe also ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which was incorporated into Zimbabwean Law by the Arbitration (International Investment Disputes) Act [Chapter 7:03]. This deals specifically with investment disputes. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards requires courts of contracting states to give effect to private agreements to arbitrate, and to recognise and enforce arbitration awards made in the

contracting countries. In terms of Article 3 of the Convention, each contracting state shall recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon.

Various tax incentives can be negotiated and granted by the government, including exemptions on duty on the importation of capital goods. It is possible to negotiate for the project to be granted National Project Status so as to qualify for various exemptions on duties on the importation of capital goods into the country.

▼ 1.4 Principal Laws Governing the Sale of Power Industry Assets

Licences are not transferable, and ZERA is required to approve any mergers or acquisitions of assets. The sale of power industry assets or businesses, or other transactions, would be subject to control by the Competition and Tariff Commission ("CTC"), which was established by the Competition Act [Chapter 14:28] ("the Competition Act") and requires that all notifiable mergers that are at or above the notifiable merger threshold are approved by it. A merger is defined in the Competition Act as *"the direct or indirect acquisition or establishment of a controlling interest by one or more persons in the whole or part of the business of a competitor, supplier, customer or other person whether that controlling interest is achieved as a result of —"*

(a) the purchase or lease of the shares or assets of a competitor, supplier, customer or other person;

(b) the amalgamation or combination with a competitor, supplier, customer or other person; or

(c) any means other than as specified in paragraph (a) or (b)."

A notifiable merger refers to a merger or proposed merger with a value at or above the prescribed threshold of USD1,200,000 in either the combined annual turnover of the acquiring firm and the target firm, or the combined assets in Zimbabwe of the acquiring firm and the target firm.

The process typically involves notifying CTC of the proposed merger and paying the fees required, which are based on the combined annual turnover or combined value of the assets in Zimbabwe of the merging parties, whichever is greater, subject to a minimum of USD10,000 and a maximum of USD50,000. The process can take up to 90 days. If the approval is granted, CTC may impose any conditions it deems fit to ensure that competition is enhanced. These may include directives to dispose of certain services provided or the disposal of certain assets over a given period of time.

▼ 1.5 Central Planning Authority

ZERA is mandated to regulate the entire energy sector in Zimbabwe in a fair, transparent, efficient and cost-effective manner for the benefit of the consumers and energy suppliers. ZERA derives its mandate from the ERA Act, as read together with the Electricity Act, and regulations made thereunder.

In addition to the role of ZERA in ensuring the reliability of the electric system and the adequacy of supply to satisfy the demand for electricity, Zimbabwe is part of the Southern African Power Pool ("SAPP"), whose headquarters are in Zimbabwe. SAPP has 12 member countries represented by their respective electric power utilities, organised through the Southern African Development Committee ("SADC"), and provides a forum for the development of robust, efficient, reliable and stable interconnected electrical systems in the Southern African region. It is also responsible for the co-ordination and enforcement of common regional standards regarding the quality of supply, measurement and monitoring of system performance.

Section 4 of the Electricity Act creates and empowers ZERA to regulate the procurement, production, transportation, transmission, distribution, importation and exportation of energy derived from any energy source (renewable or non-renewable energy), as defined in section 4 of the ERA Act. ZERA's functions include:

- creating, promoting and preserving efficient industry and market structures for the provision of electricity services, and ensuring the optimal utilisation of resources for the provision of such services;
- maximising access to electricity services by promoting and facilitating consumer connections to distribution systems in both rural and urban areas;
- ensuring that an adequate supply of electricity is available to consumers;
- ensuring that the prices charged by licensees are fair in the light of the need for prices to be sufficient to allow licensees to finance their activities and obtain reasonable earnings for their efficient operation;
- ensuring the safety, security, reliability and quality of service in the production and delivery of electricity to consumers; and
- ensuring that regulation is fair and balanced for licensees, consumers, investors and other stakeholders in the electricity industry.

In September 2018, the Minister of Energy and Power Development published the Electricity (Public Safety) Regulations, 2018 to impose safety standards on players in the electricity industry, to protect the public. Among other things, owners of generation and transmission infrastructure are required to ensure that their assets are electrically safe, to develop and implement asset design, procurement, operation and maintenance plans to eliminate the electrical risk, to carry out periodic inspections and maintenance of electrical infrastructure, including the testing of protection equipment, and to carry public liability insurance.

▼ 1.6 Recent Material Changes in Law or Regulation

A major change in the law was the publication in June 2018 of the Electricity (Net Metering) Regulations, 2018 (published as Statutory Instrument 86/2018), which establish a framework in terms of which electricity is generated by a participant and delivered to an electricity distribution licensee's local distribution facility and may be used to offset electric energy provided by the electricity distribution licensee to the participant during an applicable billing period.

In September 2018, Regulations dealing with public safety were published, as explained above.

There has also been a major policy shift, with the government announcing in February 2019 that it would merge all ZESA group companies into a single integrated company as part of its public sector enterprise reform programme. The Electricity Act would be amended to take account of the new structure, while a consultant is being sought to advise the government on the best structure for the merged utility. This is a reversal of policies that started in 1997 and was fully implemented by the amendments made to the Electricity Act in 2003 and 2005. It is also a shift away from plans set out in the Energy Policy of 2012, which aimed to create a wholesale market for electricity with further deregulation at some future date.

▼ 1.7 Announcements Regarding New Policies

The Minister of Energy and Power Development announced a policy whereby IPPs that have received a licence but have failed to implement their projects would lose their licences. This policy appears to have been motivated by an acute power shortage, and would require changes to the current legal framework.

▼ 1.8 Unique Aspects of the Power Industry

The major issue at the moment for many international investors in the power sector is the issue of the capacity of the national utility to pay for the electricity sold to it in a currency that enables the investor to recover its investment. With an acute shortage of foreign currency in the country, repayment of external obligations is a challenge. Most IPPs have failed to reach financial close due to this consideration. There is, however, a critical shortage of electricity at the moment due to reduced capacity at the major hydropower station at Kariba due to low water levels.

▼ 2. Market Structure, Supply and Pricing

▼ 2.1 Structure of the Wholesale Electricity Market

The principal law that governs the entire electricity market is the Electricity Act (Chapter 13:19 – www.parlzim.gov.zw/acts-list/electricity-act-13-19), read together with the Energy Regulatory Authority Act (Chapter 13:23 (www.zera.co.zw/images/legislation/energy_regulat_authority_act) .

Because of the virtual monopoly of the ZESA Holdings entities, the wholesale market is virtually non-existent at present. In its National Energy Policy, the government intimated a desire to unbundle the transmission and distribution business units so as to create a bulk supply market that will facilitate and support IPP investments and serve as a basis for the transition to a more competitive wholesale market.

▼ 2.2 Imports and Exports of Electricity

Imports and exports are permissible in the SADC and Common Market for Eastern and Southern Africa (“COMESA”) regions. Power imports and exports are done through the facilitation of SAPP.

Section 4(1) (d) of the ERA Act provides that one of the functions of ZERA is to promote co-ordination and integration in the importation, exportation and pooling of energy from any energy source (renewable or non-renewable) in the SADC and COMESA regions.

ZESA imports some of its power from Eskom (South Africa), Cahora-Bassa (Mozambique) and SNEL (the Democratic Republic of Congo) through SAPP. SAPP is currently developing a 400kV transmission system, MoZiSA, over 935 km through Mozambique, Zimbabwe and South Africa, which will result in increased power trading in the Southern African region and provide further capacity for current congested transmission lines. MoZiSA is sponsored by the member countries’ national power utilities, Electricidade de Mozambique, ZESA Holdings Limited and Eskom, and is anticipated to take approximately two years to complete.

▼ 2.3 Supply Mix for the Entire Market

The total power supply has dropped considerably due to reduced water levels at the main hydropower station at Kariba and coal supply challenges for the thermal power stations. Imports have also been severely restricted due to foreign currency constraints. As of 3 July 2019, the supply mix is as follows:

- total electricity supply: 1,160 MW
- Hydro: 52.6%
- Thermal: 43.1%
- Imports: 4.3%

▼ 2.4 Principal Laws Governing Market Concentration Limits

There are no concentration limits regarding the percentage of electricity supply that is controlled in the market by any one entity, given the fact that supply is still below demand for electricity.

▼ 2.5 Agency Conducting Surveillance to Detect Anti-competitive Behaviour

Even though there is currently no competitive market, section 59(1) of the Electricity Act gives ZERA the ongoing responsibility to monitor whether electricity services are being provided competitively and determine whether any electricity service in respect of which prices or tariffs are fixed by ZERA can be provided competitively, and to provide a report on these matters, at least annually, to the Minister.

Subject to Ministerial approval, ZERA may free a regulated service from price or tariff regulation and determine the time and circumstances in which this would be permissible.

ZERA also has powers to restrict the introduction of competition in certain areas, or of certain licensees or customers, on either a temporary or permanent basis.

ZERA also determines the pre-conditions and any transitional arrangements required in order for a regulated service to be offered competitively, which may include codes of conduct, rules relating to access to information, access to the electric system and constraints against undue price discrimination in the offering of services.

ZERA also has the responsibility to monitor electricity undertakings and markets, and is entitled to require information from licensees, undertake enquiries and hearings, and establish or contract with an independent entity to provide monitoring services.

In terms of section 59(7) of the Electricity Act, ZERA is obliged to provide evidence to CTC of the presence or possible development of market power in the operation of the licensed undertakings or electricity markets.

ZERA also has the ongoing responsibility to consider issues associated with the competitive provision of electricity services and the prevention or mitigation of market power in its decisions and orders regarding matters such as licence applications, the grant of licences, licence terms and conditions, the setting of prices and tariffs, and whether to approve a merger, acquisition or affiliation, among others.

In terms of section 59(8) of the Electricity Act, if ZERA determines that there is any problem related to the development or unfair exercise of market power, it may do the following, with the agreement of CTC:

- issue such cease and desist orders as may be required upon the licensee or licensees concerned;
- levy monetary penalties upon the licensee or licensees concerned; and
- refer the matter to CTC for investigation.

▼ 3. Climate Change Laws and Alternative Energy

▼ 3.1 Principal Climate Change Laws and/or Policies

In addition to economic and institutional objectives, the National Energy Policy of 2012 aims to develop the use of renewable energy technologies (RETs) to complement the use of conventional energy sources. Listed policy measures include adopting a renewable energy technologies programme driven by the government of Zimbabwe, and instituting funding mechanisms such as Clean Development Mechanisms and micro credit institutions for RETs. Incentives for investment in renewable energy are also listed, such as subsidies and tax concessions. ZERA has developed a Renewable Energy Feed-in-Tariff scheme, which is yet to be implemented. Zimbabwe's current economic blueprint, the Zimbabwe Agenda for Sustainable Socio-Economic Transformation (2013) ("ZIMASSET"), aims to increase the use of alternative energy sources.

The following are noteworthy policies in the renewable energy sector in Zimbabwe:

- the Zimbabwe Renewable Energy Policy (www.zera.co.zw/images/pdfs/Energy_Policy.pdf) establishes a regulatory framework for the promotion of renewable energy and investment;

- the Renewable Energy Masterplan (2016) includes both off-grid and on-grid components, and outlines how Zimbabwe's rural areas are to be provided with modern energy services over a 20-year timeframe;
- the National Energy Policy (NEP) (2012) provides a framework for the exploitation, distribution and utilisation of the country's energy resources, and outlines the principal strategies for implementing the policy. It strongly advocates the promotion of renewable energy to address the supply gap, and also provides for the formation of the Rural Energy Agency and the establishment of a renewable energy feed-in-tariff ("REFIT"), the National Grid Code and IPPs;
- Statutory Instrument (SI 147) 2010 exempts solar equipment, except batteries, from excise duty;
- the REF Act [Chapter 13:20] establishes the REF to facilitate the rapid and equitable electrification of rural areas using grid and off-grid technologies;
- the Environmental Management Act [Chapter 20:27] ("the EMA Act") provides for the sustainable management of natural resources, and for the protection of the environment in accordance with global commitments. Energy is a prescribed activity under Schedule 1 of the Act, so it is mandatory for Environmental Impact Assessments of all energy projects to be undertaken, including mitigation measures;
- the Water Act of 1998 [Chapter 20:24] regulates the development and utilisation of water resources within Zimbabwe, such as for inland dams with potential for hydropower generation in addition to their primary purpose of irrigation and urban water supply;
- Part IX of the EMA Act [Chapter 20:27] provides for environmental quality standards. While there are no specific provisions on the power industry, section 63 provides for air quality standards. In terms of this section, the Standards and Enforcement Committee established within the terms of the EMA Act shall advise the Board of the Environmental Management Agency ("EMA") established under the EMA Act on the criteria and procedure for the measurement of air quality and make recommendations to the Board on, inter alia, air quality standards and emission standards; and
- The Environmental Management (Atmospheric Pollution Control) Regulations 2009 seek to control the emission of pollutants, and require every person who carries out an activity or operation that may cause air pollution to obtain a licence from the EMA. They also set the maximum permissible air emissions, including for thermal and power operations.

▼ **3.2 Principal Laws and/or Policies Relating to the Early Retirement of Carbon-based Generation**

There are currently no laws regarding the early retirement of coal-fired power generation facilities. As noted earlier, Zimbabwe continues to be heavily reliant on coal-power generation units, and it is unlikely that there will be a policy shift until sufficient capacity for alternative renewable energy sources has been developed.

▼ **3.3 Principal Law and/or Policies to Encourage the Development of Alternative Energy Sources**

Several policy initiatives have been put in place to encourage the development and use of alternative energy sources, including the provision of Statutory Instrument 147/2010, which allows solar panel inventors, solar lights, solar geysers, energy saving bulbs and tubes, and electrical motors to be imported into Zimbabwe duty free and surtax free. Several policy initiatives on renewable energy aimed at encouraging the use of solar power are still being developed. Zimbabwe's solar radiation averages 20MJ/m²/day. The Net Metering Regulations also aim to encourage investment in renewable energy.

▼ **4. Generation**

▼ **4.1 Principal Laws Governing the Construction and Operation of Generation Facilities**

This is provided for in terms of section 42 of the Electricity Act, as well as the Licensing Regulations.

Under section 42(1) of the Electricity Act, a generation licence authorises the licensee to construct, own, operate and maintain a generation station for purposes of the generation and supply of electricity, subject to any terms and conditions imposed by ZESA and without contravention of the other provisions in the Electricity Act.

In terms of section 42(2) of the Act, the holder of a generation licence may supply electricity to any transmission, distribution or supply licensee who purchases electricity for resale and, with the approval of the Commission, to any one or more consumers, subject to the terms and conditions imposed by ZERA and without prejudice to any other provisions in the Electricity Act.

For such purposes and in terms of section 49(3), a “holder of a generation licence” includes a generating company outside Zimbabwe that is entitled, under an arrangement approved by ZERA or permitted by a licence issued to another licensee, to sell power to Zimbabwean licensees or consumers without a licence from ZERA.

In terms of section 11 of the Licensing Regulations, anyone who operates an electric generator (including standalone generators) that is capable of generating, distributing or transmitting in excess of 100 kW must obtain a licence under section 40 of the Electricity Act, unless he can show ZERA that the generator in question is for the sole use of his household or business. The notification must occur within 60 days of acquiring the generator. ZERA may order and conduct an inspection and, if it determines that the generator is for personal use, will issue an indefinite permit with conditions to comply with public safety standards and to allow further inspection by ZERA.

The principal laws are as follows:

- the Electricity Act (Chapter 13:19) (www.parlzim.gov.zw/acts-list/electricity-act-13-19);
- the Energy Regulatory Authority Act (http://archive.kubatana.net/docs/legisl/energy_reg_authority_act_3_2011_110610.pdf) [Chapter 13:23] ;
- the Petroleum Act [Chapter 13:22] (www.zera.co.zw/images/legislation/petroleum_act.pdf);
- the Electricity (Licensing) Regulations (www.zera.co.zw/images/Electricity-Licensing-Regulations_103_2008_cm1.pdf) ; and
- SI 55 of 2015 Electricity Licensing Regulations Amendment (www.zera.co.zw/images/SI_55_of_2015_Electricity_Licensing_Regulations_Amendment.pdf)

▼ 4.2 Regulatory Process for Obtaining All Approvals to Construct and Operate Generation Facilities

Section 4 of the Licensing Regulations governs the processes and timelines for each licence. Applicants must fill out the appropriate application form (Form EL1 for primary licences and Form EL2 for secondary electric licences) and pay the licence fee to ZERA (the amount to be paid is detailed within Statutory Instrument 55 of 2015, which is an amendment to the Licensing Regulations). Within 30 days of receiving the application, ZERA publishes a notice in two consecutive issues of a national newspaper, inviting representations from the public in writing and thereafter forwards such representations together with the application to the Technical Committee (which consists of technical experts retained as consultants by ZERA in terms of section 19 of the Electricity Act). The Technical Committee will have 45 days in which to consider the applications and representations and make a recommendation to the ZERA Board. ZERA may either grant or reject the application, or compel the Technical Committee to reconsider. In the event of a reconsideration, the Technical Committee will have 15 days to reconsider the application and report back to ZERA. ZERA may hold public hearings before its decision, and may impose general terms and conditions over and above those included in a licence.

ZERA requires the following documents in order to consider an application for a power generation licence:

- Proposed Generation Capacity;
- Buyer/Off-taker arrangements;
- Electricity Generation Cost;
- Grid Impact Assessment;
- Fuel Supply Arrangement(s)/Agreement(s);
- proposed Power Purchase Agreement;
- proposed interconnection point to the transmission system;
- prefeasibility/feasibility study report;
- maps indicating the location of the generating plant;
- Land Use Permit;
- Water Extraction Permit;
- Environmental Impact Assessment Prospectus/Certificate; and
- Project Timeline/Gantt Chart/Implementation.

▼ **4.3 Terms and Conditions Imposed in Approvals to Construct and Operate Generation Facilities**

Section 47 of the Electricity Act provides for the terms and conditions that may be prescribed or that ZERA may reasonably determine in the circumstances.

ZERA may prescribe terms and conditions after considering aspects such as the size and scope of the undertaking or business, whether it is to be a monopoly or competitive service, whether the service is to be provided pursuant to a contract between the parties and whether the service is to be provided to a consumer or to another licensee – provided that, in the case of a licensee whose services are provided pursuant to a contract, ZERA may incorporate in the licence the contractual obligations of the licensee or declare the terms and conditions of the contract to be the terms and conditions of the licence or part thereof.

The licence may also be issued subject to the following conditions:

- within a specified time, the licensee shall divest any holding of shares in another licensee or comply with other such conditions that ZERA determines to be in the public interest, including adherence to any code of conduct;
- the licensee must make such reasonable provision as may be specified by ZERA in the licence for the facilitation of rural electrification in the proximity of the service;
- the terms and conditions of a licence may require the licensee to:
 - enter into agreements on specified terms with other persons for the provision or use of electric lines and associated equipment operated by the licensee;
 - purchase power and other resources in an economical and transparent manner; and
 - refer disputes to arbitration, mediation or determination by ZERA;
- the licensee must provide information on a periodic basis, in such form and detail as ZERA may determine;
- ZERA may allow a licensed activity to be exclusive for all or part of the period of the licence, for a specific purpose, for a geographical area, or for some combination of the foregoing;
- the licence shall cease to have effect or to be modified or amended by ZERA in such circumstances as may be specified in the licence or as may be determined by ZERA;
- as a condition of its licence, unless expressly exempted by said licence, every licensee shall prepare and submit to ZERA an annual statement of accounts in such form, and containing such particulars, as ZERA may require; and
- a licence shall be valid for a period up to but not exceeding 30 years, provided that ZERA may extend the period of a licence, taking into account the nature of the undertaking or business, for an additional period not exceeding 20 years should it determine that it is in the public interest to do so.

In addition, and in terms of Part IV of the Licensing Regulations, a licensee must:

- comply with the consumer protection and performance standards;
- comply with the Zimbabwe Grid Code, the Zimbabwe Distribution Code and any other codes specified by ZERA;
- notify ZERA in writing as soon as there is a material breach of a standard or code;
- undertake an operations and compliance audit at regular intervals notified by the Code, completed by a designated and appropriately qualified person;
- maintain separate and ring-fenced accounts for its operations; and
- annually submit audited copies of its accounting statements to ZERA together with the annual licence compliance return and, where year-end falls at a time other than 31 December, within 45 days of the end of its financial year.

ZERA may impose general terms and conditions over and above those included in a licence.

▼ 4.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

A proponent does not have eminent domain or expropriation rights. Land use rights are usually acquired by way of leasing land from the relevant authority or municipality. The lessee then pays “rent” to the municipality as a form of compensation. One may also purchase the land outright. Way leaves can be negotiated with owners of private land or the local authorities.

▼ 4.5 Requirements for Decommissioning

The objective is to achieve an acceptable state as quickly as possible, reducing long-term maintenance to a minimum. On the socio-economic side, the plan regarding preparation for closure will largely have been carried out during the operational phase. Each facility should try to start planning for decommissioning during the planning phases of the development, to allow for smooth closure and decommissioning.

▼ 5. Transmission

▼ 5.1 Regulation of Construction and Operation of Transmission Lines and Associated Facilities

▼ 5.1.1 Principal Laws Governing the Construction and Operation of Transmission Facilities

The construction and operation of transmission lines and associated facilities is again governed by the following:

- the Electricity Act (Chapter 13:19) (<http://www.parlzim.gov.zw/acts-list/electricity-act-13-19>);
- the Energy Regulatory Authority Act [Chapter 13:23] (http://archive.kubatana.net/docs/legisl/energy_reg_authority_act_3_2011_110610.pdf);
- the Electricity (Licensing) Regulations – SI 103 of 2008 (www.zera.co.zw/images/Electricity-Licensing-Regulations_103_2008_cm1.pdf) ; and
- SI 55 of 2015 Electricity Licensing Regulations Amendment (www.zera.co.zw/images/SI_55_of_2015_Electricity_Licensing_Regulations_Amendment.pdf)

Section 43 of the Electricity Act regulates the subject of transmission and bulk supply licences. Subsection (1) states that, subject to such terms and conditions as ZERA may fix in the licence, a primary transmission licence shall authorise the licensee to, inter alia, carry on grid construction and the operation and maintenance of transmission facilities within Zimbabwe.

Under section 3 of the Electricity Regulations, every electricity undertaking that transmits in excess of 100 kW requires a transmission and bulk supply licence. Every undertaking that maintains or proposes to maintain a transmission facility, operates or proposes to operate an independent power exchange in terms of section 43(1) of the Electricity Act, or is an

electricity licensee or applicant thereof in terms of section 43(1) of the Electricity Act is obliged to obtain an independent transmission and bulk supply licence in addition to its electricity licence.

▼ **5.1.2 Regulatory Process for Obtaining Approvals to Construct and Operate Transmission Facilities**

Section 4 of the Regulations governs the processes and timelines for each licence. Applicants must fill out the appropriate application form (Form EL1 for primary licences and Form EL2 for secondary electric licences) and pay the licence fee to ZERA. Within 30 days of receiving the application, ZERA publishes a notice in two consecutive issues of a national newspaper, inviting representations from the public in writing, and thereafter forwards such representations together with the application to the Technical Committee (which consists of technical experts retained as consultants by ZERA in terms of section 19 of the Electricity Act). The Technical Committee will have 45 days in which to consider the applications and representations and make a recommendation to the Committee. ZERA may either grant or reject the application, or compel the Technical Committee to reconsider. In the event of a reconsideration, the Technical Committee will have 15 days to reconsider the application and report back to the ZERA Board. ZERA may hold public hearings before its decision. Section 46(8) decrees that the period between ZERA's receipt of an application and all documents and information submitted in support of it and the date on which it notifies the applicant of its decision or proposed decision shall not exceed six months, unless the applicant consents to an extension of the period.

ZERA requires the following information when considering an application for a transmission line:

- a map indicating the route of the transmission lines;
- information relating to the transmission system;
- line specifications – capacity, voltage, length, conductor type, configuration, etc;
- points of supply;
- contractual arrangements (where the applicant intends to operate transmission facilities that they do not own);
- a single line diagram;
- methodology for fees and tariffs for distribution use and connection charges;
- guidelines on non-discriminatory open access by third parties to transmission facilities (in the case of the primary licensee); and
- an Environmental Impact Assessment Prospectus/Certificate.

This process can take up to two years, as it normally takes a while to obtain some of the documents and permits required to be submitted to ZERA with the application.

▼ **5.1.3 Terms and Conditions Imposed in Approvals to Construct and Operate Transmission Facilities**

Transmission entities must submit a map indicating the route of the transmission lines and have an exclusive right to construct and operate transmission facilities within the territory outlined on the map. Typical conditions include the requirement to:

- comply with the consumer protection and performance standards;
- comply with the Zimbabwe Grid Code, the Zimbabwe Distribution Code and any other codes specified by ZERA;
- transmit electricity in accordance with any power quality directives issued by ZERA and subject to the quality, standards and directives (including the Zimbabwe Grid Code) as issued by ZERA periodically;
- notify ZERA in writing as soon as there is a material breach of a standard or code;
- undertake an operations and compliance audit at regular intervals notified by the Code, completed by a designated and appropriately qualified person;

- maintain separate and ring-fenced accounts for its operations; and
- annually submit audited copies of its accounting statements to ZERA together with the annual licence compliance return and, where year-end falls at a time other than 31 December, within 45 days of the end of its financial year.

▼ 5.1.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

No such rights exist. Land use rights are usually acquired by way of leasing land from the relevant authority or municipality. The lessee then pays “rent” to the municipality as a form of compensation. If it is on private property, one must negotiate with the owner of the land.

▼ 5.1.5 Transmission Service Monopoly Rights

Section 47(6) of the Electricity Act provides that *“unless expressly indicated in the licence, the grant of a licence shall not hinder or restrict the grant of a licence to another person for a like purpose and in the absence of such express indication, the licensee shall not claim any exclusivity.”*

ZERA may, however, allow a licensed activity to be exclusive for all or part of the period of the licence, for a specific purpose, for a geographical area, or for some combination of the foregoing.”

▼ 5.2 Regulation of Transmission Service, Charges and Terms of Service

▼ 5.2.1 Principal Laws Governing the Provision of Transmission Service, Regulation of Transmission Charges and Terms of Service

The statutes referred to under **5.1.1 Principal Laws Governing the Construction and Operation of Transmission Facilities** also apply here .

▼ 5.2.2 Establishment of Transmission Charges and Terms of Service

All prices or tariffs in connection with the provision of an electricity service or the operation of an electric power system by a licensee or proposed licensee must be approved or fixed by ZERA. ZERA fixes or approves prices and tariffs for licensees with a view to:

- enabling an efficient licensee to recover the full costs of its business activities, including a reasonable return;
- providing incentives for the continued improvement of the technical and economic efficiency with which the services are provided;
- protecting consumers while keeping them informed about the cost their consumption imposes on the licensee's business;
- avoiding undue discrimination between customers and customer categories; and
- phasing out or substantially reducing cross subsidies.

ZERA may, however, allow a lifeline tariff for some customers. ZERA also has the authority to approve prices and tariffs that are established pursuant to the terms and conditions of a contract between licensees, or between a licensee and one or more customers, which includes methods and formulas that allow for the calculation of prices and tariffs. Notwithstanding this, ZERA may differentiate among consumers based on differences in total electricity consumption, the time periods on which electricity is consumed, load factor, power factor, voltage levels, and other criteria that affect the cost of providing a service in fixing or approving prices and tariffs.

An aggrieved party may make an Appeal to the Administrative Court. For the purpose of determining such an appeal, the Administrative Court may require ZERA to furnish it with the reasons for the decision or action that is the subject of the appeal, and with a copy of any evidence upon which the reasons are based. Such an appeal shall be made in the form and manner prescribed in the rules of court of the Administrative Court, and within the period prescribed therein. For the purpose of determining an appeal, the President of the

Administrative Court shall be assisted by two assessors with ability or experience in the field of electricity. In an appeal, the Administrative Court may confirm, vary or set aside the decision or action appealed against, and may make such order as it thinks just, whether regarding costs or otherwise.

Prior to making an appeal as stated above, an aggrieved person may request ZERA to reconsider some or all of its decisions or actions for the purpose of correcting a manifest error, within ten days of the rendering of the decision or action.

▼ 5.2.3 Open-access Transmission Service

These are matters that are stipulated in the licence. Under section 43(1) and subject to such terms and conditions as ZERA may fix in the licence, a primary transmission licence shall authorise the licensee to do any one or more of the following as may be specified in the licence:

- carry on grid construction and the operation and maintenance of transmission facilities within Zimbabwe;
- carry on the operation of an electric power system, including but not limited to generation scheduling, commitment and dispatch, transmission scheduling and generation outage co-ordination, transmission congestion management, power pooling, international transmission co-ordination, procurement and scheduling of ancillary services and system planning for long-term capacity and such other activities as may be required for the reliable and efficient operation of an electric power system; and
- operate a power exchange, including energy accounting and settlement, establishing and maintaining standards and protocols for the setting of electricity prices, publishing prices and other market information, and such other activities as may be required for a reliable and efficient power exchange.

Section 43(2) states that ZERA may require separate primary transmission licences to be issued in respect of the functions identified in paragraphs (a), (b) and (c) of subsection (1), if it determines that doing so is in the public interest.

Given the size of the market in Zimbabwe, it is most unlikely that many transmission licences will be issued; it is more likely to remain on an open access and non-discriminatory basis.

▼ 6. Distribution

▼ 6.1 Regulation of Construction and Operation of Electricity Distribution Facilities

▼ 6.1.1 Principal Laws Governing the Construction and Operation of Electricity Distribution Facilities

The same regulatory authority and approvals mentioned under **4.1 Principal Laws Governing the Construction and Operation of Generation Facilities** apply regarding the construction and operation of electric distribution facilities.

▼ 6.1.2 Regulatory Process for Obtaining Approvals to Construct and Operate Distribution Facilities

The same process described above in respect of generation and transmission applies to distribution facilities applications, although the following documents are required:

- a map indicating the location of the distribution lines; and
- information relating to the distribution system, covering:
 - line specifications (capacity, voltage, length, conductor type, configuration, etc);
 - points of supply;
 - contractual arrangements – O & M;
 - metering arrangements and billing arrangements;
 - connection charges/agreements;
 - client services standards;

- applicable tariffs;
- single line diagram;
- transformers and transformer sizes;
- proposed agreements for distribution network connections and use of the system;
- environmental Social Impact Assessment and Environmental Management Agency approval; and
- the number and types of customers per voltage level.

▼ 6.1.3 Terms and Conditions Imposed in Approvals to Construct and Operate

The licence may be issued subject to the following conditions:

- within a specified time, the licensee shall divest any holding of shares in another licensee or comply with such other conditions, including adherence to any code of conduct, that ZERA determines to be in the public interest;
- the licensee must make such reasonable provision as may be specified by ZERA in the licence for the facilitation of rural electrification in the proximity of the service;
- the terms and conditions of a licence may require the licensee to:
 - enter into agreements on specified terms with other persons for the provision or use of electricity lines and associated equipment operated by the licensee;
 - purchase power and other resources in an economical and transparent manner; and
 - refer disputes to arbitration, mediation or determination by ZERA;
- the licensee must provide information on a periodic basis, in such form and detail as ZERA may determine;
- ZERA may allow a licensed activity to be exclusive for all or part of the period of the licence, for a specific purpose, for a geographical area, or for some combination of the foregoing;
- the licence shall cease to have effect or to be modified or amended by ZERA in such circumstances as may be specified in the licence or determined by ZERA;
- as a condition of the licence, unless expressly exempted by said licence, every licensee shall prepare and submit to ZERA each year an annual statement of accounts in such form, and containing such particulars, as ZERA may require; and
- a licence shall be valid for a period up to but not exceeding 30 years – ZERA may extend the period of a licence, taking into account the nature of the undertaking or business, for an additional period not exceeding 20 years should it determine that it is in the public interests to do so.

In addition, and in terms of Part IV of the Licensing Regulations, a licensee must:

- comply with the consumer protection and performance standards;
- comply with the Zimbabwe Grid Code, the Zimbabwe Distribution Code and any other codes specified by ZERA;
- notify ZERA in writing as soon as there is a material breach of a standard or code;
- undertake an operations and compliance audit at regular intervals notified by the Code, completed by a designated and appropriately qualified person;
- maintain separate and ring-fenced accounts for its operations; and
- annually submit audited copies of its accounting statements to ZERA together with the annual licence compliance return and, where year-end falls at a time other than 31 December, within 45 days of the end of its financial year.

▼ 6.1.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

The rights to the surface of land are obtained by way of a lease agreement with the owner of such land, which could be a private entity, a municipality or a district council. The lessee pays rent to the landowner, which acts as compensation.

▼ 6.1.5 Distribution Service Monopoly Rights

There are no monopoly rights to provide a distribution service within a specified geographical territory. Section 47(6) of the Electricity Act provides that, *“unless expressly indicated in the licence, the grant of a licence shall not hinder or restrict the grant of a licence to another person for a like purpose and in the absence of such express indication, the licensee shall not claim any exclusivity.*

ZERA may, however, allow a licensed activity to be exclusive for all or part of the period of the licence, for a specific purpose, for a geographical area, or for some combination of the foregoing.”

▼ 6.2 Regulation of Distribution Service, Charges and Terms of Service

▼ 6.2.1 Principal Laws Governing the Provision of Distribution Service, Regulation of Distribution Charges and Terms of Service

The same regulatory authority and the same laws referred to in relation to generation and transmission govern the provision of electric distribution services and the regulation of electric distribution charges and terms of service.

▼ 6.2.2 Establishment of Distribution Charges and Terms of Service

This falls under the purview of ZERA, as described in relation to generation and transmission services. The same principles apply, and the same rights are afforded to any aggrieved party.

Wintertons

Beverly Corner
No. 11 Selous Avenue
Harare
Zimbabwe

+263 242 250 113/29

+263 242 764 015

nikita@wintertons.co.zw (mailto:nikita@wintertons.co.zw)

www.wintertons.co.zw (http://www.wintertons.co.zw)



Compare law and practice by selecting locations and topic(s)

Select Location(s)

Search □

- ☐ Armenia
- ☐ Austria
- ☐ Brazil
- ☐ Burundi
- ☐ Cambodia



- ☐ Cameroon
- ☐ Canada
- ☐ Chile
- ☐ Colombia

Select Topic(s)

Law and Practice

- ☒ 1. General Structure and Ownership of the Power Industry
 - ☐ 1.1 Principal Laws Governing the Structure and Ownership of the Power Industry
 - ☐ 1.2 Principal State-owned or Investor-owned Entities
 - ☐ 1.3 Foreign Investment Review Process
 - ☐ 1.4 Principal Laws Governing the Sale of Power Industry Assets
 - ☐ 1.5 Central Planning Authority
 - ☐ 1.6 Recent Material Changes in Law or Regulation
 - ☐ 1.7 Announcements Regarding New Policies
 - ☐ 1.8 Unique Aspects of the Power Industry

[Reset](#)
[Compare >](#)
[\(/practice-guides/comparison/418/2951/5919-5928-5934-5938-5944-5955\)](/practice-guides/comparison/418/2951/5919-5928-5934-5938-5944-5955)

© 2019 Chambers and Partners | [Terms and Conditions \(https://chambers.com/info/terms-and-conditions\)](https://chambers.com/info/terms-and-conditions) | [Privacy \(https://chambers.com/info/privacy\)](https://chambers.com/info/privacy)

in (<https://www.linkedin.com/company/chambers-and-partners/>)



(<https://twitter.com/chambersguides?lang=en>)



(<https://en-gb.facebook.com/Chambersandpartners/>)

Chambers and Partners make no representation or endorsement of the quality and services supplied by companies or firms that may be found on this website. In no event will Chambers and Partners be liable for any damages including, without limitation, indirect or consequential damages, or any damages whatsoever arising from use or loss of use, data, or profits, whether in action of contract, negligence or other tort action, arising out of or in connection with the use of the website.