

# THE WOLF THEISS GUIDE TO:

Licensing of Electricity and Gas  
Wholesale Activities in Central,  
Eastern & Southeastern Europe



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## Licensing of Electricity and Gas Wholesale Activities in Central, Eastern & Southeastern Europe

This second edition of *The Wolf Theiss Guide To: Licensing of Electricity and Gas Wholesale Activities in Central, Eastern & Southeastern Europe* is intended as a practical guide to the general principles and features of the basic legislation and procedures in the countries included in the publication.

While every effort has been made to ensure that the country guides were accurate when finalised, they should be used only as a general reference guide and should not be relied upon as definitive for planning or making definitive legal decisions. In these rapidly changing legal markets, the laws and regulations are frequently revised, either by amended legislation or by administrative interpretation.

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## FOREWORD

Wolf Theiss is pleased to publish the 2nd edition of The Wolf Theiss Guide To: Licensing of Electricity and Gas Wholesale Activities in Central, Eastern & Southeastern Europe.

In the past decade, this part of Europe has seen increasing interest in participation in the wholesale energy markets. Our energy team has handled numerous licensing procedures throughout the region both in the electricity and the natural gas market. The most challenging aspect is often helping our clients manoeuvre through the labyrinth of regulations, hence our decision to publish this Wolf Theiss Guide To: Licensing of Electricity and Gas Wholesale Activities in Central, Eastern & Southeastern Europe. It is intended as a practical guide to the principal regulatory features of the licensing of wholesale activities in 13 jurisdictions covered by Wolf Theiss.

In the first part of the guide, we present an executive summary of the regulatory licensing framework applicable in each of the 13 jurisdictions covered. The second chapter of the guide contains an outline of the current status of the internal energy market in the European Union and highlights the regulatory “patchwork” regarding access to the physical wholesale energy markets in our region. The regulatory framework applicable in each jurisdiction is described in more detail in the country chapters. To facilitate the reference to the relevant sections, all the country chapters follow a uniform structure and start with a detailed table of contents including the relevant page numbers. When they are used, defined terms apply to the specific country chapter only.

The information contained in this Wolf Theiss guide was correct as of 1 January 2018. While every effort has been made to ensure that the information was accurate when finalised, the guide should be used only as a general reference guide and should not be relied upon as definitive for planning concrete transactions. In these rapidly changing legal markets, the laws and regulations are frequently revised, either by legislative amendments or by administrative interpretations.

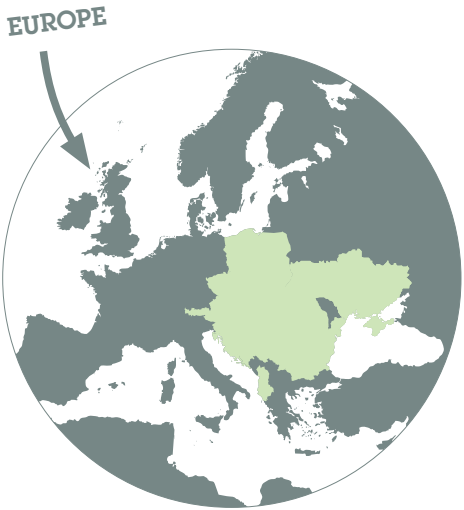
Our thanks go to all of the teams at Wolf Theiss who have enabled us to produce this guide.



**Zoltán Faludi • March 2018**

Partner, Co-Head of Projects (Infrastructure and Energy) Practice Group  
Wolf Theiss





- WOLF THEISS REGION
- EUROPE



## EXECUTIVE SUMMARY

### 1. LICENSING OF ELECTRICITY WHOLESALE ACTIVITIES

	ARE WHOLESALE ACTIVITIES SUBJECT TO LICENSING (NOTIFICATION)?	MAY A FOREIGN ENTITY DIRECTLY APPLY FOR AND HOLD A WHOLESALE LICENCE?	DO YOU NEED AN ADDITIONAL LICENCE TO SUPPLY INDUSTRIAL END-CUSTOMERS?
<b>ALBANIA</b>	Yes.	No. Foreign entities are required to establish a Local Corporation in order to apply for a Wholesale Licence.	No.
<b>AUSTRIA</b>	No.	N/A. A foreign entity may directly engage in electricity Wholesale Activities in Austria provided that it has a domestic process agent.	N/A.
<b>BOSNIA &amp; HERZEGOVINA</b>	Yes.	No. Foreign entities are required to establish a Local Corporation in order to apply for the Wholesale Licences.	No.
<b>BULGARIA</b>	Yes.	A foreign entity incorporated in an EU Member State may directly apply for and hold a Wholesale Licence, if it meets the mandatory requirements for the performance of Wholesale Activities. Foreign entities incorporated in other countries cannot directly obtain a Wholesale Licence, they need to establish a Local Corporation for this purpose.	No.
<b>CROATIA</b>	Yes.	No. A Local Corporation or a natural person registered as an individual trader may apply for a Wholesale Licence. However, if a foreign entity is set up in the EU or the European Energy Community (including Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia), it may apply for and hold a Wholesale Licence directly, provided that it has a branch office registered in Croatia and meets the financial, technical and staffing requirements set out by the Ordinance on permits for performance of energy related activities.	Yes.
<b>CZECH REPUBLIC</b>	Yes.	No. Foreign companies are required to have a local presence either through the establishment of a new Local Corporation/acquisition of an existing Local Corporation or a Branch Office to be established in the Czech Republic.	No.

	ARE WHOLESALE ACTIVITIES SUBJECT TO LICENSING (NOTIFICA- TION)?	MAY A FOREIGN ENTITY DIRECTLY APPLY FOR AND HOLD A WHOLESALE LICENCE?	DO YOU NEED AN ADDITIONAL LICENCE TO SUPPLY INDUSTRIAL END-CUSTOMERS?
<b>HUNGARY</b>	Yes.	Foreign entities incorporated in an EU/EEA Member State may directly apply for and hold a Wholesale Licence, provided that they lawfully and effectively pursue electricity trading in their country of incorporation. Foreign entities incorporated in countries other than EU/EEA Member States cannot directly apply for a Wholesale Licence in Hungary. They may only obtain an Additional Licence, provided that they establish a Local Corporation.	Yes. An Additional Licence can be directly obtained by a foreign entity incorporated in an EU/EEA Member State provided that it lawfully and effectively pursues electricity trading in its country of incorporation. Foreign entities incorporated in countries other than EU/EEA Member States are required to establish a Local Corporation or a Local Branch Office in order to apply for an Additional Licence.
<b>POLAND</b>	Yes.	Foreign entities having their corporate seat (or domicile, in case of individuals) within the territory of an EU Member State, the Swiss Confederation or a Member State of both the European Free Trade Association (EFTA) and the EEA may directly apply for and hold a Wholesale Licence.  Foreign entities registered in other countries are required to have, in addition to the information from URE, at least a Local Branch Office, or preferably a Local Corporation.	No.
<b>ROMANIA</b>	Yes.	A foreign company may apply for the recognition of its Wholesale Licence issued in another EU Member State provided it declares on its own liability that it will observe the technical and commercial norms in Romania applicable to the respective activity.  A foreign company which is not established within the territory of an EU Member State may only apply for a Wholesale Licence provided it sets up a Local Corporation or a Local Branch Office for the entire duration of such licence validity period.	No.
<b>SERBIA</b>	Yes.	Yes, foreign legal entities can directly apply for a Wholesale Licence.	Yes, however a foreign legal entity cannot directly apply for and hold an Additional Licence; it is necessary to establish a Local Corporation in Serbia.

	ARE WHOLESALE ACTIVITIES SUBJECT TO LICENSING (NOTIFICATION)?	MAY A FOREIGN ENTITY DIRECTLY APPLY FOR AND HOLD A WHOLESALE LICENCE?	DO YOU NEED AN ADDITIONAL LICENCE TO SUPPLY INDUSTRIAL END-CUSTOMERS?
<b>SLOVAK REPUBLIC</b>	Yes.	Foreign entities incorporated and lawfully supplying electricity in a Member State of the EU/EEA are entitled to directly apply for and hold a licence in the Slovak Republic.  Foreign entities incorporated in other countries cannot directly apply for and hold a Wholesale Licence. They need to set up a Local Branch Office or a Local Corporation in order to obtain a Wholesale Licence.	No.
<b>SLOVENIA</b>	No.	N/A.	Generally, no. Licence is only required for closed distribution systems.
<b>UKRAINE</b>	Yes.	No. Foreign entities are required to establish a Local Corporation in order to obtain a Wholesale Licence.	No.

## 2. LICENSING OF NATURAL GAS WHOLESALE ACTIVITIES

	ARE WHOLESALE ACTIVITIES SUBJECT TO LICENSING (NOTIFICATION)?	MAY A FOREIGN ENTITY DIRECTLY APPLY FOR AND HOLD A WHOLESALE LICENCE?	DO YOU NEED AN ADDITIONAL LICENCE TO SUPPLY INDUSTRIAL END-CUSTOMERS?
<b>ALBANIA</b>	Yes.	No. Foreign entities are required to establish a Local Corporation in order to apply for a Wholesale Licence.	Yes.
<b>AUSTRIA</b>	Wholesale Activities are subject to prior notification to the competent energy regulator.  Additionally, natural gas traders need to obtain a trade licence from the competent trade authority.	The trade licence may only be obtained by a Local Corporation or a Local Branch Office. The extent to which trading activities affecting Austrian territory may be exercised cross-border by EEA and non-EEA companies is not fully clarified by case law.	No.
<b>BOSNIA &amp; HERZEGOVINA</b>	Yes.	No. Foreign entities are required to establish a Local Corporation in order to apply for a Wholesale Licence.	No.
<b>BULGARIA</b>	No.	N/A. Natural gas traders can be entities duly registered as traders under the relevant Bulgarian or other national legislation in the respective country (not necessarily EU Member States).	No.
<b>CROATIA</b>	Yes.	No. A Local Corporation or a natural person registered as an individual trader may apply for a Wholesale Licence. However, if a foreign entity is set up in the EU or the European Energy Community (including Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia), it may apply for and hold a Wholesale Licence directly, provided that it has a branch office registered in Croatia and meets the financial, technical and staffing requirements set out by the Ordinance on permits for performance of energy related activities.	Yes.
<b>CZECH REPUBLIC</b>	Yes.	No. Foreign companies are required to have a local presence either through the establishment of a new Local Corporation/acquisition of an existing Local Corporation or a Branch Office to be established in the Czech Republic.	No.

	ARE WHOLESALE ACTIVITIES SUBJECT TO LICENSING (NOTIFICA- TION)?	MAY A FOREIGN ENTITY DIRECTLY APPLY FOR AND HOLD A WHOLESALE LICENCE?	DO YOU NEED AN ADDITIONAL LICENCE TO SUPPLY INDUSTRIAL END-CUSTOMERS?
<b>HUNGARY</b>	Yes.	Foreign entities incorporated in an EU/EEA Member State may directly apply for and hold a Wholesale Licence, provided that they lawfully and effectively pursue natural gas trading in their country of incorporation. Foreign entities incorporated in countries other than EU/EEA Member States cannot directly apply for a Wholesale Licence in Hungary. They may only obtain an Additional Licence, provided that they establish a Local Corporation.	Yes. An Additional Licence can be directly obtained by a foreign entity incorporated in an EU/EEA Member State provided that it lawfully and effectively pursues natural gas trading in its country of incorporation. Foreign entities incorporated in countries other than EU/EEA Member States are required to establish a Local Corporation or a Local Branch Office in order to apply for an Additional Licence.
<b>POLAND</b>	Yes.	Foreign entities having their corporate seat within the territory of an EU Member State, the Swiss Confederation or a Member State of both the European Free Trade Association (EFTA) and the EEA may directly apply for and hold a Wholesale Licence.  Foreign entities registered in other countries are required to have, further to the information from URE, at least a Local Branch Office, or preferably a Local Corporation.	No.
<b>ROMANIA</b>	Yes.	No. Foreign entities (including entities established within the territory of an EU Member State) are required to establish at least a Local Branch Office in order to obtain a Wholesale Licence.	No.
<b>SERBIA</b>	Yes.	No. Foreign entities cannot directly apply for and hold a Wholesale Licence; they are required to establish a Local Corporation in order to obtain a Wholesale Licence.	No.
<b>SLOVAK REPUBLIC</b>	Yes.	Foreign entities incorporated and lawfully supplying natural gas in a Member State of the EU/EEA are entitled to directly apply for and hold a licence in the Slovak Republic. Foreign entities incorporated in other countries cannot directly apply for and hold a Wholesale Licence. They need to set up a Local Branch Office or a Local Corporation in order to obtain a Wholesale Licence.	No.
<b>SLOVENIA</b>	No.	N/A.	Generally, no. Licence is only required for closed distribution systems.

	ARE WHOLESALE ACTIVITIES SUBJECT TO LICENSING (NOTIFICA- TION)?	MAY A FOREIGN ENTITY DIRECTLY APPLY FOR AND HOLD A WHOLESALE LICENCE?	DO YOU NEED AN ADDITIONAL LICENCE TO SUPPLY INDUSTRIAL END-CUSTOMERS?
UKRAINE	Yes.	No. Foreign entities are required to establish a Local Corporation in order to obtain a Wholesale Licence.	No.

# AN INTERNAL ENERGY MARKET FOR THE EUROPEAN UNION AND BEYOND

The European Union has, as one of its priority actions for the creation of a single market, the completion of the internal energy market. On 4 February 2011, the Council of the European Union thus set a deadline of 2014 for the completion of the internal energy market and stated that “no Member State should remain isolated from the European gas and electricity networks after 2015”.

The main action plan for achieving this ambitious target is the Communication published by the European Commission in November 2012 on “Making the internal energy market work”<sup>1</sup>. One of the key goals identified by the Commission is the development of well-functioning, cross-border, wholesale markets, for which the development of relevant network codes applicable across the European Union will be crucial. These network codes<sup>2</sup> are in the process of being agreed and adopted through the comitology process provided for in the so-called “third package” for an internal EU gas and electricity market, which was adopted in July 2009 and entered into force in March 2011.

The Council of the European Union dedicated its June 2013 session to the subject of “Making the internal energy market work” and further confirmed its full commitment to the correct and urgent implementation of internal energy market legislation.

## 1. IMPLEMENTATION OF EU ENERGY POLICY (INCLUDING THIRD ENERGY PACKAGE) IN THE ENERGY COMMUNITY

The Energy Community Treaty, establishing the Energy Community, was signed in Athens on 25 October 2005 between the European Community, on the one hand, and Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Montenegro, Romania, Serbia and the UN Mission in Kosovo (“**Contracting Parties**”), on the other hand. It entered into force on 1 July 2006. Bulgaria, Croatia, and Romania subsequently became Member States of the EU. Moldova became a full-fledged member as of 1 May 2010, and Ukraine officially acceded to the Energy Community on 1 February 2011. Armenia, Georgia, Norway and Turkey participate as “observers”.

The main objective of the Energy Community is the implementation by the Contracting Parties of the *acquis communautaire* regarding major aspects of EU energy policy. These include, for the electricity and gas sectors, the so-called Third Energy Package which is in the process of being implemented by the various Contracting Parties, as well as EU energy policy regarding the environment, competition law, renewable energy and energy efficiency.

## 2. LACK OF HARMONISATION OF FRAMEWORK FOR ACCESS TO WHOLESALE ENERGY TRADING ACTIVITIES

Due to the express derogation of the electricity and natural gas sectors from the general principle of freedom to provide services in the European Union<sup>3</sup>, the regulatory framework for access to wholesale energy trading activities is within the competence of the Member States.

1 COM (2012) 663 final dated 15 November 2012.

2 For example, the priorities for 2013 include, in the electricity sector, the adoption of a Network Code on Capacity Allocation and Congestion Management, which sets out the methods for allocating day-ahead and intra-day timescales, and outlines the way in which capacity will be calculated across the different zones.

3 Article 17(1) paragraphs (b) and (c) of Directive 2006/123/EC on services in the internal market.

Access to the derivatives (financial instruments) part of wholesale energy markets is extensively covered by the regulation governing financial markets which has been mostly harmonised across the European Union through the Market Abuse Directive or so-called “**MAD**”<sup>4</sup>, the so-called “**MiFID**”<sup>5</sup>, and the so-called “**EMIR**”<sup>6</sup>. An important feature of this harmonised regulation is the “passport” feature applicable under the MiFID. Such passporting enables an investment company to offer services, remotely or through a branch, in any EU or European Economic Area Member State without having to obtain the authorisation of any financial market regulator other than that of the company’s home jurisdiction.

This harmonisation does not extend to the physical energy markets, which remain subject to the national legal and regulatory framework governing the energy sector in each country.

Recognising that the regulatory access regimes to wholesale energy trading constitute a key element for the creation of an internal energy market and ensuring the integrity of energy trading in Europe, the Council of European Energy Regulators (“**CEER**”), at the request of the European Commission, has been analysing some aspects of these regimes since 2009.

As part of its final advice issued in November 2011<sup>7</sup>, CEER noted, from the results of an external study it had commissioned and from an analysis of the national energy regulators, the serious shortcomings of the current patchwork of regimes regarding access to the physical wholesale energy markets in the Member States of the European Union: *“There are currently a variety of rules and regimes regarding the access for trading companies to energy wholesale markets. This poses serious administrative burdens and barriers for more competition in the wholesale energy markets. Several of the current licensing requirements in European countries are perceived as serious market entry barriers especially for trading companies that want to be active in several Member States. Furthermore, as there are Member States with no access requirements at all, it must be noted that in those markets minimum checks on trading companies cannot be guaranteed. A consistent overview on who is actually acting on the market is missing.”*

CEER therefore recommended a Europe-wide Energy Wholesale Trading Passport as the best policy option to fulfil all the relevant goals of: ensuring a level playing field for market participants; providing appropriate level of checks; identifying all market participants; and avoiding unnecessary bureaucracy.

To date, there has been some progress in preventing market abuse of wholesale energy markets through the adoption of the Regulation on wholesale energy market integrity and transparency (“**REMIT**”)<sup>8</sup> which came into force on 28 December 2011, although there are certain steps that remain to be taken to complete its implementation<sup>9</sup>.

REMIT has introduced a harmonised framework across the whole of the European Union:

- defining market abuse, in the form of market manipulation, attempted market manipulation and insider trading, in wholesale energy markets;
- introducing explicit prohibitions of market abuse in wholesale energy markets;

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4 Directive 2003/6/EC on insider dealing and market manipulation (market abuse).

5 Directive 2004/39/EC on markets in financial instruments.

6 EU Regulation No. 648/2012 on OTC derivatives, central counterparties and trade repositories.

7 CEER Final Advice on the Introduction of a Europe-wide Energy Wholesale Trading Passport, A CEER Conclusions Paper, Ref C11-WMS-15-04b, 8 November 2011.

8 Regulation 1227/2011 of 25 October 2011.

9 One of the most important steps is the adoption of certain REMIT Implementing Acts by the European Commission.

- establishing a new framework for the monitoring of wholesale energy markets to detect and deter market abuse, including introducing an obligation to report suspicious transactions;
- providing for the enforcement of prohibitions and avoiding the sanctioning of breaches of market abuse rules at national level.

### 3. **REGULATORY “PATCHWORK” REGARDING ACCESS TO THE PHYSICAL WHOLESALE ENERGY MARKETS**

Unfortunately, CEER’s recommendation for a Europe-wide Energy Wholesale Trading Passport has not yet been taken up by the relevant institutions of the European Union, and energy traders envisaging conducting physical trading activities in the wholesale electricity or gas markets of the European Union or of the Energy Community are still confronted with the difficulties of a patchwork of different regulatory access regimes.

For example, on the one hand, in order to engage in Wholesale Activities in Hungary only one licence needs to be obtained from the national regulator. However, a Swiss company may not directly apply for and hold such a Wholesale Licence since only companies incorporated in a Member State of the EU/EEA may benefit from the simplified licensing procedure and obtain a Wholesale Licence directly, without the need for a Local Entity. On the other hand, under the laws of Poland, for instance, Switzerland is classified as a privileged jurisdiction and Swiss companies may directly engage in gas Wholesale Activities under the same conditions as any other company incorporated in a Member State of the EU/EEA. However, in order to do so they are required to obtain three different Wholesale Licences.

This is the main reason why we at Wolf Theiss have prepared this Guide to Licensing of Electricity and Gas Wholesale Activities in 13 jurisdictions of Central, Eastern and Southeastern Europe (“**CEE-SEE**”). For each of the jurisdictions, we cover the following aspects of the national legal and regulatory framework governing access to the physical wholesale energy markets: conditions for applying for a natural gas and electricity trading Wholesale Licence, obtaining a Wholesale Licence for trade of electricity or natural gas, different rules applicable for supply to industrial end-customers and obtaining the Additional Licence(s), and the fundamental rules for setting up an Entity for obtaining the Wholesale Licence, if necessary. As some of the functions usually implemented through a regime of trading licences can also be met by other institutions, we have also covered additional aspects in this guide; such as the reporting obligations of market participants, and contractual arrangements which are mandatory for market participants in each jurisdiction.

For the purpose of this Guide *Wholesale Activities* mean the wholesale trading activities with power and gas respectively that include the purchase of physical power or natural gas from generators/producers, traders or at an exchange, and their sale to other traders (no end customers) or at an exchange, as well as the access to power/natural gas infrastructures and export from or import to the respective country. *Wholesale License* means any permit, licence or authorisation issued by any state controlled authority or state body which is necessary to perform the Wholesale Activities. If a different or additional licence is required for engaging in supply to industrial end customers, such licence is referred to as an *Additional Licence*. Subject to the specific provisions of the law of the country where it is incorporated, *Local Corporation* generally means a corporate entity (e.g. Ltd. or Plc.) registered in a country and regulated by the respective law providing for minimal capital, operation, management structure etc, and which management structure, financial means and liability is partially or completely independent from the foreign founder company. *Local Branch Office* means an organizational unit of a foreign company registered in a country without legal personality that does not meet the requirements set for a Local Corporation by the respective law meaning only a less formal presence in the country. *Entity* means either a Local Branch Office or a Local Corporation.



# ALBANIA

## **1. RELEVANT LAWS AND REGULATIONS**

- Law No. 43/2015 of 2015 “On the electric energy sector” (“**Energy Act**”);
- Law No. 9501 of 2006 “On the ratification of the treaty establishing the Energy Community” (“**Ratification Law**”);
- Decision of the Council of Ministers No. 338 of 2008 “On the Albanian Market Model”, as amended (“**Market Model**”);
- Decision of the Council of Ministers No. 519, dated 13 July 2016 “On the Albanian Market Model” (“**New Market Model**”) (will only be applicable once the Albanian Energy Exchange Model becomes operational);
- Decision of the Energy Regulatory Entity No. 68 of 2008 “On the Albanian electric energy market rules” (“**Market Rules**”); and
- Law No. 102/2015 of 2015 “On Natural Gas Sector” (“**Gas Law**”).

## **2. ORGANISATION OF ELECTRICITY MARKET AND GAS MARKET**

### **2.1 Electricity Market**

Key legislation applying to the electricity sector in Albania includes the Energy Act, the Ratification Law, the Market Model and the Market Rules.

The power sector is principally regulated by the Energy Act, which also defines the rights and obligations of legal and/or physical persons, and public administration involved in the sector, as well as the procedures for selecting and developing a market model and the rules for an electricity market. The Energy Act defines, *inter alia*, (i) the authority of the Energy Regulatory Entity (“**ERE**”), as the regulator of the energy sector; (ii) the development of a regional electrical power market; (iii) regulations for feed-in tariffs and tariffs for the commercialisation of electricity; and (iv) licensing requirements.

In line with the undertakings made by Albania under the Ratification Law to adopt the EU single market regulations on common rules for the internal market in electricity, the Albanian electricity market has been gradually liberalised. As of 1 January 2008, all non-household customers classify as eligible and are entitled to secure their electricity demand from the free market. Full market liberalisation was due by 1 January 2017 when Albania should have liberalised the market for all customers, including householders.<sup>1</sup>

The energy sector policies of the Government of Albania are enacted in the Market Model, which provides a framework for reform in the electricity sector and the basis for privatising certain segments of the power sector. The Market Model also contains provisions regarding responsibilities and obligations in the electricity market and ensures the flow of information about the operation of the market in order to create structures for electricity market transactions.

The Market Rules regulate procedures for market operations and management, the framework under which participants in the electricity market can interact with each other, the sale and purchase of electricity at freely negotiated prices and the conditions for participating in the electricity balancing market.

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<sup>1</sup> At the time of printing, in March 2018, although the respective Albanian authorities involved are making all the necessary preparations, full market liberalisation has not been achieved yet.

The Energy Act in basic terms, and the Market Model and Market Rules, in more specific and detailed terms, set forth the framework under which contracts between the various electricity market participants may be entered into. Under these regulations, a regulated market and a free market for the sale of energy are established as described further below. The regulated market involves contractual relations that are subject to the contractual terms determined and, most importantly, the tariff regulations established by ERE.

Two types of Power Purchase Agreements (“PPAs”) are stipulated: (i) regulated PPAs, whose mandatory content is set forth by ERE; and (ii) non-regulated PPAs, where the parties enjoy a high degree of flexibility in negotiating the terms and conditions of the agreement, however continuing to observe the mandatory provisions of the Market Model and of the Market Rules passed by ERE.

Under the current Market Model and Market Rules a Local Corporation licensed in Wholesale Activities may trade electricity under non-regulated PPAs with other traders, the distribution system operator (only for losses in the distribution system), the wholesale public supplier and with eligible customers, and may purchase electricity from producers, including from the public producer (for its excess capacity), on freely negotiated terms.

Unregulated contracts must be disclosed to the transmission system operator; at least with respect to the contracting parties, the amount of electricity contracted and the starting date and duration of the contract. Unless such disclosures are effectively made, an unregulated contract shall not become effective.

On the other hand, the regulated market aims at protecting captive/tariff consumers against the risk of market price variations. Therefore, there are some legal limitations applicable to regulated PPAs, such as the price for the sale of energy from a generator to the wholesale public supplier.

Under the current Market Model and Market Rules, small power plants (which are connected to the distribution network) with a generation licence may sell electricity to qualified suppliers, traders, or to the Distribution System Operator on freely negotiated terms. Furthermore, such power plants may sell power to the wholesale public supplier at a regulated price.

By contrast, an independent power producer (“IPP”) which is connected to the transmission network must apply for a qualified supply licence if it chooses to sell directly to eligible customers. Furthermore, under the unregulated market terms, IPPs may sell capacity or energy to traders or qualified suppliers at market prices, or to the wholesale public supplier at a regulated price and pursuant to a contract that must be approved by ERE.

Regulated contracts are renewed on an annual basis, as the price for the sale of energy is also revised each year. The prices of trading electricity through regulated PPAs are set by ERE. A framework for regulated PPAs is available on the official Web site of ERE.

It has become common practice in Albania for PPAs to be entered into for the duration of 1 (one) year. This mostly applies to contracts that are subject to ERE regulations. The reasons that have led to short term PPAs being entered into are mainly the revision of the prices for the exchange of electricity by ERE on an annual basis and the limited overall number of operators in the electricity market which operate mostly under the regulated market terms.

The electricity market in itself is managed by the market operator which is managed by the Transmission System Operator (“TSO”). All participants in the electricity market must conclude a standard agreement, as approved by ERE, on the basis of which the terms for the participation of the entities licensed to operate in the electricity market are set forth. The Energy Act specifically provided for the obligation of the Council of Ministers to decide on the legal and financial division/separation of the market operator from the TSO by **31 December 2017**. From this point in time the market operator should be the only licensed entity to operate and manage the energy market and also to prepare the financial statements for the liquidation of mutual obligations with the market participants, without including the activities for purchasing and selling of energy.<sup>2</sup>

2 At the time of printing, in March 2018, although the respective Albanian authorities involved are making all the necessary preparations, the separation has not happened yet.

## **2.2 Natural Gas market**

The development of the natural gas sector in Albania is one of the priorities set out in the National Strategy of Energy of Albania. Albania is currently not connected to the international gas network, although this is foreseen for the future. The proposed Trans Adriatic Pipeline (“**TAP**”) will bring natural gas from new sources in the Caspian region to western and southeastern Europe. The TAP will transport gas via Greece and Albania, across the Adriatic Sea and into southern Italy. The project is designed to expand the transportation capacity from 10 to 20 billion m<sup>3</sup> per year. The TAP also envisages a physical reverse flow of up to 80% (eighty percent) and the option to develop natural gas storage facilities in Albania to further ensure security of supply. The pipeline will be approximately 800 km in length (Greece 478 km; Albania 204 km; offshore Adriatic Sea 105 km; Italy 5 km).

The natural gas reserves in Albania are not yet fully exploited due to the absence of infrastructure and investments in the sector, and the State is willing and actively looking to cooperate with foreign investors for the development of the natural gas sector.

The Albanian natural gas market is influenced by international treaties and all agreements in this sector have to comply with the requirements of these treaties or other international agreements. Albania is a party to the Energy Community and has signed the Athens Treaty on 25 October 2005 (ratified by the Albanian Parliament as Law No. 9501 dated 3 April 2006).

Given that Albania has no developed gas infrastructure, there is currently no gas market operating in Albania. However, the legal framework for the natural gas market is regulated by the Gas Law, which was introduced in 2015 and repealed the old law No. 9946 “On natural gas sector”.

The Gas Law stipulates that the Energy Regulatory Entity (“**ERE**”) is the regulatory authority establishing the criteria for ensuring equal treatment and freedom of access to the gas transmission/distribution network for all users and which defines the duties of the natural gas transmission/distribution operators. ERE issues licences, *inter alia*, for activities such as (i) transmission; (ii) distribution; (iii) supply; (iv) trade; (v) operation of storage areas; (vi) operation of LNG plants; and (vii) natural gas market operator. The licences for transmission, distribution and supply are granted to only 1 (one) entity for operating in a defined area.

Other responsibilities of ERE in the natural gas sector include, among others:

- Drafting, approving and publishing the methodology for:
  - setting fees for connection and tariffs, terms and conditions for access to the natural gas networks, and tariffs for access to the LNG facilities which shall allow for the necessary investments in the networks, and in the network efficiency and facilities of LNG;
  - setting tariffs for the supply of natural gas to household customers and small non-household customers, as well as tariffs for the supply of last resort; and
  - setting tariffs for access to cross-border infrastructure, including the procedures for the allocation of capacity and congestion management.
- Monitoring the TSO and the Distribution System Operator;
- Supervising the implementation of public service obligations;
- Supervising the effective implementation of end-customer safeguards by companies in the natural gas sector;
- Ensuring that customers may effectively choose new suppliers and switch them under the terms and conditions stipulated in the Gas Law;

- Adopting the general conditions of supply, including the establishment of transparent general contractual terms and conditions;
- Granting, modifying, transferring and withdrawing licences for natural gas undertakings;
- Approving the investment plans of the licensees in the natural gas sector, as well as monitoring them;
- Setting minimum requirements for the TSO for the maintenance and development of the transmission system, including interconnection capacity;
- Defining the dispute resolution mechanisms for natural gas undertakings and between these and end-customers; and
- Determining exemptions for new infrastructures.

The activity of natural gas transmission and distribution is of public interest and is performed respectively by the TSO and DSO(s). These operators own, operate, construct and maintain the transmission/distribution systems. They act transparently and objectively; avoiding discrimination between the system users. The system operators conclude grid connection and grid access agreements with third persons seeking access. Grid access can only be refused if such access is technically or economically impossible or unreasonable. Upon the request of the interested parties, in cases when the TSO and DSO refuses third party access to the grid, ERE may review such decisions and in case of an unjustified refusal will order access to be granted. The TSO/DSO publishes the terms and conditions approved by ERE for granting access to the transmission/distribution system to third parties.

As mentioned above, given that Albania has not developed any gas infrastructure, there is currently no DSO or TSO in the gas sector, nor are there any Codes published in this respect.

### 3. CONDITIONS FOR APPLYING FOR ELECTRICITY AND NATURAL GAS WHOLESALE LICENCE(S)

#### 3.1 Electricity Licensing – Regulatory and Corporate Conditions

Wholesale Activities are subject to licensing in Albania. ERE is the competent authority to issue an electricity trading licence which covers all elements of Wholesale Activities ("**Wholesale Licence**").

Although a foreign entity may not directly apply for and hold a Wholesale Licence in Albania, it may apply for a Wholesale Licence through a Local Corporation. A Local Corporation may, under the Albanian Law on Companies (Law No. 9901/2008), be organised in the form of a (i) general partnership; (ii) limited partnership; (iii) limited liability company (*sh.p.k.*); or (iv) joint stock company (*Sh.A.*) – which may be set up either as a joint stock company without a public offering (non-public) or with a public offering (public).

Investors generally prefer to set up their investment vehicle as a limited liability company (*sh.p.k.*). This is because a *sh.p.k.* is lightly regulated, offering among other things limitation of liability of its shareholders to the share capital of the *sh.p.k.* (as a principal rule), and a higher degree of flexibility for its management.

#### 3.2 Natural Gas Licensing – Regulatory and Corporate Conditions

In order to conduct natural gas Wholesale Activities in Albania, a licence needs to be obtained from ERE ("**Wholesale Licence**"). As in the case of a wholesale licence for electricity, a foreign entity may not directly apply for and hold a Wholesale Licence for Gas in Albania; however, it may apply for a Wholesale Licence through a Local Corporation. A Local Corporation may, under the Albanian Law on Companies (Law No. 9901/2008), be

organised in the form of a (i) general partnership; (ii) limited partnership; (iii) limited liability company (*sh.p.k.*); or (iv) joint stock company (*Sh.A.*) – which may be set up either as a joint stock company without a public offering (non-public) or with a public offering (public).

## **4. OBTAINING THE WHOLESALE LICENCE(S)**

### **4.1 Electricity**

#### **4.1.1 Annexes to the application for the electricity Wholesale Licence**

The application for obtaining a licence must be submitted to the Licensing & Monitoring Department of ERE.

The application needs to be submitted in person by the duly authorised representative of the applicant who may be the executive officer of the applicant or another person vested with representation rights pursuant to a duly issued proxy.

In addition to the application form, the representative shall submit the following documents:

- A proxy vesting him/her with the authority of representation; and
- A certificate that the representative is not involved in a judicial process by the juridical authorities (certification issued by the prosecution and judicial authorities).

The representative is responsible for submitting any additional data and information required by ERE during the application process.

The applicant shall submit two copies of the application; one copy shall contain the original or notarised photocopies of the documentation, whereas the second one shall be an electronic copy of all the documents included in the application.

Certifications and declarations issued by other bodies shall not be backdated later than 1 (one) month from the date of the application.

The application shall be submitted in the Albanian language or, if not, be accompanied by an Albanian translation certified by a notary.

All documentation of a technical nature must be prepared and certified by a licensed expert.

For those requirements where, for any reason, the applicant is unable to submit documentation, the applicant shall provide written explanations detailing the reasons and causes for such omission(s).

As part of the application, the applicant shall submit the application form accompanied by the supporting documentation.

In the application form, the applicant shall provide the following information:

- The type of licence required;
- Information on the identity of the applicant such as:
  - the name;
  - the registration number with the Trade Registry (“NBC”);
  - the address and telephone and fax numbers;
  - the name and position of the key administrators of the applicant; and
  - the name, address, telephone and fax numbers of the legal representative of the applicant.
- Representations and declarations of the applicant:
  - whether it has previously been refused any energy related licence in Albania or abroad;
  - that it will abide by the applicable laws; and
  - whether it carries out activities other than the one for which is applying.

The documentation that shall be enclosed with the application form consists of:

- Documentation of a legal, administrative and proprietary nature, such as:
  - the founding resolution;
  - the articles of association;
  - the certificate of registration with the NBR;
  - a certificate proving that the key administrators of the applicant are not involved in any criminal proceeding (issued by the prosecution and/or judicial authorities);
  - the administrative and corporate governance structure of the applicant including the names and the profiles (CVs) of its staff, who will be responsible for the operation of the activity for which the licence is required under this application;
  - the Concession Agreement or autorisation from the Council of Ministers (if applicable) and also their amendments; and
  - any document that proves the ownership of the applicant over the assets used for carrying out the activity for which the licence is required under this application.
- Documentation of a financial and fiscal nature such as:
  - evidence of the payment of all tax and social insurance duties;
  - the financial statements for the last 3 (three) financial years of the applicant or of its actual life (for companies that are owned by other companies (i.e. companies whose members are also companies) the applicant shall submit also the financial statements for the last 3 (three) financial years of the member companies);

- documents that show or support the financial viability of the applicant in relation to the activity for which it requires the licence, which clearly show the planned financing amounts and structure (self financing, bank loans, donations etc.); and
- Evidence of the payment to ERE of the application tariff.
- Documentation of a technical nature such as:
  - Technical data regarding the HPP;
  - Technical data regarding the transformation block and system access;
  - Technical and graphical documentation;
  - Technical and economical documentation;
  - Permits from other institutions, such as:
    - TSO or OSSH approval for connection of the plant with the transmission or distribution grid;
    - Water Usage Permit; or
    - Environmental Permit.

#### **4.1.2 Procedural rules**

The application procedure is a paper-based procedure.

Once the application has been submitted, the following steps take place:

- The Licensing and Monitoring Department shall submit a report to the Board of ERE proposing the initiation (or not) of the procedures for licensing;
- On the basis of the above-mentioned report, the Board of ERE may resolve to initiate or not initiate the licensing procedure. In the event the Board resolves to refuse the initiation of the licensing procedure, ERE must notify the applicant within 7 (seven) working days of the decision date the reasons behind such refusal and provide further instructions. The refusal may be due to non-compliance with statutory legal or technical requirements. A decision in this respect may be challenged within 30 (thirty) days with the court. However, a new application may be submitted following the compliance with the statutory legal or technical requirements;
- In the event the Board resolves to initiate the licensing procedure, ERE publishes after 2 (two) working days from the date of the application the relevant information on the application in the written media for 2 (two) consecutive days and invites any interested person to submit objections or complaints against such application;
- The waiting period for receiving objections/complaints is 30 (thirty) working days, during which period the application documentation is subject to public inspection. ERE shall, on the basis of the applicant's request, decide what information or documentation shall be treated as confidential and consequently prevent any access by interested parties. During this period ERE may request further information from the applicant; and
- At the end of the waiting period, and depending on its outcome, the Board of ERE shall resolve to issue or refuse the licence, not later than 60 (sixty) working days from the first publication of the initiation of the application procedure.

#### **4.1.3 Operational conditions required for the issuance and maintenance of the electricity Wholesale Licence**

##### **4.1.3.1 Personnel**

Applicants are generally required to have the facilities and qualified staff necessary for the continuous and long-term pursuit of the licensed activity. Nevertheless, the relevant laws do not contain any specific requirements as to how many officers are necessary, and what roles these should have.

##### **4.1.3.2 Premises**

Applicants are required to have a fully functioning physical presence in Albania, either by way of ownership or lease of the legal seat.

##### **4.1.3.3 IT systems/assets**

The applicant is required to have all facilities, including IT systems/assets necessary for the performance of the Wholesale Activities. However, the applicable regulations do not specify any minimum requirements for the purpose of obtaining the Wholesale Licence.

##### **4.1.4 Financial guarantee**

There are no financial guarantees (including bank guarantees or cash deposits) to be provided to an authority in Albania.

##### **4.1.5 Procedural costs**

The licensing tariff is ALL 40,000 payable before the application is submitted.

##### **4.1.6 Term of the electricity Wholesale Licence**

The Wholesale Licence is valid for 5 (five) years. It can be renewed based on an application submitted within 2 (two) months prior to the expiry date of the original Wholesale Licence.

There is no formal requirement for a regular control of the Wholesale Licence; however, the licence holder is required to continuously satisfy the requirements for obtaining a Wholesale Licence. Upon failure by the licence holder to do so or to comply with its statutory obligations ERE may withdraw the Wholesale Licence, as an ultimate measure.

#### **4.2 Natural Gas**

##### **4.2.1 Annexes to the application for the gas Wholesale Licence**

The application for obtaining a licence must be submitted to the Licensing & Monitoring Department of ERE.

The application needs to be submitted in person by the duly authorised representative of the applicant who may be the executive officer of the applicant or another person vested with representation rights pursuant to a duly issued proxy.

In addition to the application form, the representative shall submit the following documents:

- A proxy vesting him/her with the authority of representation; and
- A decision from the company's decision-making body authorising the applicant to file the application on behalf of the company.

The representative is responsible for submitting any additional data and information required by ERE during the application process.

The applicant shall submit two copies of the application; one copy shall contain the original or notarised photocopies of the documentation, whereas the second one shall contain a scanned copy and also an electronic copy of all the documents included in the application.

Certifications and declarations issued by other bodies shall not be backdated later than 1 (one) month from the date of the application.

The application shall be submitted in the Albanian language or, if not, be accompanied by an Albanian translation certified by a notary.

All documentation of a technical nature must be prepared and certified by a licensed expert.

For those requirements where, for any reason, the applicant is unable to submit documentation, the applicant shall provide written explanations detailing the reasons and causes for such omission(s).

As part of the application, the applicant shall submit the application form accompanied by the supporting documentation.

In the application form, the applicant shall provide the following information:

- The type of licence required;
- Information on the identity of the applicant such as:
  - the name;
  - the registration number with the Trade Registry (“NBC”);
  - the address and telephone and fax numbers;
  - the name and position of the key administrators of the applicant; and
  - the name, address, telephone and fax numbers of the legal representative of the applicant.
- Representations and declarations of the applicant:
  - whether it has previously been refused any energy related licence in Albania or abroad;
  - that it will abide by the applicable laws; and
  - whether it carries out activities other than the one for which is applying.

The documentation that shall be enclosed with the application form consists of:

- Documentation of a legal, administrative and proprietary nature, such as:
  - the certificate of registration with the NBC, founding resolution and articles of association of the company;
  - a certificate proving that the company and the key administrators of the applicant are not involved in any criminal proceeding (issued by the prosecution and/or judicial authorities);

- proof of residence and criminal record certificate of the representative of an entity with foreign nationality;
  - the administrative and corporate governance structure of the applicant including the names and the profiles (CVs) of its staff, who will be responsible for the operation of the activity for which the licence is required under this application;
  - except for the supply, trading and market operation licences, the agreement and permit approved from the Council of Ministers;
  - identity of all persons that hold a legal title in the applicant in the amount equal to or more than 5% (five percent); and
  - any document that proves the ownership of the applicant over the assets used for carrying out the activity for which the licence is required under this application.
- Documentation and financial guarantees:
    - certificates from tax authorities that the applicant has paid all obligations towards them and there are no pending obligations over the applicant;
    - financial statements for the last 3 (three) years audited by an accredited auditor;
    - appropriate financial guarantees and trade and performance guarantee ensuring the applicant's ability to fulfill all its obligations under the required licence, including but not limited to; complete or partial disposal of equipment and/or infrastructure and environmental rehabilitation as well as managerial, operational and financial support from the applicant's owners;
    - except for the case of supply and of trading, an insurance certificate from an insurance company (operating in accordance with the legislation in force in Albania) that identifies liability coverage for damages for the injury, illness or death of persons or for the loss or destruction of property caused or resulting from the applicant's activities within the required licence on a level of liability not less than USD 10 million. This policy or these insurance policies will be and remain in full force and effective for the entire length of the required licence. Furthermore, the licensee will remain liable for any damages that may or may not result from, or result from, any activity that has occurred during the term of the licence;
    - confirmation of the payment to ERE of the applicable application fee at the time of submission of the application;
    - a business plan that includes an analysis of costs and benefits, including costs for the final disposal of equipment and environmental rehabilitation upon completion of operations; and
    - if the applicant intends to use a management company for its day-to-day operations, it must inform the ERE thereof and provide a performance guarantee for the honest and reliable performance of that management company.
  - Documentation of a technical nature:
    - Other types of documents to be presented shall depend on the specific type of licence.

#### **4.2.2 Procedural rules**

The application procedure is a paper-based procedure.

Once the application has been submitted, the following steps take place:

- The Licensing and Monitoring Department shall submit a report to the Board of ERE proposing the initiation (or not) of the licensing procedure;
- On the basis of the above-mentioned report, the Board of ERE may resolve to initiate or not the licensing procedure. In the event the Board resolves to refuse the initiation of the licensing procedure, ERE must notify the applicant within 7 (seven) working days of the decision date the reasons behind such refusal and provide further instructions. The refusal may be due to non-compliance with statutory legal or technical requirements. A decision in this respect may be challenged within 30 (thirty) days with the court. However, a new application may be submitted following the compliance with the statutory legal or technical requirements;
- In the event the Board resolves to initiate the licensing procedure, ERE publishes after 2 (two) working days from the date of the application the relevant information on the application in the written media for 2 (two) consecutive days and invites any interested person to submit objections or complaints against such application;
- The waiting period for receiving objections/complaints is 30 (thirty) working days, during which period the application documentation is subject to public inspection. ERE shall, on the basis of the applicant's request, decide what information or documentation shall be treated as confidential and consequently prevent any access by interested parties. During this period ERE may request further information from the applicant;
- At the end of the waiting period, and depending on its outcome, the Board of ERE shall resolve to issue or refuse the licence, not later than 90 (ninety) days from the first publication of the initiation of the application procedure.

#### **4.2.3 Operational conditions required for the issuance and maintenance of the gas Wholesale Licence**

##### **4.2.3.1 Personnel**

Applicants are generally required to have the facilities and qualified staff necessary for the continuous and long-term pursuit of the licensed activity. Nevertheless, the relevant laws do not contain any specific requirements as to how many officers are necessary, and what roles these should have.

##### **4.2.3.2 Premises**

Applicants are required to have a fully functioning physical presence in Albania, either by way of ownership or lease of the legal seat.

##### **4.2.3.3 IT systems/assets**

The applicant is required to have all facilities, including IT systems/assets necessary for the performance of the Wholesale Activities. However, the applicable regulations do not specify any minimum requirements for the purpose of obtaining the Wholesale Licence.

#### **4.2.4 Financial guarantee**

There are financial guarantees (including bank guarantees or cash deposits) to be provided to an authority in Albania.

#### **4.2.5 Procedural costs**

The licensing tariff is ALL 40,000 payable before the application is submitted.

#### **4.2.6 Term of the electricity Wholesale Licence**

The Wholesale Licence is valid for 10 (ten) years. It can be renewed based on an application submitted prior to the expiry date of the original Wholesale Licence.

There is no formal requirement for a regular control of the Wholesale Licence; however, the licence holder is required to continuously satisfy the requirements for obtaining a Wholesale Licence. Upon failure by the licence holder to do so or to comply with its statutory obligations ERE may withdraw the Wholesale Licence, as an ultimate measure.

### **5. DIFFERENT RULES APPLICABLE FOR SUPPLYING INDUSTRIAL END-CUSTOMERS**

#### **5.1 Electricity Licensing – Regulatory and Corporate Conditions**

In Albania there is only one type of electricity trading licence which entitles its holder both to pursue Wholesale Activities and to supply end-customers, so no Additional Licence is needed for supplying industrial end-customers.

#### **5.2 Natural Gas Licensing – Regulatory and Corporate Conditions**

Further to the Gas Law, in order to supply industrial end-customers (as well as any other end-customers) an Additional Licence is required for the supply of natural gas. The same rules and conditions, as provided in Point 4.2 above, apply to obtaining a licence for supplying natural gas to end-customers. The same entity can hold simultaneously a trading licence and a supply licence, provided that it keeps separate accounts for each activity, i.e. one for the trading activity and one for the supply activity.

### **6. OBTAINING THE ADDITIONAL LICENCE(S)**

#### **6.1 Electricity**

In Albania there is only one type of electricity trading licence. Licensing requirements are detailed under Point 4.1 above.

#### **6.2 Natural Gas**

In Albania there is only one type of gas trading licence. Licensing requirements are detailed under Point 4.2 above.

## 7. SETTING UP A LOCAL ENTITY

As described under Point 3 above, foreign companies need to establish a Local Corporation in the form of a limited liability company (as this is the simplest form) in order to obtain an electricity Wholesale Licence in Albania.

They become legal entities upon registration and their assets are separated from the shareholders' assets.

### 7.1 Most Important Legal Rules and Operational Requirements

	LOCAL CORPORATION/SH.P.K.
<b>GENERAL DESCRIPTION</b>	A business association established with a registered capital consisting of capital contributions of a pre-determined amount. The obligation of the members (shareholders) of the company extends only to the provision of their capital contributions and to other possible contributions as set forth in the articles of association. Subject to the exceptions prescribed by law, shareholders are not liable for the obligations of the company. A limited liability company may have one shareholder or several shareholders.
<b>MINIMUM CAPITAL</b>	ALL 100 (approximately EUR 0.80).  The payment of the contribution in cash is done via a commercial bank located in the territory of the Republic of Albania. The payment of the initial capital (by contribution in cash) is not a prerequisite for the registration (establishment) of a limited liability company. In case of a contribution in kind, a special evaluation report setting out the value of the contribution shall be presented at the time of establishment.  The capital of a limited liability company may be withdrawn only through the dissolution of the company or by way of a capital decrease.
<b>LIABILITY FOR DEBTS</b>	As a general rule a shareholder's liability is limited to the share contribution it has supplied.
<b>MANAGEMENT/ REPRESENTATION</b>	A limited liability company is typically managed by one administrator, though some choose to have more than one administrator.  The administrators are supervised by the shareholders' assembly.  The administrator does not have to be Albanian or have his/her permanent residence in Albania.
<b>PREMISES</b>	The Local Corporation needs to have an individual physical office registered as its seat in the Commercial Register.
<b>BANK ACCOUNT OPENING REQUIREMENT</b>	The Local Corporation is required to open a bank account in Albania.
<b>TAX NUMBER REQUIREMENT</b>	The Local Corporation is required to receive a tax number upon registration with the Trade Registry and subsequent registration with the tax authority.

## 7.2 Procedural Rules

The administrative fee for establishing a Local Corporation is approximately EUR 1.

The official time period for registration once all the required documents have been submitted to the National Business Centre is 1 (one) day. The documents necessary for establishing a Local Corporation are:

### 7.2.1 The Founding Act and the articles of association of the parent company

The founding act and the articles of association of the parent company shall be in their current version and must contain, *inter alia*, particulars regarding the (i) legal form of the parent company; (ii) name of the parent company; (iii) legal seat and registration number of the parent company; (iv) relevant competent bodies taking decisions within the parent company including the relevant provisions or articles providing for the right to establish subsidiaries; (v) object of the activity of the parent company; and (vi) the share capital of the parent company.

### 7.2.2 Extract of Registration of the parent company (including a statement that the company is not under liquidation proceedings)

The extract of registration of the parent company with the relevant authorities (i.e. Commercial Register) shall contain data and information on the parent company such as, *inter alia*, (i) legal form; (ii) company's duration (if determined); (iii) name of the parent company; (iv) name(s) of founder(s); (v) registered office and capital of the parent company; (vi) legal representatives of the parent company; and (vii) good standing of the parent company (i.e. the fact that the parent company is not under any bankruptcy or liquidation proceedings).

### 7.2.3 The Resolution/Authorisation of the parent company on the establishment of the Local Corporation in Albania

The establishment of the Local Corporation in Albania should be approved by the competent authority/body of the parent company by resolution indicating, *inter alia*, the following information regarding the Local Corporation: (i) duration (if determined); (ii) name; (iii) legal seat; (iv) object of the activity; and (v) name(s) of administrator(s) as well as a copy of the passport(s) of the administrator(s).

### 7.2.4 The articles of association and the founding act of the Local Corporation

The founding act of the Local Corporation must contain, *inter alia*, particulars regarding the Local Corporation's (i) legal form; (ii) duration (if determined); (iii) name; (iv) founders' name(s); (v) registered office; and (vi) object of activity.

The articles of association must contain particulars regarding, *inter alia*, (i) the founding capital par value, kind and class of issued shares; (ii) procedure for appointing members of the Local Corporation's bodies and description of the scope of their authority; (iii) procedure for making amendments to the articles of association; (iv) the method of transfer of shares; (v) the name and duration of the mandate of the first administrator(s); and (vi) if the Local Corporation is incorporated for a specific term, the procedure by which the company will be terminated upon the expiry of such term.

### 7.2.5 Notarised copy of passport of the administrator(s)

The Resolution/Authorisation of the parent company referred to in Point 7.2.3 above shall be signed by the authorised representatives/bodies of the parent company in the presence of a notary public. Following notarisation of this document as well as the notarisation of the documents listed under Point 7.2.1 and 7.2.2 above, an apostille in compliance with The Hague Convention of 1961 shall be obtained for all documents.

## **8. TAXES**

Having a Local Corporation in Albania for pursuing Wholesale Activities creates a taxable presence in Albania and as such the Local Corporation is liable for tax in Albania in accordance with the general rules. However, there is no additional direct tax applicable to the performance of Wholesale Activities.

## **9. CONTRACTUAL RELATIONS**

The only compulsory contract which must be entered into by a trader is the contract with the market operator responsible for the operation of the electricity market.

## **10. REPORTING OBLIGATIONS**

The Local Corporation licensed for Wholesale Activities is under the obligation to report to ERE within the last 3 (three) months of each year the complete financial reports of its activity, in accordance with the standards approved by ERE.



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AUSTRIA

## 1. RELEVANT LAWS AND REGULATIONS

The most relevant laws and regulations governing the electricity and gas markets in Austria are the following:

- Bundesgesetz über die Regulierungsbehörde in der Elektrizitäts- und Erdgaswirtschaft (*Energie-Control-Gesetz*; “**E-Control Act**”);
- Bundesgesetz, mit dem die Organisation auf dem Gebiet der Elektrizitätswirtschaft neu geregelt wird (*Elektrizitätswirtschafts- und -organisationsgesetz 2010*; “**Electricity Market and Organisation Act**”);
- Bundesgesetz, mit dem die Ausübungsvoraussetzungen, die Aufgaben und die Befugnisse der Verrechnungsstellen für Transaktionen und Preisbildung für die Ausgleichsenergie geregelt werden (“**Settlement Agency Act**”);
- Bundesgesetz über die Transparenz von Preisen für Erdöl, Mineralölzerzeugnisse, Gas, Strom und Arzneimittel sowie der Preisauszeichnungsvorschriften (*Preistransparenzgesetz*; “**Price Transparency Act**”);
- Bundesgesetz, mit dem Neuregelungen auf dem Gebiet der Erdgaswirtschaft erlassen werden (*Gaswirtschaftsgesetz 2011, GWG 2011*; “**Natural Gas Act**”);
- Gewerbeordnung 1994 (*GewO*; “**Trade and Industry Act**”);
- Verordnung des Vorstands der E-Control über die nähere Regelung der Datenerhebung zur Wahrnehmung der in § 131 Abs. 1 GWG 2011 genannten Überwachungsaufgaben (“**Natural Gas Monitoring Ordinance**”);
- Verordnung des Vorstands der E-Control zu Regelungen zum Gas-Marktmodell (*Gas-Marktmodell-Verordnung 2012*; “**Natural Gas Market Model Ordinance**”);
- Gesetz vom 28. September 2006 über die Regelung des Elektrizitätswesens im Burgenland (“**Electricity Act of the Province of Burgenland**”);
- Gesetz vom 16. Dezember 2011, über die Erzeugung, Übertragung und Verteilung von Elektrizität sowie die Organisation der Elektrizitätswirtschaft in Kärnten (“**Electricity Act of the Province of Carinthia**”);
- NÖ Elektrizitätswesengesetz 2005 (“**Electricity Act of the Province of Lower Austria**”);
- Landesgesetz, mit dem das Oö. Elektrizitätswirtschafts- und -organisationsgesetz 2006 erlassen wird (“**Electricity Act of the Province of Upper Austria**”);
- Salzburger Landeselektrizitätsgesetz 1999 (“**Electricity Act of the Province of Salzburg**”);
- Gesetz vom 19. April 2005, mit dem die Organisation auf dem Gebiet der Elektrizitätswirtschaft im Land Steiermark geregelt wird (“**Electricity Act of the Province of Styria**”);
- Gesetz vom 16. November 2011 über die Regelung des Elektrizitätswesens in Tirol (“**Electricity Act of the Province of Tyrol**”);
- Gesetz über die Erzeugung, Übertragung und Verteilung von elektrischer Energie (“**Electricity Act of the Province of Vorarlberg**”); and
- Gesetz über die Neuregelung der Elektrizitätswirtschaft 2005 (“**Electricity Act of the Province of Vienna**”).

## 2. ORGANISATION OF ELECTRICITY MARKET AND GAS MARKET

The Austrian energy markets have been liberalised in accordance with the requirements of relevant EU law. The electricity market has been liberalised in 2001 while the gas market followed 1 (one) year later, in 2002. Changes in the legislative framework entailed by the liberalisation of the energy markets included the transfer of responsibility for the oversight of the electricity and gas markets to Energie-Control ("**E-Control**") as an independent regulator. Since the entry into force of the E-Control Act (*Energie-Control-Gesetz*) in 2011, E-Control has the special status of an agency under public law, acting through its Management Board (*Vorstand*), the Regulatory Commission (*Regulierungskommission*) or the Supervisory Board (*Aufsichtsrat*). It shall foster and ensure competition, taking into consideration the security of energy supply and sustainability. To that end the E-Control supervises especially the wholesale energy market to ensure its integrity and transparency.

Within the Federal Government, the Federal Minister of Economy is responsible for energy-related matters. The Federal Minister of Economy appoints the members of the Management Board and is also involved in the appointment of other members of E-Control bodies. She/he may inform her/himself about the activities of E-Control on an on-going basis.

### 2.1 Electricity Market

The opening of the Austrian electricity market is based on the Federal Electricity Market and Organisation Act (*Elektrizitätswirtschafts- und -organisationsgesetz, ElWOG*). Due to the federalist division of legislative powers, some aspects of the electricity sector are only covered by general (i.e. non-self-executing) legislation at federal level, which consequently must be implemented and further specified in the legislation of Austria's nine federal provinces. Hence, there are also nine electricity acts at provincial level (namely *Burgenland, Carinthia, Lower Austria, Salzburg, Styria, Tyrol, Upper Austria, Vienna* and *Vorarlberg*). The federal provinces have legislative and administrative powers with regard to grid operators, permitting of electrical power plants and issuing licences to distribution network operators (*Verteilernetzbetreiber*).

Since 2012, the Austrian electricity market consists of only one single control area (*Regelzone*), which is the *Austrian Power Grid AG* ("**APG**") control area, which amalgamated the three former control areas. A control area is a minimum unit of the combined system (*Verbundsystem*), which is equipped and operated with a power-frequency control (*Leistungs-Frequenz Regelung*). APG acts as control area manager (*Regelzonenführer*, "**CAM**") and is responsible for the power-frequency control in the control area. This task includes, *inter alia*, to continuously measure demand within the control area and to transmit meter readings to the clearing and settlement agency (*Verrechnungsstelle*; "**CSA**") which calculates the amount of balancing energy (*Ausgleichsenergie*) required on the basis of the difference between forecasts and actual supply and demand.

*APCS Power Clearing and Settlement AG* ("**APCS**") is – besides its functions as CSA – also the balance group coordinator (*Bilanzgruppenkoordinator*; "**BGC**") for the APG control area. A BGC may be a natural or legal person or commercial undertaking (*eingetragene Personengesellschaft*) exercising clearing and settlement functions.

APG further has the function of a transmission system operator (*Übertragungsnetzbetreiber*; "**TSO**"), except for the province of Vorarlberg where *Vorarlberger Übertragungsnetz GmbH* exercises this function. A TSO is defined by statutory law as any natural or legal person or commercial undertaking which is responsible for the operation, maintenance (*Wartung*) and, if necessary, expansion of the transmission system and the connection grids (*Verbindungsleitungen*) to other systems as well as for securing the permanent capability of the system to meet the requirements of an adequate demand for transmission of electricity.

*EXAA Abwicklungsstelle für Energieprodukte AG* ("**EXAA**"), founded in 2001, started day-ahead spot market trading of electricity in March 2002. Since then, EXAA has developed into a major platform for efficient trading that makes use of the possibilities offered by a liberalised energy market in Central Europe. EXAA's biggest shareholders are *Wiener Börse AG* ("**Wiener Börse**") and APCS. Furthermore, there are a number of companies from the Austrian energy sector holding smaller shares. Since 2005, EXAA forms part of the *CISMO Clearing Integrated Services and Market Operations GmbH*, a group covering a broad range of specialised services for the

energy markets. Over 75 companies from approximately 17 different countries are trading on the EXAA electricity spot market. Most of these companies have no branch office set up in Austria, but take part in the trading from abroad.

## **2.2 Natural Gas Market**

The legal basis regulating the Austrian gas market is the Natural Gas Act (*Gaswirtschaftsgesetz; GWG*).

The Austrian natural gas market is divided into three market areas (*Marktgebiete*), namely market area east, market area (for the province of) Tyrol and market area (for the province of) Vorarlberg. A market area is a combination of systems of different system operators within which a party entitled to system access can flexibly use its booked capacity at entry and exit points. *GAS CONNECT AUSTRIA GmbH* ("**Gas Connect Austria**") is the market area manager (*Marktgebietsmanager; "MAM"*) for the market area east. Market area Tyrol and market area Vorarlberg do not have a MAM. These two market areas are connected with the German market area *NetConnect Germany* as of 1 October 2013. MAM's tasks include, *inter alia*, the administration of balance groups which are active in the relevant market area and securing the establishment of and non-discriminatory access to the Virtual Trading Point (*Virtueller Handelspunkt; "VTP"*).

The Austrian gas market is further sub-divided into distribution areas (*Verteilergebiete*) which are geographically delimited regions within a market area covered by distribution grids (*Verteilernetz*). *AGGM Austrian Gas Grid Management AG* is the distribution area manager (*Verteilergebietsmanager;*) for the market area east, as well as for Tyrol and Vorarlberg. The distribution area manager is, *inter alia*, responsible for managing grid access (*Netzzugang*) and capacities, gas flow control (*Gasflussteuerung*) as well as for crisis management in bottleneck situations (*Engpasssituationen*).

The CEGH Gas Exchange of Wiener Börse is operated in cooperation between Wiener Börse and *European Commodity Clearing AG* ("**ECC**"). *Central European Gas Hub AG* ("**CEGH**") operates the physical settlement of gas exchanges and is the face the customer sees whereas Wiener Börse is responsible for the operation of the IT infrastructure for all exchange related systems. ECC, as the commodity exchange clearing house, offers clearing and settlement services for exchange transactions as well as OTC trade registrations.

E-Control has to publish a list of all natural gas traders. Currently, approximately 92 gas traders are listed on E-Control's homepage.

## **3. CONDITIONS FOR APPLYING FOR ELECTRICITY AND NATURAL GAS WHOLESALE LICENCE(S)**

### **3.1 Electricity Licensing – Regulatory and Corporate Conditions**

Neither the Electricity Market and Organisation Act nor any of the nine Provincial Electricity Acts provide for an obligation to obtain a licence for wholesale electricity trading. Hence, a trading licence is not required.

Pursuant to the Austrian Trade and Industry Act (*Gewerbeordnung; GewO*), operating an "electricity undertaking", which includes carrying out Wholesale Activities, is not subject to its provisions. Therefore, the regular rules under the Trade and Industry Act relating to the requirement of a business licence (*Gewerbeberechtigung*) do not apply to operators of an electricity undertaking.

Electricity traders, domestic or foreign, do not have to establish a Local Corporation or Local Branch Office in Austria in order to be able to commence electricity trading. However, if no Local Branch Office or Local Corporation has been established, the details of a domestic process agent (*Zustellbevollmächtigter*) must be notified to E-Control on a regular basis. A trader, i.e. a natural or legal person or commercial undertaking selling electricity with the intention of thereby making profits, which wants to conclude business on the Austrian market

must first become a member of a balance group. Either they join an existing balance group or form a new one. Balance groups consolidate market generators, traders, suppliers and consumers into commercial groups and strive to regularly balance out the electricity supply (generation and procurement from other balance groups) and demand (consumption and supplies to other balance groups).

Balance groups are established by the balance group representative (*Bilanzgruppenverantwortlicher*; “BGR”), who also represents the group towards CSA and CAM. BGRs can be natural or legal persons or commercial undertakings situated in an EU/EEA Member State.

Apart from joining or forming a balancing group, there are no specific requirements for OTC trading in electricity. An electricity trader may do business with its trading partners by concluding bilateral sale and purchase agreements. Spot-market products may be traded on EXAA. For trading electricity on the power exchange, it is mandatory to be admitted as a member of EXAA.

### 3.2 Natural Gas Licensing – Regulatory and Corporate Conditions

Pursuant to the Natural Gas Act, gas traders are natural or legal persons or commercial undertakings buying and selling natural gas without carrying out the function of transmission or distribution within or outside the system in which the natural gas trader is established.

According to the Natural Gas Act, no licences are required in order to exercise Wholesale Activities with natural gas. However, E-Control must be notified before the commencement of the trading activity.

Unlike electricity traders, natural gas traders need to obtain a trade licence (*Gewerbeberechtigung*) based on the Trade and Industry Act from the competent local trade authority, i.e. the general local authority (*Bezirksverwaltungsbehörde*). Pursuant to the Trade and Industry Act, natural and legal persons can apply for a licence for carrying out Wholesale Activities regarding natural gas. For a trade licence under the Trade and Industry Act, a natural person needs to be appointed as a trade representative (*gewerberechtlicher Geschäftsführer*) who is responsible vis-à-vis the trade authority and vis-à-vis the trade licence holder for compliance with the provisions under the Trade and Industry Act and other laws and ordinances based thereon, as well as for the professional and correct operation of the trade licence. Trade representatives may – but do not necessarily need to – simultaneously hold the function of managing director as the statutory representative (*handelsrechtlicher Geschäftsführer*). The appointment as well as the termination of the appointment as trade representative has to be notified to the trade authority.

Both EEA and non-EEA companies working through a Local Corporation or a Local Branch Office in Austria need to obtain such a licence. The extent to which trading activities affecting Austrian territory may be exercised cross-border by EEA and non-EEA companies is not fully clarified by case law. Such companies may be able to act cross-border, depending on a case-by-case analysis which largely depends on where their registered seat is located. In case of the establishment of a Local Branch Office, the latter has to obtain the licence but – from a strictly legal point of view – the foreign entity is the holder of the licence.

## 4. OBTAINING THE WHOLESALE LICENCE(S)

### 4.1 Electricity

As set out above in Point 3.1, a wholesale trading licence is not required for trading electricity. Rather, electricity traders on the Austrian market need to be members of a balance group. There are two possibilities to become a member of a balance group:

### 4.1.1 Joining an existing balance group

In case an electricity trader joins an existing balance group that is represented by a licensed BGR, traders need to notify the activity to the CSA and to the competent provincial authorities of the federal provinces in which the activity will be carried out.

### 4.1.2 Establishing a new balance group

If the trader opts to establish a new balance group they need to go through a formalised approval procedure before E-Control. The approval of a BGR is carried out in a two-stage procedure.

In a first step, a registration with the BGC and subsequently with the CAM is required. The BGC will examine the fulfilment of certain financial requirements and initiate a credit analysis by Oesterreichische Kontrollbank AG. The BGR, *inter alia*, has to deposit financial securities with the BGC. These securities are scaled depending on the turnover of the undertaking. As for newly registered undertakings, the expected turnover in the future is taken as a benchmark for the 1<sup>st</sup> (first) year. After the BGR has completed the financial clearing it receives a "Green Card". The BGC will also notify the CAM, so that the BGR can register for the technical tests. As final result of these proceedings the BGR will have received the "Green Card" and countersigned contracts with the BGR and the CAM.

In a second step, E-Control examines the legal requirements which are set forth by the provincial electricity acts (e.g. sufficient knowledge and skills), and issues a licence providing these requirements are fulfilled.

The following documents are to be submitted to E-Control for the approval as BGR (please note that these may vary slightly depending on the province):

- Agreements with the BGC and CAM, as required by the applicable provincial laws, the Electricity Market and Organisation Act and the Settlement Agency Act in order to fulfil the stated duties and obligations, in particular those of an administrative and commercial nature;
- Commercial Register extract (*Firmenbuchauszug*) of the applicant and certificate regarding the place of business, if this is not identical with the business address mentioned in the Commercial Register extract. In case the applicant is a natural person; certificate about the place of business (*Unternehmenssitz*) and main residence;
- Proof of fulfilling the personal requirements of the applicant, or the bodies authorised to represent the applicant company (*nach außen vertretungsbefugten Organe*), respectively. Provincial laws further specify the exact requirements. E.g. the Provincial Act of Vorarlberg states that natural persons need to be at least 24 (twenty four) years of age;
- Proof of professional aptitude (*fachliche Eignung*) of at least one member of the body authorised to represent the applicant company, of a personally liable partner, a leading employee (*leitender Mitarbeiter*) or the BGR itself, as the case may be. "Professional aptitude" presupposes sufficient theoretical and practical knowledge in owing an electricity business or in a leading activity in the electricity industry field (*Elektrizitätswirtschaft*), especially in power trading (*Stromhandel*), power generation (*Stromerzeugung*) or operating a grid (*Netzbetrieb*); and
- Proof that the BGR has sufficient funds for the exercise of the activity of a BGR. More precise regulations are set forth in provincial laws. Generally, provincial laws require funds in the amount of EUR 50,000 that need to be proved, e.g. in the form of a bank guarantee.

In addition, in case of the establishment of a new balance group, electricity traders have to register with the provincial government of the province in which their activities shall take place.

The costs for being member in a balance group depend on the respective balance group. The fee for receiving the required approval from E-Control to be active as a BGR (who in turn may establish a new balance group) is EUR 152.70.

Membership in a balance group does not expire automatically but is subject to contract. BGRs are not obliged to contract with traders wishing to be part of a certain balance group. E-Control approves the general terms and conditions ("GTC") of BGRs in contracts with members of the respective balance group.

## 4.2 Natural Gas

### 4.2.1 Trade licence

In order to obtain the necessary licence pursuant to the Trade and Industry Act, the following documents need to be submitted to the trade authority:

#### 4.2.2 For the registration of the trader

In order to obtain a trade licence under the Trade and Industry Act, a Local Corporation or Local Branch Office needs to submit the following documents (which may vary according to local practice) to the competent trade authority, i.e. the general local authority (*Bezirksverwaltungsbehörde*) where the activities shall be carried out:

- Commercial Register extract of applicant company (Local Corporation or – in case of Local Branch Office – parent company as defined in Point 7.1 below);
- Commercial Register extract of majority shareholder of applicant company (if any);
- Declaration about the non-existence of any disqualification reason for legal persons signed by a statutory representative of the applicant company;
- Declaration about the non-existence of any disqualification reason for statutory representatives of the applicant company; and
- Personal documents of each statutory representative of the applicant company (including passport; residency confirmation; Criminal Register extract (*Strafregisterauszug*) in case his/her habitual abode is abroad or has not been in Austria for the past 5 (five) years).

#### 4.2.3 For the trade representative

For an appointment as trade representative the following documents need to be submitted to the general local authority (*Bezirksverwaltungsbehörde*) where the activities shall be carried out (again, concrete documents required may vary based on local practice):

- Birth certificate and certificate about citizenship of the trade representative or passport of the trade representative;
- Residency confirmation (*Meldebestätigung*), if the habitual abode is not in Austria;
- Criminal Register extract in case the trade representative resides abroad, or has not been residing in Austria for the past 5 (five) years; and
- Standard form declarations for trade representatives and applicant companies signed by the trade representative and statutory representatives of the applicant company (essentially, these forms contain assertions on behalf of the trade representative and statutory representatives of the applicant company in respect of, e.g. absence of criminal convictions).

The application procedure is usually paper-based; some local authorities offer registration through a web-interface. Registration generally becomes effective once the required documents have all been filed.

#### **4.2.4 Balance group systems**

The Austrian natural gas market is – like the electricity market – based on a balance group system. Any system user (*Netzbenutzer*), i.e. any natural person or legal entity feeding into or out of a system or being supplied by a system or whose facility is connected to a system, must be a member of a balance group. System users are required to either set up a new balance group or to join an existing balance group.

A wholesale natural gas trader – by virtue of not supplying gas to final customers in Austria – is not considered a system user. Hence, (direct) membership in a balance group is not required. However, in order for a wholesale gas trader to sell gas to other natural gas traders or suppliers on the Austrian market, the wholesale gas trader has to conclude a contract with a supplier who is a member of a balance group. This membership to a balance group is a so-called “indirect” membership (*mittelbare Bilanzgruppenmitgliedschaft*) since the natural gas trader does not have a direct contractual relationship with the BGR.

## **5. DIFFERENT RULES APPLICABLE FOR SUPPLYING INDUSTRIAL END-CUSTOMERS**

Supply to industrial end-customers may be carried out under the same conditions as Wholesale Activities.

## **6. OBTAINING THE ADDITIONAL LICENCE(S)**

### **6.1 Electricity**

Supply to industrial end-customers may be carried out under the same conditions as Wholesale Activities, so as detailed under Point 3.1, no licence is required for this activity.

### **6.2 Natural Gas**

Supply to industrial end-customers may be carried out under the same conditions as Wholesale Activities, so no Additional Licence is required for this activity. Licensing requirements are detailed in Point 3.2.

## **7. SETTING UP A LOCAL ENTITY**

As described under Point 3 above, it is not necessary to have a Local Corporation or Local Branch Office in order to perform electricity Wholesale Activities in Austria. However, in order to engage in gas Wholesale Activities and obtain the necessary licence, at least a Local Branch Office needs to be established in Austria.

### **7.1 Local Branch Office**

A Local Branch Office represents a sub-division of a foreign entity (“**parent company**”) and does not have legal personality of its own. The registration of the Local Branch Office in the Commercial Register is obligatory but has only declaratory effect, i.e. carrying out operations with the Local Branch Office does not depend on the effectiveness of the Local Branch Office’s registration with the Commercial Register. Such registration refers to the parent company itself as well as to the branch. The name of the Local Branch Office must be identical with the

name of the parent company. An addition, indicating that it is a branch and mentioning its location, is permitted but not mandatory (e.g. *Repräsentanz für Österreich; Niederlassung für Österreich*).

In general, a Local Branch Office is represented by the managing directors of the parent company. If the parent company is not registered within the EEA, at least one individual that is not already a managing director of the parent company, has to be appointed as permanent representative (*ständiger Vertreter*) for the Local Branch Office. The permanent representative needs to have his/her permanent place of residence in Austria. Any liability incurred by the branch automatically constitutes a liability of the parent company since the Local Branch Office does not qualify as a separate legal entity.

## 7.2 Documents required for the Registration of the Local Branch Office

In Austria, there are specific requirements to be complied with and documents to be presented in order to register a Local Branch Office with the Austrian Commercial Register. These are, *inter alia*:

- a certified translation of the current version of the certified articles of association of the parent company, if the articles of association are not in German, provided by an Austrian sworn interpreter;
- certified Commercial Register extract of the parent company together with a certified translation (ideally by an Austrian sworn interpreter); there is no need for an apostille;
- evidence that the Local Branch Office has actually been established (e.g. a copy of a tenancy agreement or a confirmation of due establishment issued by the Economic Chamber of Vienna);
- notarised specimen signatures of the representatives (board members) of the parent company as well as of the permanent proxies (*Prokuristen*) of the parent company (if any); and
- notarised application for registration of the Local Branch Office with the Austrian Commercial Register, signed by the representatives of the parent company.

## 7.3 Time frame for the Establishment of the Local Branch Office

The mere registration of the Local Branch Office usually takes approximately 2 (two) weeks from filing the respective application, depending on the actual processing of the documentation by the competent court. Preparatory work, including compliance with the applicable law requirements of the parent company as well as the drafting, translation, execution and notarisation of the documents mentioned above, is usually more time consuming.

## 8. TAXES

A Local Branch Office will most likely create a taxable presence (so-called “permanent establishment”) in Austria. Whilst this permanent establishment is not a taxable entity under Austrian law, the foreign company will be subject to 25% (twenty five percent) Austrian Corporation Income Tax on Austrian source income to the extent it is attributable to this permanent establishment. The respective double taxation treaty between Austria and the company's country of residence, if existent, will most likely grant Austria the sole right to tax income derived from a Local Branch Office.

There is no additional direct tax applicable on the wholesale of energy in Austria.

## **9. CONTRACTUAL RELATIONS**

### **9.1 Electricity**

#### **9.1.1 Balance group (membership) contract**

In case the trader decides to join an existing balance group represented by an approved BGR, the trader is required to enter into an agreement with the BGR.

In case the trader establishes a new balance group, it needs to be approved as a BGR by E-Control and enter into contractual relations for data exchange with BGC and the grid operators. Furthermore, BGRs are required to conclude agreements for reserve holdings (*Reservehaltung*) and the supply (*Versorgung*) of members that have been assigned to the BGR by E-Control.

#### **9.1.2 Data exchange**

Electricity traders serving end-customers must enter into contractual relations for data exchange with the BGR whose members they supply, with the operator of the grid (*Netzbetreiber*) to which their customer is connected, and with the competent BGC.

#### **9.1.3 Admission to exchange**

In Austria it is not mandatory to participate in exchange trade. Hence, traders are free to decide whether they want to trade on the electricity market EXAA, in which case they are required to complete and submit the processing agreement (*Abwicklungsvereinbarung*) with EXAA and the membership agreement (*Mitgliedschaftsvereinbarung*) with Wiener Börse to EXAA.

### **9.2 Natural Gas**

#### **9.2.1 Balance group (membership) contract**

In case a wholesale gas trader intends to sell gas to other gas traders or suppliers on the Austrian market, it is necessary to conclude a contract with a supplier who is a member of a balance group (indirect membership to a balance group). Such a contract is a private law contract and is not subject to any specific rules. Direct membership in a balance group requires the conclusion of a contract with a BGR.

#### **9.2.2 Admission to exchange**

In Austria, trading of natural gas generally takes place at the CEGH. Trading may either take place OTC or on the gas exchange platform; in both cases, the gas trader is required to register with CEGH and to conclude a CEGH Membership Agreement. In case a gas trader intends to trade on the CEGH Gas Exchange of Wiener Börse, the trader is required to be member of Wiener Börse and to sign a contract with the clearing house EEC, a subsidiary of EEX in Leipzig.

## 10. REPORTING OBLIGATIONS

### 10.1 Electricity

Electricity undertakings are obliged to allow inspections by the authorities, including E-Control, of all business related documents and records, and to provide information on the relevant facts to the above-mentioned authorities.

Electricity traders are obliged to store certain data about transactions with other electricity traders and TSO's (such as data about the identity of the purchaser, the time of conclusion of the transaction, etc.) for a period of 5 (five) years and to make these available to E-Control, the National Competition Authority (*Bundeswettbewerbsbehörde*) and the European Commission in fulfilment of their duties.

Electricity undertakings supplying industrial end-customers in Austria are obliged to report certain data to the *Bundesanstalt Statistik Austria* in order to abide by EU transparency regulations.

Wholesale electricity traders required to publish insider-information pursuant to Regulation 1227/2011 are obliged to notify the published information at the same time to E-Control.

### 10.2 Natural Gas

Natural gas undertakings are obliged to allow inspections by the authorities, including E-Control, of all business related documents and records. Furthermore, they are obliged to provide information on the relevant facts to the above-mentioned authorities.

Natural gas traders are obliged to store certain data about transactions with other natural gas traders and transmission system operators (*Fernleitungsnetzbetreibern*) (such as data about the identity of the purchaser, the time of conclusion of the transaction, etc.) over a period of 5 (five) years and to make these available to E-Control, the National Competition Authority and the European Commission in fulfilment of their duties.

Natural gas undertakings supplying industrial end-customers in Austria are obliged to report certain data to the *Bundesanstalt Statistik Austria* in order to abide by EU transparency regulations.

Wholesale natural gas traders required to publish insider-information pursuant to Regulation 1227/2011 are obliged to notify the published information at the same time to E-Control.



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WOLF THEISS

# BOSNIA & HERZEGOVINA

## **1. RELEVANT LAWS AND REGULATIONS**

- FBiH Law on Business Companies ("Official Gazette of FBiH", No. 81/15);
- FBiH Law on Electricity ("Official Gazette of FBiH", Nos. 66/13 and 94/15);
- FBiH Law on Registration of Business Companies ("Official Gazette of FBiH", Nos. 27/05, 68/05, 43/09 and 63/14);
- FERK Licensing Rules ("Official Gazette of FBiH", No. 2/17);
- FERK Decision on Amount of One-Time Processing Fees ("Official Gazette of FBiH", Nos. 15/16 and 99/16);
- FERK Rulebook on Public Hearings and Resolving Requests, Disputes and Appeals ("Official Gazette of FBiH", Nos. 57/12, 71/14 and 31/16);
- FERK Rulebook on Reporting for Holders of Licences for Supply of Electric Energy – Second Tier, Independent and Qualified Producers and Operator for RES ("Official Gazette of FBiH", No. 27/16);
- SERC Licensing Rules ("Official Gazette of BiH Nos. 87/12, 98/15 and 63/16);
- SERC Decision on Amount of Fee ("Official Gazette of BiH", Nos. 41/16 and 17/16);
- SERC Rules on Access of Third Parties to Transmission System ("Official Gazette of BiH" No. 103/06);
- RS Law on Electricity ("Official Gazette of RS", Nos. 8/08, 34/09, 92/09 and 1/11);
- RS Law on Gas ("Official Gazette of RS", Nos. 86/07 and 121/12);
- RERS Rulebook on Issuance of the Licences ("Official Gazette of RS", Nos. 39/10 and 65/13);
- RERS Rulebook on Reporting ("Official Gazette of RS", No. 64/12);
- RERS Decision on Amount of One-Time Regulatory Fees ("Official Gazette of RS", No. 49/10);
- RERS Rulebook on Public Hearings and Resolving of Disputes and Appeals ("Official Gazette of RS", No. 70/10);
- RS Law on Business Companies ("Official Gazette of RS", Nos. 127/08, 58/09, 100/11, 67/13 and 100/17);
- RS Law on Registration of Business Entities ("Official Gazette RS", Nos. 67/13 and 15/16);
- BiH Grid Code;
- BiH Market Rules;
- Law on Electricity Transmission, System Regulator and Operator in BiH ("Official Gazette of BiH", Nos. 7/02, 13/03, 76/09 and 1/11);
- Law on Establishment of the Independent System Operator for BiH Transmission System ("Official Gazette BiH", No. 35/04); and
- Law on Establishment of the Company for Transmission of Electricity in BiH. ("Official Gazette BiH", Nos. 35/04, 76/09 and 20/14).

## 2. ORGANISATION OF ELECTRICITY MARKET AND GAS MARKET

Bosnia and Herzegovina ("**BiH**") is a country consisting of two separate entities; the Federation of Bosnia and Herzegovina ("**FBiH**") and the Republic of Srpska ("**RS**"), and one special autonomous district under the direct sovereignty of the state, i.e. the Brčko District. In each of the three areas, in principle, different legal regimes are applicable; however, certain matters are regulated by the national laws which are applicable in both entities and the Brčko District.

### 2.1 Electricity Market

In BiH, there are four main regulators of the electricity sector: the two entities' regulators, i.e. (i) the FBiH Regulatory Commission for Electricity ("**FERC**"); and (ii) the RS Regulatory Commission for Energy ("**RERS**"); as well as (iii) the State Electricity Regulatory Commission of BiH ("**SERC**"); and (iv) the Independent Operator of the BiH Transmission System ("**ISO**").

RERS and FERC are independent regulators responsible for the supervision of the electricity sectors in each of the BiH entities. RERS is responsible for the issuance of licences for electricity production, distribution, supply and trading within BiH, as well as for the issuance of licences for the construction of new and the reconstruction of existing power plants in the respective entity. FERC is responsible, *inter alia*, for the issuance, renewal, transfer or suspension of licences for the production, distribution, supply, trade of electric energy and operator for renewable energy sources and cogeneration. In FBiH the Federal Ministry for Energy, Mining and Industry is the competent authority for issuing licences (i.e. energy permit) for the construction of new or reconstruction of existing power plants.

SERC is an independent state regulator responsible for the transmission of electricity on the mid and high voltage grid, as well as for transmission system operations and the cross-border trade in electricity, including the issuance of licences for cross-border electricity trading.

ISO is the state transmission system operator responsible for the management of the transmission system with the aim of ensuring reliability, management of assets and appliances in the mainstream control centre, management of a balanced market, assurance of ancillary services, development and application of reliable standards, development and application of guidelines which regulate the usage of the transmission system, and development and enforcement of market regulations.

In addition, the Company for Transmission of Electricity in BiH ("**Transco**") is responsible for the proper functioning and development of the market for electric power, for the stable and rational transmission of electric power in BiH, as well as for the construction, maintenance, expansion and management of the transmission system facilities. SERC is authorised to regulate the work of the Transco.

Two electricity utility companies, both owned by FBiH, JP Elektroprivreda BiH d.d.-Sarajevo and JP Elektroprivreda Hrvatske zajednice Herceg Bosne d.d. Mostar – are licensed by FERC for the distribution of electric energy in FBiH.

In Brčko Distrikt, as the district under direct sovereignty of the state, the company "Komunalno Brčko" d.o.o. Brčko Distrikt BiH is responsible for the distribution of electric energy on the basis of SERC's licence for electric energy distribution.

In RS five companies, that together make up the mixed holding company Elektroprivreda RS, possess licences issued by RERS for the distribution of electric energy.

Furthermore, according to SERC's Decision on Scope, Conditions and Time line on the Opening of the Market of Electric Energy in BiH, the electric energy market in BiH has been officially liberalised from 1 January 2015 for all end-customers in BiH, including households. Consequently, all end-customers of electric energy in BiH have acquired a status as eligible/qualified consumer, i.e. they gained the right to choose the licensed supplier of electric energy with whom they want to conclude contracts prescribed by the relevant laws on electricity.

For such purposes, the following companies in RS obtained a licence issued by RERS for the trade and supply of electric energy: "Energy Financing Team" d.o.o. Bileća, MH "ERS" MP a.d. Trebinje, "Comsar Energy Trading" d.o.o. Banja Luka, "LE Trading BH" d.o.o., "INTEH" d.o.o. Banja Luka and "EFT – Rudnik and Termoelektrana Stanari" d.o.o. Stanari.

In FBiH, the following companies are holders of licences issued by FERC for the supply of electric energy – second tier which includes the trade of electric energy in BiH: PROENERGY d.o.o. Mostar, HSE BH d.o.o. Sarajevo, Al Trade d.o.o. Mostar, HEP-Trade d.o.o. Mostar, EZPADA d.o.o. Mostar, ASA Energija d.o.o. Sarajevo, BNT „HOLDING“ D.D. Novi Travnik, PRVO PLINARSKO DRUŠTVO d.o.o. Sarajevo, G-PETROL d.o.o. Sarajevo, Vitol Adriatik d.o.o. Sarajevo, Alpiq Energija BH d.o.o. Sarajevo, Danske Commodities BH d.o.o. Sarajevo, GEN-I d.o.o. Sarajevo, EURO-POWER d.o.o. Tešanj, Xpo BH d.o.o. Sarajevo, „PETROL BH OIL COMPANY“ d.o.o. Sarajevo, JP Elektroprivreda BiH d.d.-Sarajevo, JP "Elektroprivreda HZ HB" d.d. Mostar and "Interenergo d.o.o. Sarajevo.

## **2.2 Natural Gas Market**

In terms of the gas market, it is worth noting that this sector is in its early development stage, meaning that BiH still does not have a liberalised and regulated gas market. BiH has no domestic production of gas and imports all gas needed to secure local demand from Russia, via Ukraine, Hungary and Serbia. Currently, three companies in BiH are authorised to transport natural gas: BH-Gas d.o.o., as the operator for the transport of natural gas in FBiH, and Sarajevo Gas – Istočno Sarajevo and Gas Promet Istočno Sarajevo – Pale which also acts as an operator for the transport of natural gas in RS. BH-Gas imports natural gas based on an agreement with Gazprom which is renewed on a yearly basis. All consumers of natural gas in FBiH are supplied by their respective supplier (BH-Gas d.o.o. Sarajevo or Energoinvest d.d. Sarajevo) at regulated prices. In RS, there are different suppliers, and regulated prices remain only for household customers within the public supply. Since the market for natural gas in RS has been liberalised since 1 January 2015, according to the Law on Gas, all customers of natural gas in RS are qualified customers and eligible to purchase natural gas on a liberalised market.

In terms of regulatory framework, this sector is regulated on the entity level. Although the competent authorities prepared a draft Law on Regulator, Transmission and Trade of the Electric Energy and Natural Gas in BiH, it has not been enacted so far. One of the main aims of the respective law is to harmonise the entity laws governing the gas sector with the European Union Third Energy Package as well as to harmonise the legislation over the entire territory of Bosnia and Herzegovina. Currently, the Regulation on the Organisation and Regulation of the Gas Industry Sector in FBiH ("**Regulation**") is the only relevant act in FBiH which regulates this market. The Regulation has been enacted in 2007 by the FBiH Government and shall be in force until the enactment of the relevant laws in the gas sector on the federal and state level. In general, it contains provisions with regard to certain aspects of distribution, transport, storage, and supply of gas such as the rights and obligations of the operators of these activities, concessions related to distribution, determination of the customer (or non-eligible consumer), etc. Currently, within the territory of FBiH, natural gas is distributed by the public companies KJKP "Sarajevogas" d.o.o. Sarajevo and J.P. "Visoko Ekoenergija" d.o.o. Visoko.

The latest development in this sector in FBiH is the planned adoption of the New Draft Law on Gas which will regulate the gas sector in more detail.

The gas market in RS is mainly regulated by the RS Law on Gas which governs the organisation and functioning as well as the performance of business activities in the natural gas sector within the territory of RS. RERS is the authority competent for the regulation of gas-related business activities in RS; therefore, the regulations adopted by RERS are also of relevance.

Currently, the distribution and management of the system for distribution of natural gas in RS is performed by two licensed companies; Sarajevo-Gas AD Istočno Sarajevo and Zvornik-stan AD Zvornik.

The licensed companies for the trade and supply of natural gas in RS, are Sarajevo-Gas AD Istočno Sarajevo, Zvornik-stan AD Zvornik, BIJELJINA-GAS d.o.o. Bijeljina, GAS-RES d.o.o. Banja Luka, ENERGY PRIME RS d.o.o. Trebinje, ALUMINA d.o.o. Zvornik and Društvo sa ograničenom odgovornošću "CNG ENERGY" Banja Luka.

### 3. CONDITIONS FOR APPLYING FOR ELECTRICITY AND NATURAL GAS WHOLESALE LICENCE(S)

#### 3.1 Electricity Licensing – Regulatory and Corporate Conditions

According to the relevant FBiH, RS and BiH legislation, any legal entity that intends to perform business activities of production, distribution, supply and/or trade of electricity must obtain an adequate licence. In particular with regard to the trade of electricity, a legal entity which intends to perform trading activities within the territory of BiH must obtain a licence issued by FERC/RERS, respectively ("**Domestic Licence**"). In addition, if a legal entity intends to directly import electricity, it must obtain the appropriate licence issued by SERC ("**Cross-border Licence**") (the Domestic Licence and the Cross-border Licence are referred to together as the "**Wholesale Licences**").

Holders of a Domestic Licence may supply end-customers. According to the FBiH Law on Electricity, all customers of electric energy in FBiH are defined as eligible/qualified customers. Both the FBiH and RS Laws on Electricity stipulate that only locally incorporated entities may apply for and hold Wholesale Licences. Therefore, a Wholesale Licence cannot be obtained directly by a foreign entity, whether incorporated in an EU/EEA Member State or elsewhere. Under the relevant entity laws on business companies, the type of entities which can be established (and apply for a licence) are: limited liability companies, joint stock companies, limited partnerships (*komanditno društvo*) and general partnerships (*društvo sa neograničenom solidarnom odgovornošću/ortračko društvo*). In principle, it is advisable to establish a Local Corporation in the form of a limited liability company, mainly due to low costs and the simple procedure for setting up such a company (a limited liability company organised and existing under the laws of BiH will, therefore, be referred to as a "**Local Corporation**").

Although both the FBiH and RS Law on Business Companies provide for the possibility of establishing a Local Branch Office of a foreign company, having in mind the relevant provisions of the FBiH and RS Law on Electricity, it may be fairly concluded that it is not possible to obtain Wholesale Licences through a Local Branch Office in FBiH or RS.

#### 3.2 Natural Gas Licensing – Regulatory and Corporate Conditions

The gas sector is regulated differently in FBiH and RS; therefore the main aspects thereof will be outlined in separate sections below.

##### 3.2.1 Gas sector in FBiH

According to the Regulation, the supply of gas encompasses the procurement, sale and resale of natural gas and LNG. However, the supply of gas does not include the export and import of gas. The legal requirements for performing such activities are currently not regulated by the applicable laws either. It is expected that the regulatory framework for these activities will be covered by the new laws. In any case, a legal entity intending to perform the supply of gas must be incorporated under BiH legislation and hold an adequate licence ("**Wholesale Licence**") issued by the Federal Ministry of Energy, Mining and Industry ("**FBiH Ministry**").

With respect to the above, a gas Wholesale Licence cannot be obtained by a foreign entity (whether incorporated in an EU/EEA Member State or elsewhere) directly, and establishing a Local Branch Office would not suffice for this purpose either. In order to perform this type of activity, a foreign entity would have to set up a Local Corporation registered for gas Wholesale Activities and subsequently obtain a Gas Wholesale Licence.

The Regulation does not further address the procedure for obtaining a Wholesale Licence; although relevant aspects of the procedure (e.g. required documents and administrative fees) have been established by the FBiH Ministry. The relevant procedure should be regulated in more detail by the FBiH Law on Gas. Finally, the relevant legislation does not expressly regulate whether one legal entity may obtain a licence both for gas related business activities and electricity related business activities. Nonetheless, according to the information obtained from the FBiH Ministry, there are no obstacles for such a scenario, provided that the respective legal entity fulfils all the relevant legal requirements for obtaining the respective licence. In any case, it should be noted that there is no relevant practice in this regard, especially since (as previously outlined) there is almost no practice with regard to the issuance of licences for gas related activities.

### **3.2.2 Gas sector in RS**

Under the RS Law on Gas, relevant gas related business activities are transport, distribution, supply, trade or storage of natural gas and management of systems. Each of these activities is subject to licensing by RERS. In terms of trading, the respective licence enables its holder to purchase gas for its resale and sale of gas on the free market to energy facilities and eligible customers ("**Wholesale Licence**"). This licence, however, does not entitle its holder to export and import gas. The regulatory requirements for performing these activities are not regulated in the applicable laws.

Although not explicitly stated in the relevant legislation, from an interpretation of the relevant applicable provisions as well as established practices of RERS, it follows that a Wholesale Licence may only be obtained by a Local Corporation; therefore, a foreign entity (whether incorporated in an EU/EEA Member State or in another country) cannot directly obtain a Wholesale Licence.

With regard to the possibility of one legal entity obtaining both the electricity and the gas Wholesale Licences, we believe that there are no obstacles for a legal entity to do so, provided that it duly meets all relevant legal requirements.

## **4. OBTAINING THE WHOLESALE LICENCE(S)**

### **4.1 Electricity**

#### **4.1.1 Annexes to the application for the electricity Wholesale Licence**

As explained above, in order to perform Wholesale Activities, it is necessary to obtain a Domestic Licence issued by FERC/RERS and a Cross-border Licence issued by SERC.

#### **4.1.2 Domestic Licence in FBiH**

According to the currently applicable rules, an applicant for a Domestic Licence issued by FERC, must enclose, with its application, two groups of documents, i.e. one set of basic documents and one set of additional documents.

An applicant for any licence issued by FERC must provide the following basic documents:

- up-to-date excerpt from the competent court register for the legal entities;
- notification on the classification of the applicant's business activities issued by the competent statistics authority;
- certificate of the competent tax administration and certificate of Indirect Tax Administration (if applicable);
- organisational structure of the applicant with information on number of employees and their professional qualifications for performance of activities for which the application is being submitted;

- evidence that an applicant has a legal basis for the use of buildings, facilities, installations and equipment for the performance of the activities for which the application is being submitted;
- complete set of financial reports for the previous year (including balance sheets, cash flow statement, changes of capital statement, independent auditor's report, etc.);
- statement on all transaction bank accounts of the applicant with enclosed confirmation of the solvency of the bank account issued by the relevant bank;
- annual business plans of the applicant;
- evidence that the applicant is performing the electricity related business activity subject to its application, functionally separated, and the operator of the distributive system (ODS) is legally separated as well, from the other activities; and
- evidence on payment of a one-time application processing fee.

In addition to the above, an applicant for a Domestic Licence must also submit the following documents:

- overview of facilities, installations and equipment on the basis of which the licensed activity is being performed;
- evidence of the registered and paid-in share capital in the amount of BAM 1 million (approximately EUR 500,000);
- data on the planned volume of purchase and sale of electricity for supply of end-customers; and
- planned annual volume of the electricity trade within the inside market, excluding the sale to the end-customers.

#### **4.1.3 Domestic Licence in RS**

An applicant for a Domestic Licence issued by RERS must enclose, with its application, the following set of documents:

- valid decision on registration in the court register or other relevant register (with attachments);
- registration number and tax identification certificate;
- foundation act with accompanying agreements or the articles of association (statute) of the applicant;
- organisational structure of the applicant (organisational scheme), including data on number of employees and their qualifications/education; statement of the applicant that the employed personnel has sufficient skills and the necessary education to perform the wholesale of electricity; or, optionally, an outsourcing agreement concluded with other legal or natural persons which have sufficient technical and educational capacities to perform the wholesale of electricity;
- statement of the applicant that it possesses the necessary facilities, installations and equipment (appropriate office space, computer, printer and fax machine suffices) for the wholesale of electricity; or, optionally, an outsourcing agreement concluded with other legal or natural persons which have sufficient technical qualifications;
- annual financial report (including income statement, cash flow statement, and independent auditor's report) for the previous 3 (three) years; or, optionally, an initial financial status report for newly established corporations;

- statement of the applicant and a certificate issued by a commercial bank regarding the applicant's solvency or the possibility of obtaining loans or bank guarantees;
- statement of the applicant and certificates issued by the banks on all open accounts with a commercial bank including a bank certificate on the balance of these accounts;
- annual and 3 (three) years business plan of the applicant;
- a certification from the competent authority (i.e. court) that the applicant and its legal representatives (i.e. members of the management board and procurators, etc.) are not prohibited from performing the respective profession/activity – criminal record certificate;
- statement of the applicant regarding all licences issued or pending applications for licences with other regulatory bodies;
- certification by the court of competent jurisdiction that there is no bankruptcy or liquidation proceeding initiated against the applicant;
- proof of payment of the administrative (procedural) fee;
- proof of the legal basis for the use of the business premises of the applicant (i.e. lease agreement or proof of ownership);
- description of the computer equipment (software and hardware) that will be used for the wholesale of electricity;
- proof that applicant has obtained a quality certificate (ISO 9001) and, if not, a statement as to the applicant's plans to obtain one; and
- annual plan of the quantities of electricity that is the applicant intends to trade/supply.

It should be noted that, in the course of the procedure for the issuance of a Domestic Licence, RERS may at any time request the submission of additional documentation that it deems appropriate.

#### **4.1.4 Cross-border Licence**

An applicant for a Cross-border Licence issued by SERC must enclose, with its application, two groups of documents, i.e. basic and additional documents.

The basic list of documents that must be submitted to SERC includes:

- excerpt from the competent court register for the legal entities;
- certificate or verification on the tax registration;
- articles of association (statute) or the foundation act of the applicant;
- organisational structure of the applicant (organisational scheme), including data on number of employees;
- audited financial annual reports for previous 3 (three) years for existing companies or the initial balance sheet for newly established companies;
- business plan for the next 3 (three) years;

- list of fixed assets as per depreciation groups and the last annual statement of depreciation;
- certificate issued by the court or other competent authority that there is no bankruptcy or liquidation proceeding initiated against the applicant;
- certificate issued by the competent court that the applicant or its legal representative are not subject to criminal proceedings;
- certificate issued by a competent authority (i.e. court) that the applicant and its legal representatives are not prohibited from performing the respective profession/activity for which the application is submitted;
- statement on all opened transaction accounts with commercial banks and the bank certificate of their status;
- statement on the status of compliance with all regulations pertaining to environmental protection and their implementation;
- statement confirming that the applicant will abide by the market rules;
- statement on existing licences or pending applications submitted to FERC or RERS, as well as to any other regulatory bodies outside of BiH; and
- any other information that SERC finds important for the issuance of a licence.

An applicant for a Cross-border Licence must submit the following additional documents:

- existing licence for trade, production or the supply of electric energy issued by FERC or RERS, if the applicant is already a participant on the domestic market of the electric energy or evidence that the applicant has requested issuance of such licence;
- proof of solvency of the applicant;
- proof of the equity of the applicant with an overview of the owners or shareholders with a participation of more than 5% (five percent);
- statement issued by a commercial bank or other organisation on the willingness to provide financial guarantees or performance guarantees on the amount of planned or contracted transactions (eligibility of the guarantor and the quality of the guarantee shall be rated by SERC);
- statement of the applicant on the acceptance of the standardised requirements for licensing; and
- information of the applicant on other electricity markets outside BiH in which it operates (if the applicant operates outside of BiH).

#### **4.1.5 Procedural rules**

In principle, under the FERC, RERS and SERC Licensing Rules the procedure is paper-based; we are not aware of any practice of personal hearings or attendance by the applicant. Nonetheless, the competent authority may require the applicant to attend a formal hearing. Generally a formal hearing shall be held in case there are certain disputed facts which should be resolved in the process of issuance of the respective licence. In any case, upon receipt of the respective application, FERC/RERS/SERC publishes a short notice for the public providing basic information concerning the received application. This notice also contains an instruction on the form in which interested parties can obtain information as well as submit comments with regard to the application.

In addition according to the RERS Licensing Rules, once the draft of the licence is determined, RERS is obliged to organise at least one public hearing as well as to invite the public to submit comments to the draft licence. As part of such process, the public should also be informed of the possibilities to intervene in the pending procedure before RERS. Similar rules apply in terms of issuance of the licence by SERC. FERC, on the other side, is free to determine the type and number of public hearings, having in mind any submitted comments, eventual requests for intervening and other relevant information. As for the time frame of procedures before FERC/RERS (i.e. for the procedure for the issuance of a Domestic Licence), the Licensing Rules of FERC/RERS specify that FERC/RERS shall render the final decision on the request for issuance of the licence not later than 60 (sixty) days from the date of the submission of the complete application. As for the procedure before SERC (i.e. the procedure for the issuance of a Cross-border Licence), the deadline for rendering the final decision on issuance of the licence depends on the complexity of the request whereby SERC shall take the principle of effectiveness into consideration while making its decision in the respective proceedings.

#### **4.1.6 Operational conditions required for the issuance and maintenance of the electricity Wholesale Licence**

##### **4.1.6.1 Personnel**

According to the FERC/RERS Licensing Rules, an applicant for a Wholesale Licence must submit its organisational structure, which includes information on the number of employees, their education, as well as a statement of the applicant that the employed personnel has sufficient skills and the necessary education to perform the intended activities. Furthermore, in RS the applicant can also be requested to submit a statement that it has concluded an agreement with other legal or natural persons who have the necessary skills and education for the performance of the intended activities. However, the relevant legislation does not regulate in more detail what type of educational skills and qualification the employees or contactors of the applicant must possess. On the basis of our experience in previous projects, we are not aware of any case where an applicant's request for the issuance of a licence for trade activity was rejected on the grounds that its personnel were not qualified; nonetheless such possibility cannot be excluded.

##### **4.1.6.2 Premises**

In general, there are no special requirements with respect to the premises. However, in order to obtain a Domestic Licence or a Cross-border Licence the applicant should also submit a statement or other document evidencing that it has a valid basis for the use of buildings/premises in order to perform the licensed activity. Nevertheless the licence holder is required to have a real physical presence with all the assets necessary for performing the licensed activity.

##### **4.1.6.3 IT systems/assets**

In terms of IT systems, the FERC/RERS Licensing Rules stipulate that the applicant must possess the equipment and assets necessary to perform the intended activities. Furthermore, the applicant is obliged to submit a description of the necessary computer equipment, including software and hardware. In RS, in order to obtain a Domestic Licence the applicant must submit proof of holding a quality certificate (ISO 9001) or a statement as to its plans to obtain one. However, the relevant legislation does not further regulate what kind of equipment and assets an applicant must ensure/possess in order to perform the activities nor what the quality certificate should stand for. With regard to the Cross-border Licence, the SERC Licensing Rules do not explicitly request the applicant to provide evidence proving possession or ownership of IT systems or any other equipment or assets.

##### **4.1.7 Financial Guarantee**

The FERC/RERS Licensing Rules do not provide for an explicit obligation of the applicant to submit a bank guarantee in order to obtain a Domestic Licence. However, as already mentioned above, an applicant in RS must submit a statement and certificates issued by commercial banks confirming that the applicant has funds available (cash deposits) or that the applicant has access to loans or the possibility to obtain a bank guarantee. An applicant for a Domestic Licence in FBiH must only provide evidence of registered and paid-in share capital in the amount of BAM 1 million (approximately EUR 500,000). According to the SERC Licensing Rules an applicant for a Cross-border Licence must provide a statement issued by a commercial bank or other organisation on the willingness to provide financial guarantees or performance guarantees to the amount of planned or contracted

transactions. However, one of the main criteria for issuance of a SERC licence is proof that the applicant has registered and paid-in share capital in the amount of at least BAM 1 million (approximately EUR 500,000).

#### **4.1.8 Procedural costs**

According to the SERC Decision on Fees, the procedural administrative fee for the submission of an application for a Cross-border Licence amounts to BAM 2,000 (approximately EUR 1,000). According to the FERC Licensing Rules, the fee for filing and processing an application for the issuance of a Domestic Licence amounts to BAM 3,000 (approximately EUR 1,500). Under the RERS Licensing Rules, the procedural fees amount to BAM 2,000 (approximately EUR 1,000). FERC/RERS/SERC determine the amount of the regulatory fee (i.e. recurring annual fee) that a licence holder (e.g. a holder of Wholesale Licences) has to pay during the licence term. In general, the amount of the regulatory fee is determined by a decision rendered by FERC/RERS/SERC on an annual basis for each licence holder individually. The annual regulatory fee for Domestic License holders consists of a fixed and variable part.

#### **4.1.9 Term of the Wholesale Licences**

Under both the FERC and RERS Licensing Rules, a Domestic Licence is issued for a term of up to 5 (five) years. In case the respective licence is issued for the first time, it is issued for a period of 2 (two) years. In any case, the respective licence can be renewed in FBiH and extended in RS. Although the respective rules in RS use the term "extension of the licence", in effect, the applicant must obtain a new licence, under the same procedure as for the previous licence, and must continue to satisfy all requirements.

A Cross-border Licence can be issued for a period of at least 5 (five) years but for a maximum of 40 (forty) years. Although the applicant indicates the preferred period for which the licence is requested, SERC decides on the term for which the licence is eventually granted. In practice a Cross-border Licence is usually issued for 5 (five) years, which may be renewed after expiry.

According to the FERC Licensing Rules, a licence holder is obligated to submit a request for the renewal of the licence at least 120 (one hundred and twenty) days prior to expiration of the licence. In RS, the application for the extension of the licence must be submitted at least 3 (three) months prior to its expiration. On the other hand, according to the SERC Licensing Rules, the licence holder is obligated to submit the request for the renewal of the licence at least 120 (one hundred and twenty) days prior to expiration of the licence.

### **4.2 Natural Gas**

#### **4.2.1 Natural Gas in FBiH**

The Regulation does not provide for a list of documentation to be submitted to the FBiH Ministry with the application for a Wholesale Licence. However, according to the information which may be obtained from the FBiH Ministry, in practice, *inter alia*, the following documents are required:

- decision on the registration of the entity at the competent court;
- concession agreement for the construction of a distribution system pipeline and for the distribution of natural gas in the relevant municipality;
- approval of the location of the distribution pipeline;
- decision on the approval of the construction of a low-pressure gas distribution network on the route of the pipeline;
- use permit;

- decision on the issuance of the environmental permit;
- normative acts of the legal entity (statutes i.e. articles of association, rules on procedures, rules on job classification, rules on safety at work);
- proof of the possession of a suitable office space (lease contract or proof of ownership);
- evidence of labour and equipment, measuring and testing equipment and instruments, professional staff;
- proof of payment of contributions to the FBiH Pension and Health Insurance Fund; and
- proof of registration of employees to the FBiH Pension and Health Insurance Fund.

Furthermore, and according to the practice of the FBiH Ministry, once the application is received, an ad hoc expert commission is formed (consisting of experts from various fields depending on the type of application in the given case) ("**Commission**"), which assesses the application and passes the final decision on whether to grant the licence or not. In any case, the Commission can require additional necessary documents from the applicant.

The time frame depends on the preparedness of the applicant. The formation of the Commission is relatively short and its procedural time frame depends on the required documentation and preparation thereof. Nevertheless, according to information which may be obtained from the FBiH Ministry, the final decision should be passed within 15 (fifteen) days from the date of all necessary documents being submitted.

The applicant is obliged to pay an adequate administrative fee for processing of the application as well as compensation for the Commission's costs which shall be determined in accordance with the separate governmental decree.

#### **4.2.2 Natural Gas in RS**

##### **4.2.2.1 Annexes to the application for the gas Wholesale Licence**

The applicant for a Wholesale Licence is required to submit the following documents with its application:

- valid decision on registration with the court or other competent register (with attachments);
- registration number and tax identification certificate;
- foundation act with accompanying agreements or articles of association (statute) of the applicant;
- organisational scheme of the applicant, data on systematisation of job positions and personnel, including professional experience of personnel, etc.;
- statement of the applicant on the possession of the required facilities, installations and equipment necessary for conducting the respective business activity;
- annual and 3 (three) year business plan of the applicant;
- agreement concluded with the participants in the gas market;
- financial annual statements for the previous 3 (three) years for existing companies or initial balance sheet for newly formed companies;
- statement of the applicant and certificates from commercial banks that the applicant has sufficient funds in its bank accounts or the possibility of obtaining loans or bank guarantees; that it has ensured bank guarantees, which are necessary for regular conducting the intended activities;

- statement of the applicant and certificates from commercial banks on open bank accounts of the applicant, including information on the status of these accounts;
- loan agreements with repayment plan, if conducting of the intended activities is financed by loans;
- proof that the applicant has obtained a quality certificate (ISO 9001) and, if not, a statement as to the applicant's plans to obtain one;
- a certification from the competent authority that the applicant and its legal representatives (i.e. members of management board and procurators, etc.) are not prohibited from performing the respective profession/activity;
- certificate issued by the competent authority that the applicant is not undergoing bankruptcy or liquidation proceedings; and
- proof of payment of the one-time regulatory fee.

In addition to the above listed documentation, it is also necessary to submit the following additional documents:

- proof of the legal basis for use of the business premises of the applicant (lease agreement or proof of ownership);
- list of fixed assets, especially IT equipment;
- general terms and conditions for natural gas supply;
- number of purchasers in total and by categories of consumption and the respective group of purchasers and number of the potential purchasers for the next 3 (three) years according to the annual supply plans;
- description of the manner for monitoring the quality of the delivered natural gas;
- templates of the standard agreements and supporting documentation for conducting the given activity (e.g. trade and supply of natural gas); and
- planned scope of annual supply/trading in natural gas for the next 3 (three) years.

#### **4.2.2.2 Procedural rules**

The procedure for the issuance of a Wholesale Licence is in general paper-based; the documents need to be submitted via post and electronically. Although RERS schedules at least one public hearing during the procedure for the issuance of the licence, the presence of the applicant is not obligatory.

According to the RS Licensing Rules, RERS shall issue the natural gas Wholesale Licence within 60 (sixty) days at the latest following the receipt of a complete application.

#### **4.2.2.3 Operational conditions required for the issuance and maintenance of the gas Wholesale Licence**

##### **Personnel**

The applicant is required to submit its organisational structure (organisational scheme), which includes information on the number of employees, their professional competences, as well as a statement of the applicant that the employed personnel has sufficient skills and the necessary education to perform the intended activities. An applicant may also submit a statement that it has concluded an agreement with other legal or natural persons who have the necessary skills and education for the performance of the intended activity. However, none of the applicable legislation regulates in more detail what type of educational skills and qualifications the employees

or contactors of an applicant for a Wholesale Licence must possess. Therefore, it can be fairly concluded that RERS will, at its own discretion, decide whether an applicant meets the requirements related to the engaged staff.

#### **Premises**

In principle there are no special requirements with respect to the premises. However, in order to obtain a Wholesale Licence the applicant should submit, together with the request, evidence that it has a valid legal basis for the use of business premises. Nevertheless, the licence holder is required to have a real physical presence with all the assets necessary for performing the licensed activity.

#### **IT systems/assets**

Under the RERS Licensing Rules the applicant for a natural gas Wholesale Licence is required to submit a list of its fixed assets and especially a description of the IT technologies used for the performance of the given business activity (i.e. software, hardware and communications). However, the relevant rules do not further stipulate as to what IT systems are deemed adequate for the performance of the given business activity.

#### **4.2.2.4 Financial Guarantees**

In the course of the procedure for the issuance of a natural gas Wholesale Licence, RERS assesses whether the applicant meets the financial criteria necessary for the performance of the given business activity. In this respect, the applicant is required to submit a statement and the certificates issued by its commercial banks confirming that it has enough funds and proof that it may take out a loan or a bank guarantee. The amount which the applicant should have on its account or the amount of the guarantee, are not defined as exact amounts. Therefore, it can be fairly concluded that RERS will, at its own discretion, decide whether an applicant fulfils the financial criteria or not.

#### **4.2.2.5 Procedural costs**

Under RERS Licensing Rules, the applicant is required to pay a procedural fee when submitting an application for the issuance of the respective licence. The amount of this fee is determined by a special decision of RERS; currently it amounts to BAM 1,000 (approximately EUR 500).

In addition to the above, the applicant (once it has obtained the licence) is obliged to pay an annually recurring regulatory fee determined by RERS in the form of a special decision.

#### **4.2.2.6 Term of the Wholesale Licence**

The Regulation does not define the term for which a natural gas Wholesale Licence can be issued. This matter will be covered by the FBiH Law on Gas (once in force).

Under the RS Law on Gas, a natural gas Wholesale Licence is issued for a term of up to 10 (ten) years.

## **5. DIFFERENT RULES APPLICABLE FOR SUPPLYING INDUSTRIAL END-CUSTOMERS**

### **5.1 Electricity Licensing – Regulatory and Corporate Conditions**

No Additional Licence is needed for supplying industrial end-customers other than that described in Point 4.1.

### **5.2 Natural Gas Licensing – Regulatory and Corporate Conditions**

No Additional Licence is needed for supplying industrial end-customers other than that described in Point 4.2.

## **6. OBTAINING THE ADDITIONAL LICENCE(S)**

### **6.1 Electricity**

The licensing requirements for obtaining the necessary licence in order to trade electricity in BiH are detailed under Point 4.1.

### **6.2 Natural Gas**

The licensing requirements for obtaining the necessary licence in order to trade natural gas in BiH are detailed under Point 4.2.

## **7. SETTING UP A LOCAL ENTITY**

### **7.1 Most Important Legal Rules and Operational Requirements**

In FBiH, the minimum share capital of a Local Corporation in the form of a limited liability company is BAM 1,000 (approximately EUR 500), whereas in RS the minimum share capital is BAM 1 (approximately EUR 0.50). In FBiH, at least 50% (fifty percent) of the share capital (but not less than BAM 1,000) must be paid prior to submission of the application for registration with the competent court. It is important to note that the SERC Licensing Rules stipulate that a company intending to perform cross-border trading of electricity must have a registered capital of BAM 1 million (approximately EUR 500,000). A company may be established by one or more domestic or foreign natural persons or legal entities. In any case, the shareholder(s) is(are) responsible for the obligations of the Local Corporation up to the amount of their share in the share capital.

The management conducts the business operations of the Local Corporation and represents it in domestic and foreign trade. The management may consist of managing director and executive directors. The members of the management do not have to be the Local Corporation's shareholders. The shareholders' meeting appoints and dismisses the members of the management. The managing director (and/or member(s) of the management) may be a foreign citizen. However, in this case he/she is obliged to resolve its work and residence status upon the registration of the Local Corporation with the competent court. In addition to the management, a Local Corporation may also have a procurist. In particular, shareholders can grant *procura* (power of attorney) to third parties for representation of the Local Corporation.

In principle, the procedure for the establishment of a Local Corporation consists of three main stages:

- execution of the relevant corporate documents in the form of notarial deeds (e.g. decision on establishment and articles of association of the Local Corporation);
- registration of the Local Corporation with the competent court; and
- post-registration phase which includes informing the relevant competent authorities of the newly established Local Corporation and obtaining the relevant licences and approvals necessary for the performance of business activities (e.g. opening a bank account, obtaining a tax identification number, VAT number, etc.).

Under the relevant FBiH and RS legislation, a Local Corporation has to have an actual corporate seat on the territory of FBiH or RS. Such residence is registered with the competent court in the course of the registration procedure.

## **7.2 Procedural Rules**

In order to proceed with the setting up of a Local Corporation the following documents must be provided:

- decision on establishment of the Local Corporation or agreement on establishment of the Local Corporation, prepared by a local notary in the form of a notarial deed;
- excerpt from the Commercial Register of the founder of the Local Corporation (notarised and apostilled, if necessary, and, translated into the local language by an official court translator);
- certified statement of the founder confirming that it is not a majority shareholder in a local company which has due and outstanding obligations to creditors, i.e. unsettled taxes;
- statement of the managing director, executive director (if any) and procurist (if any) on their acceptance of the function within the Local Corporation;
- relevant court forms, which persons authorised to represent the Local Corporation (e.g. managing director) have to sign and verify their signatures (i.e. specimen signature);
- announcement in the official gazette on the establishment of the Local Corporation (required only in FBiH);
- certified copies of the passport of all persons authorised to represent the Local Corporation or certified copies of ID cards for local authorised persons, if any (at least 3 copies provided of each);
- proof of payment of the initial share capital – minimum initial capital for a limited liability company in FBiH is BAM 1,000 (approximately EUR 500), while in RS it is BAM 1 (approximately EUR 0.50); in case the Local Corporation intends to perform cross-border trading of electricity, the initial share capital must be BAM 1 million (approximately EUR 500,000) (the initial share capital has to be paid in prior to the submission of the application for registration with the court);
- proof of payment of court fees; and
- Power of Attorney, if any of the steps in the process of registration are conducted by a third party (notarised and apostilled), including a translation by a certified court interpreter.

## **7.3 Time frame for Establishment of a Local Corporation**

The FBiH Law on Registration of Business Companies provides that the court is obliged to issue a decision on registration within 5 (five) days from the submission of the documents to the court, while under the RS Law on Registration of Business Companies the same procedure lasts up to 2 (two) days from the day when the court receives the application. In practice, the courts usually exceed the set deadline, whereas the actual duration of the procedure varies on a case by case basis.

The administrative fees in FBiH (including court fees, notary fees, post registration etc.) altogether amount to approximately BAM 1,500 (approximately EUR 750) if the initial share capital of the Local Corporation is BAM 1,000 (i.e. minimum initial capital for a limited liability company). As for the registration of a Local Corporation in FBiH which intends to carry out cross-border trade and thus has to have a registered capital of at least BAM 1 million (approximately EUR 500,000), the administrative fees (including court fees, notary fees, post registration, etc.) altogether amount to approximately BAM 4,000 (approximately EUR 2,000).

The costs of the establishment of a Local Corporation in RS include notary fees, court fees for the submission of the application for registration and the court fees for the registration of the company. The exact amount of the costs varies on a case by case basis. In general, if the company's share capital is BAM 1 (approximately EUR 0.50), the registration costs amount to around BAM 650 (approximately EUR 320).

## 8. TAXES

Wholesale Activities may be performed only by a Local Corporation which holds electricity/gas Wholesale Licences issued by the local regulatory authorities. Such a Local Corporation is subject to the local tax rules, accordingly it must obtain an ID/tax number for the payment of direct taxes (e.g. corporate income tax) and a VAT/custom number for the payment of indirect taxes (e.g. VAT, custom duties).

There are no additional direct taxes applicable to the performance of Wholesale Activities in BiH.

## 9. CONTRACTUAL RELATIONS

### 9.1 Electricity

According to the SERC Rules on Access of Third Parties to the Transmission System, the rights and obligations of licence holders having access to the transmission system on the one side and the relevant state entities on the other side are regulated in an agreement. However, these rules do not provide for any further regulation in this regard (e.g. procedures for the conclusion of an agreement, mandatory content thereof, specific rules for breach of rights and obligations stipulated in the agreement, dispute resolution, etc.).

In terms of grid connection, the SERC Rulebook on Grid Connection stipulates that the user (i.e. a legal or natural person which transmits or takes electricity from the transmission grid) and Transco must conclude a connection agreement in line with the Grid Code. This defines, *inter alia*, the technical, legal and economic conditions for the connection to the grid as well as all details concerning the construction of the connection to the grid, future ownership relations, etc. In addition, the respective rulebook provides for a list of issues that such an agreement must contain; however the parties can include and regulate under the agreement additional issues as they find fit. ISO shall be provided with one specimen of the relevant agreement.

In addition to the above, the FBiH Law on Electricity stipulates that, with regard to the supply to eligible/qualified customers, the buyer and the supplier determine in an agreement the amount, dynamic and price of electricity which is to be supplied. Finally, according to the ISO Market Rules, each licence holder connected to the grid must also conclude a balancing agreement with ISO, primarily regulating payment methods, including terms relating to security instruments. The licence holders, as a balanced responsible party, is obliged to ensure a bank guarantee up to the amount of BAM 2 million (approximately EUR 1 million) in favour of ISO, as security for due payment under the balance agreement.

### 9.2 Natural Gas

There are no detailed provisions on the contractual relationships of the gas market. The Regulation for FBiH defines a "take or pay" agreement as an agreement by which the gas distributor is obliged to distribute the agreed amount of gas, and the buyer is obliged to pay for the agreed amount irrespective of the fact whether it has obtained such amount or not. We are not aware of any such contracts being executed. Please note that the RS Law on Gas defines substantively the same agreement/clause.

## **10. REPORTING OBLIGATIONS**

### **10.1 Electricity**

According to the FERC and RERS Licensing Rules, the holder of a Domestic Licence is obliged to file reports on its financial, technical, organisational and other data to FERC/RERS. The holder of a Domestic Licence issued by FERC/RERS is obliged to file various types of reports, including: reports accompanied by the holder's documentation, reports on important events which may influence the business activities of the Domestic Licence holder, technical, energetic and financial data on the prescribed forms for reporting as well as other relevant reports. Also, licence holders are obliged to file to FERC/RERS, *inter alia*, a complete set of financial reports in line with the applicable regulations within 30 (thirty) days (in FBiH) and 15 (days) days (in RS) from the date of submission of the financial reports to the competent authorities. The reports should be filed to FERC/RERS within the deadlines and by the method prescribed by the special forms for reporting determined by FERC/RERS.

In addition, FERC/RERS are entitled and obligated to monitor the performance of the licensed activity and, *inter alia*, control and observe that all terms as well as all other provisions and rules are respected during the term of licence. In relation to this, they may request the provision of data and they can enter the premises of licence holders and carry out a physical inspection of the premises and the documents related to the licensed activity. Those inspections may be periodic, announced and unannounced. Also, in case of a complaint/appeal raised by third parties against the Domestic Licence holders, FERC/RERS examines the justification of the complaint/appeal and checks whether the business practice of the respective licence holder is in compliance with the conditions set out in the Domestic Licence.

Similarly to the above, the holder of a Cross-border Licence must submit to SERC the reports listed under the terms and conditions for obtaining the licence, for the period of the licence. In addition, SERC is entitled and obligated to monitor the conduct of the licensed activity and can enter the premises and carry out physical inspections of the premises and related documents. Moreover, SERC also checks by carrying out announced and unannounced visits that licence holders are in compliance with all aspects of the terms and conditions for obtaining a licence, as well as all other laws and regulations of SERC. Also, SERC shall inform RERS and FERC about all observed irregularities and issues related to the business activities of licence holders issued by FERC or RERS. According to the SERC Decision on Standard Conditions for Use of the Cross-Border Licence, the holder of a Cross-border Licence is obliged, *inter alia*, to file an annual business report to SERC within 90 (ninety) days of the end of the business year. Furthermore, licence holders are obliged to file audited financial reports within 180 (one hundred and eighty) days of the end of the business year. In addition, licence holders shall prepare and file to SERC monthly reports on the realisation of contracts as well as the plan i.e. estimation of the scope of activities for the following month related to the licensed activity.

### **10.2 Natural Gas**

#### **10.2.1 Natural Gas in FBiH**

According to the Regulation, the operator of the distribution system is obligated to submit annual reports to the FBiH Ministry. These annual reports are related to the reliability, safety and efficiency of the system, the execution plan for the development of the system, quality in meeting the needs of consumers/customers, maintenance of equipment on the systems and the fulfilment of other duties and exercise of rights under this Regulation. These reports are also obligatory for all other activities performed in relation to gas, i.e. storage and supply of gas.

### 10.2.2 Natural Gas in RS

During the term of the Wholesale Licence, licence holders are obliged to report to RERS, on a monthly, semi-annual and annual basis, with regard to all or some of the following matters depending on the type of licence:

- business documentation;
- relevant events which may have an influence on the business (e.g. changes of the company's organisation, statutory changes, investments, sale, transfer and pledge of fixed assets, etc.);
- technical, energy and financial data in the prescribed forms for reporting; and/or
- additional reporting.



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**BULGARIA**

## 1. RELEVANT LAWS AND REGULATIONS

- The Energy Act<sup>1</sup> (“**EA**”);
- The Commercial Act<sup>2</sup> (“**Commercial Act**”);
- The Commercial Register Act<sup>3</sup> ;
- Value Added Tax Act<sup>4</sup> (“**VAT Act**”);
- Corporate Income Tax Act<sup>5</sup>;
- Excise Duties and Tax Warehouses Act<sup>6</sup>;
- Ordinance No. 3 of 21 March 2013 for licensing of activities in the energy sector<sup>7</sup> (“**Licensing Ordinance**”);
- Ordinance No. 1 of 14 March 2017 for regulating the prices of electricity<sup>8</sup> (“**Electricity Pricing Ordinance**”);
- Ordinance No. 2 of 19 March 2013 for regulating the prices of natural gas<sup>9</sup> (“**Gas Pricing Ordinance**”);
- Rules for trade of electricity<sup>10</sup> (“**Electricity Trading Rules**”);
- Rules for trade of natural gas<sup>11</sup> (“**Gas Trading Rules**”);
- Rules for access to the electricity transmission network and distribution grids<sup>12</sup> (“**Electricity Network Access Rules**”);
- Rules for access to the gas transmission and/or gas distribution grids and for access to the gas storage facilities<sup>13</sup> (“**Gas Networks and Storage Access Rules**”);
- Rules for management and technical rules for the gas transmission networks, adopted by EWRC pursuant to Article 170, Paragraph 3 in relation to Article 21, Paragraph 1, item 9 of the Energy Act by way of a Protocol decision No. 124 as of 19 August 2013 under Point 4;
- Rules for Gas Market Balancing<sup>14</sup> (“**Gas Market Balancing Rules**”); and
- Tariff for taxes collected by EWRC under the Energy Act<sup>15</sup>.

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1 Published, State Gazette No. 107/9.12.2003, as amended from time to time.

2 Published, State Gazette No. 48/18.06.1991, as amended from time to time.

3 Published, State Gazette No. 34/25.04.2006, as amended from time to time.

4 Published in State Gazette No. 63/04.08.2006, as amended from time to time.

5 Published in State Gazette No. 105/22.12.2006, as amended from time to time.

6 Published in State Gazette No. 91/15.11.2005, as amended from time to time.

7 Published in State Gazette No. 33/05.04.2013, as amended from time to time.

8 Published in State Gazette No. 25/24.03.2017, EWRC as amended from time to time.

9 Published in State Gazette No. 33/05.04.2013, as amended from time to time.

10 Published in State Gazette No. 66/26.07.2013, as amended from time to time.

11 Published in State Gazette No. 59/04.08.2015, as amended from time to time.

12 Published in State Gazette No. 98/12.11.2013, adopted by EWRC with Protocol No. 147 of 14.10.2013.

13 Published in State Gazette No. 36/16.04.2013, as amended from time to time.

14 Published in State Gazette No. 99/2016.

15 Published in State Gazette No. 89/12.10.2004, as amended from time to time.

## 2. ORGANISATION OF ELECTRICITY MARKET AND NATURAL GAS MARKET

The Bulgarian energy markets have been only partially liberalised since 2004 and a regulated prices segment still exists. Bulgaria has implemented the two Directives from the Third Energy Package, although the European Commission had a number of concerns in this respect.<sup>16</sup> The markets are supervised and controlled by the Bulgarian Energy and Water Regulatory Commission ("**EWRC**"), a public independent administration body. The main functions of EWRC are the licensing and supervision of electricity, natural gas and water utilities companies; setting regulated prices along the energy value chain for natural gas and electricity; EWRC also monitors the progress and development of the liberalised markets.

Following the transposition of the two Directives from the Third Energy Package into Bulgarian legislation, the role and activities of EWRC have been significantly extended. A growing importance is given to supervision of the electricity and natural gas grid operators; communication with the European Commission; the Agency for Cooperation of the Energy Regulators, and the Bulgarian Competition Protection Commission; consumer protection; market monitoring; elaboration of secondary legislation; and changing or triggering changes when necessary on the competitive market environment. Following social and political pressure with respect to household customer prices, EWRC has been granted the legal right to regulate the electricity and electricity network prices several times a year.

While EWRC is the national energy regulator, the Ministry of Energy sets the national policy in the energy sector and has some controlling functions.

### 2.1 Electricity Market

There are around 150 licensed electricity traders in Bulgaria. After an initial intensive growth between 2013 and 2016, their number seems now stabilised.

The Bulgarian electricity transmission system operator is the "Electricity System Operator" EAD ("**ESO**") which is part of the Bulgarian Energy Holding EAD's ("**BEH**") vertically integrated undertakings. ESO is responsible for balancing and providing ancillary services and for cross-border capacity allocation (together with neighbouring countries' TSOs), and coordinates the regional electricity system of cross-border electricity flows in accordance with the ENTSO-E Rules. The transmission system is owned and operated by ESO. The distribution systems are operated by 4 regional distribution companies in direct system subordination by ESO. The chosen unbundling model as provided in Directive 2009/72/EC for the TSO certification of "ESO" EAD is the Independent Transmission Operator. ESO has been certified as ITO by EWRC and EC in year 2015.

Bulgaria has one nuclear power plant at Kozloduy, which has two operational WWER 1000 units, both of the model B-320 with a nominal output capacity of 1,000 MW each, which started to operate in 1987 (Unit 5) and 1991 (Unit 6). After completing a complex modernisation programme and a life time extension programme, it is expected that the operational life time of both units will be extended until 2047 and 2049 respectively. Kozloduy NPP has a significant share of the overall generation output of Bulgaria's energy system: both units contribute to more than 30% (thirty percent) of national energy production.

In addition to the Kozloduy NPP, a significant share of Bulgaria's generation capacity comes from local lignite coal from the Maritsa East Mines, supplied for the use of the state-owned Maritsa East 2 TPP part of BEH, the AES Galabovo Maritsa East 1 TPP and Contour Global Maritsa East 3 TPP. The share of power generated from renewable sources is already significant and its share is increasing year by year. EWRC has reported that Bulgaria has reached its goal of 16% (sixteen percent) share of renewable energy in the final consumption in year 2015. The largest portion of the renewable energy is allocated to the hydropower plants and amounts to more than 2,900 MWs of installed capacity.

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16 The Third Energy Package consisting of three Regulations (directly effective in Bulgaria); Regulation (EC) No. 713/2009; Regulation (EC) No. 714/2009; and Regulation (EC) No. 715/2009; and two Directives (effective upon national implementation); Directive 2009/72/EC and Directive 2009/73/EC.

There are 4 distribution network operators operating in the country. EWRC has issued 4 licences for the distribution of electricity (CEZ Distribution AD, Energo Razpredelenie Yug AD, Energo-Pro Grid AD and ERP Zlatni Pjasci EAD).

The trade of electricity is currently performed both under bilateral contracts and on the IBEX – Independent Bulgarian Energy Exchange, which was established in January 2014 as a fully-owned subsidiary of the BEH. Currently the company is being transferred to the Bulgarian Stock Exchange following commitments in this respect by BEH in a competition case, initiated by the European Commission for alleged breaches of EU law (Case 39767 BEH Electricity). In the same procedure, BEH has also committed to providing minimum stipulated volumes of electricity on the Bulgarian power exchange for a period of 5 (five) years. These volumes will be placed for sale in the Day-Ahead Market (DAM), with a maximum price based on the marginal costs of BEH's production subsidiaries – i.e. Kozloduy NPP and Maritza East 2 TPP. The volumes offered will vary on an hour-by-hour basis, in line with the pattern of consumption of electricity in Bulgaria. The IBEX has also the function of a clearing house for deals on the energy exchange. Currently IBEX operates also an OTC platform for bilateral trade.

The IBEX is experiencing a growth both in terms of participants and traded volumes. In its September 2017 Market Report, the IBEX announced that the total traded volume is 380,582 MWh, whether the average daily traded volumes exceed 12,684 MWh/day. On the DAM there are 44 active market participants.

In 2016 the Bulgarian electricity market has been further liberalised by introducing the small and medium size companies and for the first time the share of electricity on the liberalised market exceeded 50% (fifty percent).

## **2.2 Natural Gas Market**

The natural gas industry in Bulgaria has a long history. The country's gasification started in mid 1970s with the construction of the national gas transmission system. The first domestic discovery of gas condensate occurred in 1963 near the village of Chiren in the northwest section of Bulgaria. To date, after its depletion, this condensate field has been transformed to the only underground natural gas storage facility in the country – UGS Chiren. No other important natural gas production fields have been found so far and natural gas consumption in the country is primarily secured (more than 90% (ninety percent) through gas imports from one single source – the Russian Federation. Russian natural gas reaches Bulgaria from the Russia – Ukraine – Moldova – Romania line at the gas metering station Negru Voda 1.

Bulgaria is also a gas transit country that currently transports Russian gas to Macedonia (FYROM), Turkey and Greece (approximately 15 bcm/a).

The latest data from the Bulgarian Ministry of Energy shows that the average annual gas consumption of Bulgaria is about 2.9 bcm. The domestic gas consumption is dominated by heavy industry (fertilizers, mining, metals productions etc.) and the electricity and heat generation. The energy and chemistry sectors form together about 66% (sixty six percent) of the gross consumption of natural gas in Bulgaria. Household consumption is scarce – less than 3% (three percent) of households are using natural gas (in comparison to the EU as a whole where 27–30% (twenty seven to thirty percent) of households consume natural gas as their primary energy source). However, some major cities' district heating thermal power plants are gas-fuelled, for example in Sofia and Burgas.

The natural gas consumption amounts to approximately 12% (twelve percent) of the total energy consumption in the country.

Natural gas domestic production is not substantial. The main upstream market players are "Prouchvane i dobiv na neft i gas" JCS (PDNG), and Melrose Resources Ltd.

PDNG holds concession rights for extraction and production in the Black Sea fields Durankulak, Shabla region (until 2025) and Balgarevo, Kavarna region (until 2038). The company also holds concession rights for natural gas extraction and production in several fields in central Bulgaria – Iskar – Zapad (until 2049), Gorni Dubnik (until 2020), Bardarski Geran (until 2026), Selanovci (until 2027), Dolni Lukovit (until 2022) and Marinov Geran (until 2025).

In 2004 the company Melrose Resources Ltd. (later acquired by Petroceltic Ireland) started local natural gas production from the Galata field in the Black Sea. The company holds concession rights for the Galata block for 35 (thirty five) years, i.e. until 2039. Later, the company acquired the production rights over two other offshore gas fields – Kaliakra and Kavarna. As a result of the gradual development of these fields, local gas production increased to reach its peak in 2011 when 443 mcm/a or 14% (fourteen percent) of domestic consumption was secured by local gas production from those blocks. Since 2012, however, the gas production again decreased significantly to reach only 3% (three percent) in 2016.

A number of natural gas exploration permits have been issued in Bulgaria since 2012. In 2012, a JV of Total, OMV and Repsol were granted a 5 (five) year exploration and prospecting permit for the deep offshore block 1-21 Han Asparuh, which was extended in 2017 for 135 (one hundred and thirty five) more days. In 2017 Shell was also granted a 5 (five) year exploration and prospecting permit of Bulgaria's Block 1-14 Silistar, also situated on the continental shelf and in the exclusive economic zone of the Black Sea. Dozens of fields are currently explored onshore. In 2016, the Bulgarian government decided to open a call for tender to grant new oil and gas exploration licences for exploration block "1-25 Vratsa West", located onshore in the north-west part of Bulgaria.

The major gas market participants in Bulgaria are: (i) Bulgartransgaz EAD; (ii) Bulgargaz EAD – the natural gas incumbent public provider; (iii) gas traders/shippers – that supply natural gas to the public supplier, consumers, other gas traders, production companies, the natural gas storage company and the combined operator; and (iv) gas distribution companies.

Both "Bulgartransgaz" EAD and "Bulgargaz" EAD are part of the state-owned company BEH as a vertically integrated undertaking. The main gas traders in Bulgaria until 2016 were Overgas Inc. AD (also holding a large percentage of gas distribution licences across the country through its subsidiary Overgas Mreji AD) and Dexia Bulgaria EOOD. Since 2016, due to emerging the opportunity for reverse flow transactions from Greece to Bulgaria and occasional swap deals among traders, the players on the gas wholesale market participants gradually increased.

The only licensed transmission system operator ("TSO") in Bulgaria at the moment is "Bulgartransgaz" EAD. The chosen unbundling model as provided in Directive 2003/55/EO for TSO certification of "Bulgartransgaz" EAD is as Independent Transmission Operator. The operator is a combined natural gas transmission operator responsible for the performance of natural gas transmission and storage activities by virtue of a licence issued by EWRC for transmission of natural gas and operation of the natural gas UGS Chiren.

Currently, Bulgaria imports natural gas only from Russia through the interconnection points that connect the transmission system of Bulgartransgaz to the transmission systems of the Romanian operator Transgaz at the following entry points: (i) Negru Voda 1(RO)/Kardam (BG) – entry-exit point of Bulgartransgaz's National Gas Transmission Network; and (ii) Negru Voda 2,3 (RO)/Kardam (BG) – entry-exit point of Bulgartransgaz's Gas Transmission Network for Transit Transmission. In 2014 Kulata (BG)/Sidirokastro (GR) exit point to Greece was upgraded to allow reverse flow, i.e. to become also an entry point of Bulgartransgaz's gas transmission network for transit transmission. Still, a non-significant volume of natural gas is transited from Greece in the direction of Bulgaria.

The existing interconnection points with Turkey (Strandzha (BG)/Malkoclar (TR)) and FYROM (Kyustendil (BG)/Zidilovo (MK)) are used for one directional gas flow from Russia and may not be used for reverse flows in case of gas supply interruptions.

The main customers of the natural gas transmission services to end-customers and the gas distribution networks are the public supplier Bulgargaz EAD and Overgas Inc. AD – the latter transports mainly natural gas to the licensed territories of its subsidiary gas distribution company.

The underground storage facility Chiren has approximately 0.55 bcm capacity. Recently, Bulgartransgaz undertook steps to expand the capacity to 1 bcm by 2021 – the expansion project has been granted the status of a project of common interest (PCI) and is co-funded by the EU.

UGS Chiren plays a major role in providing natural gas in case of a shortage from the entry points of the national gas transmission network, by covering the seasonal fluctuations in consumption and providing an emergency reserve as per Regulation (EU) 994/2010. The major customer of the natural gas storage service is Bulgargaz EAD. According to the Emergency Plan, approved by “Bulgartransgaz” EAD in accordance with Regulation (EU) 994/2010<sup>17</sup>, “Bulgargaz” EAD is obliged to store certain quantities of natural gas in the Chiren underground storage facility in order to guarantee security of supplies to end-customers and seasonal shortage at the entry points of the transmission system.

“Bulgargaz” EAD is the incumbent natural gas public provider, licensed by EWRC for the provision of natural gas to end-customer suppliers and customers directly connected to the natural gas transmission system at high pressure at regulated prices. Natural gas is mainly imported by “Bulgargaz” EAD. The major industrial consumers which are connected to the gas transmission network are supplied mainly by the public supplier Bulgargaz EAD or other traders, operating on the market.

Households and small and medium-sized enterprises (SMEs) are the main customers of the gas distribution companies. The distribution companies are responsible for the development of the gas distribution network for the licensed territory in which they operate and provide natural gas distribution services to end-customers connected to their networks and gas supply services to consumers in their licensed territory at regulated prices.

There are 28 distribution network operators operating in the country. EWRC has issued 5 regional licences for the distribution of natural gas (in the regions Mizia, Trakya, Dobrudja, Zapad, and Dunav). The other gas distribution licences are local ones issued for one municipality or for a group of municipalities. The total number of municipalities covered by gas distribution licences is 164 or 62% (sixty two percent) of all municipalities in Bulgaria.

There are a number of significant infrastructural gas projects recently completed and/or currently developing in Bulgaria that have been declared as PCI for the EU, namely:

- the IRB gas interconnector between Bulgaria and Romania (IBR), with a maximum capacity of the interconnector of up to 1.5 bcm/a from Bulgaria to Romania. The IBR became operational in November 2016;
- the IGB gas interconnector between Komotini, Greece and Stara Zagora, Bulgaria (PCI 6.8.1), with a project transmission capacity of up to 3 bcm/a – scheduled commissioning date 2019;
- the IBS gas interconnector between Bulgaria and Serbia (PCI 6.10), with a project transmission capacity of up to 3.2 bcm/a;
- a project for permanent reverse flow at the Greek-Bulgarian border between Kula (Bulgaria) and Sidirokastro (Greece);
- a project for rehabilitation and increase of the transmission capacity of the existing transmission system of Bulgartransgaz;
- the ITB gas interconnector between Turkey and Bulgaria (PCI 7.4.2.), with an approximate transmission capacity of 3bcm/a - scheduled commissioning 2020; and
- the floating LNG terminal project, terminal Alexandroupolis, Northern Greece – in 2016 the Government of Bulgaria has decided to participate in this project. BEH and Gastrade, promoter of the LNG terminal project, have signed a terms of reference (TOR) for the creation of a joint working team that will study and propose to the Council of Ministers of the Government of Bulgaria the optimum way to implement Bulgaria's participation in the project.

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17 Regulation (EU) No. 994/2010 of The European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC.

The following regional gas projects are also considered significant for diversification and security of gas supply in the region and regional natural gas market development – the Eastring project for implementation of bi-directional natural gas supplies through the territory of Slovakia, Romania, Bulgaria, Hungary, Czech Republic and Austria. One of the main benefits outlined by the developers of this project is its viability of directly connecting Europe with Turkey (incl. TANAP). Thus, it is considered able to secure the gas flow from Turkey to Europe (diversification) and from Europe to Turkey (providing low gas prices to the new Turkish market). Another project of regional importance, including for Bulgaria is the BRUA project – a development transmission corridor Bulgaria-Romania-Hungary-Austria. This is a project with the participation of many countries responsible for the realisation of the so-called “Vertical gas corridor”, including Bulgaria.

The expectations are that in the coming years the number of new entry-exit points to the national gas transmission network will increase significantly with the completion and commencement of the interconnection projects with Romania, Greece, Turkey and Serbia. They will enable diversification of natural gas supplies sources and routes; contribute to the increase of market competition in the region and affect positively the domestic natural gas consumption.

Considering its location and involvement in the development of the most significant regional gas infrastructure projects, the Bulgarian government launched in 2015 a new project, namely: the development of a regional gas hub, named Balkan. This project is to be conducted by Bulgartransgaz EAD and aims to construct a gas distribution centre in Bulgaria. The concept is based on the idea of bringing significant gas quantities from various sources (conceptual entry/exit capacity of 45.55-61.3 bcm/y) to enter a physical point in the region of Varna for further transportation and trade through a gas hub. The Balkan Gas Hub concept includes construction of new gas infrastructure with the objective to bring new gas to Central/Western, South-Eastern and Eastern Europe in order to enhance security of supply, i.e. a point for onward transportation and trading of natural gas in the region.

The Balkan gas hub project received its “legitimacy” as a project of common interest – PCI 6.25.4 (TRA-N-592, TRA-N-593, TRA-N-594, TRA-N-649) in 2016 and is currently ongoing. In September 2017, the operator of the project launched a public procurement tender for elaboration of a feasibility study for the Balkan Gas Hub project. The objective of the feasibility study is to assess in detail the project's commercial and technical viability, define the precise business model, assess project risks, finalise the regulatory design and structure project financing. The results of the Feasibility Study will allow Bulgartransgaz EAD to decide upon the implementation of PCI 6.25.4, define a detailed schedule for the upcoming development phases until the commercial operation date, as well as develop a detailed financing structure that can be discussed with international financial institutions and private sector investors.

In 2013, legislation amendments started in order to make the key elements of the Bulgarian gas market model and of the balancing mechanism operations functional. In 2016 and 2017 significant regulatory changes were implemented in order to allow the opening of the gas market and to secure unhampered access to the market for any market participants, including newcomers. Most of those regulatory changes were initiated by the regulator EWRC, based on the proposal of the combined gas operator Bulgartransgaz.

The current national regulatory framework is already complex. It is aligned to the European legislation, in particular with the package of bills, initiated with Directive 2009/73/EC, including the network codes and regulations for security of supply.

In 2015 the new Gas Trading Rules were published in the State Gazette No. 59/2015. They provided some novelties for the natural gas market structure, including among others the introduction of a new market stakeholder – “the balancer”, i.e. the entity which performs the gas balancing of the system. The Gas Market Rules provide for the possibility for an easy change of the balancing entity with a third party (e.g. the incumbent public supplier “Bulgargaz” EAD or a trader).

The Gas Trading Rules also provided the main framework for development of the gas balancing market in accordance with Regulation (EU) 312/2014<sup>18</sup>. The amendments allow for the possibility for transactions with gas to be performed via an online electronic trading venue and for the introduction of virtual trading points for the trading of gas for balancing in the respective balancing zones of the transmission networks. It also established the framework for the balancing market which was further elaborated with the Gas Market Balancing rules, adopted in 2016.

The latest pieces of legislation, adopted in 2016 and 2017 focused on allowing (i) capacity booking and allocation; (ii) natural gas balancing; and (iii) congestion management.

The Gas Market Balancing Rules and the methodology for imbalance charges was adopted along with the requirement for transmission network users to become responsible for their balancing portfolios to minimise the necessity for the transmission operator to undertake measures for balancing. The methodology for imbalance charges determines the way of estimating the daily imbalance amount and the positive and negative imbalance charges.

In 2017 the EWRC adopted the Congestion Management Procedures, published in State Gazette No. 78/2017. These rules will be applied at the interconnection entry-exit points, which connect the national natural gas transmission system to the transmission systems of the neighbouring Member State gas transmission operators. These procedures are not applicable to existing entry-exit points with non-Member State countries (namely: FYROM and Turkey). The procedures are adopted in compliance with items 2.2.2., 2.2.4. and 2.2.5. of Appendix I of Regulation (EC) No. 715/2009<sup>19</sup>.

In order to encourage and facilitate efficient gas trading and transmission with neighbouring gas transmission systems, in July 2016 Bulgartransgaz signed interconnection agreements with the gas transmission operators Transgaz (Romania) and DESFA (Greece) in accordance with Regulation (EU) 2015/703 and Regulation (EC) 715/2009. It also signed such an agreement with Ukraine, based on their bilateral commitments as part of CESEC. The agreements became effective as from 1 October 2016.

The government's policy for the domestic gas sector is subject to the National Energy Strategy adopted by the National Assembly in 2011<sup>20</sup>. The Minister of Energy is responsible for the implementation of the national energy policy, including the domestic natural gas sector. The EWRC has regulatory functions and determines the regulated prices for end-customers.

### **3. CONDITIONS FOR APPLYING FOR ELECTRICITY AND NATURAL GAS WHOLESALE LICENCE(S)**

#### **3.1 Electricity Licensing – Regulatory and Corporate Conditions**

Pursuant to the Energy Act, traders of electricity are licensed entities complying with the conditions for the financial guarantee of the performed electricity transactions determined in the Electricity Trading Rules.

Trading with electricity is subject to the acquisition of an electricity trading licence granted by the EWRC, as provided in Article 39 (1), it. 5 of the Energy Act.

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18 Commission Regulation (EU) No. 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks.

19 Regulation (EC) No. 715/2009 Of The European Parliament And Of The Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005.

20 Energy Strategy of the Republic of Bulgaria until 2020 for reliable, efficient and cleaner energy, adopted by the Bulgarian Parliament on 1 June 2011. A new Energy Strategy is under development until 2030.

The electricity trading licence covers all Wholesale Activities and thus allows the licensed entity: (i) to purchase electricity from power plants or other traders; (ii) to sell to other traders, to end-customers (both industrial and households), or on the power exchange IBEX; and (iii) to export from or import electricity into Bulgaria.

An electricity trading licence which covers all elements of the Wholesale Activities ("**Wholesale Licence**") may be issued to a Local entity registered under the Bulgarian Commercial Act (a Local Branch Office is not sufficient) and/or to an entity with a registration equivalent to the latter under the law of any EU Member State, if the entity possesses the technical and financial capabilities, material and human resources and organisational structure compliant with the mandatory requirements for performance of the Wholesale Activities. Thus, foreign companies registered in a Member State of the EU may directly apply for and hold an electricity Wholesale Licence in Bulgaria. Non-EU Member State companies cannot directly obtain an electricity Wholesale Licence, they need to establish a Local entity or an EU Member State entity for this purpose.

### 3.2 Natural Gas Licensing – Regulatory and Corporate Conditions

In Bulgaria, trading with natural gas within the scope of Wholesale Activities is not subject to licensing. For the moment, there are no energy licensing requirements for natural gas trading in Bulgaria, or for natural gas import to or export from/to Bulgaria.

With regard to natural gas market activities, the following are subject to licensing under Bulgarian law: (i) natural gas transmission; (ii) natural gas distribution; (iii) natural gas storage; (iv) natural gas public supply; and (v) natural gas supply to end-customers connected to the gas distribution network at regulated prices.

Natural gas traders can be Bulgarian entities duly registered as traders under the Commercial Act<sup>21</sup> or other entities duly registered as traders under the national legislation in the respective country (not necessarily EU Member States).

Natural gas traders may enter into<sup>22</sup>:

- natural gas supply contracts with (i) industrial and household end-customers (beyond the scope of regulated retail supply which is subject to licensing); (ii) with other natural gas traders in or outside Bulgaria; (iii) with the natural gas public provider, end-customer suppliers; and (iv) with gas transmission and distribution operators and operators of gas storage facilities (for technological needs);
- transmission/distribution contracts with the gas transmission operator/s and/or gas distribution company/ies;
- gas storage contracts with an operator of a gas storage facility of facility for liquefied natural gas;
- gas balancing contracts.

Natural gas traders may conclude natural gas supply transactions with resident persons of an EU Member State when they are entitled to freely trade in natural gas under the law of such other country, and on the reciprocity principle, when the law of such other country provides for free trade in natural gas for customers on its territory. So far, there are no specific requirements for documents to be provided by the foreign natural gas traders to the regulator EWRC.

21 According to Article 2 of the Commercial Act ("**CA**"), a trader is any natural or legal person engaged in purchasing goods or other things for the purpose of reselling them in their original, processed or finished form. A trader is also considered any person who has established an enterprise which, in accordance with its subject and volume, requires that its affairs be conducted on a commercial basis even if its activity is not indicated explicitly in the CA. The legislation regulates three types of commercial entities: commercial companies (regulated under the CA), among which are LLCs (limited liability companies) and JSCs (joint stock companies); cooperatives and public enterprises. The registration of any commercial company in the Commercial Register is a legal prerequisite for performing commercial activity. Companies exist as of the date of registration in the Commercial Register.

22 Article 4, Paragraph 8 of the Rules for trade with natural gas.

## **4. OBTAINING THE WHOLESALE LICENCE(S)**

### **4.1 Electricity**

An application for the acquisition of a licence is provided in a standard template form established by ERWC and comprises the following information:

- The company name, registered office, unified identification code (“**UIC**”) determined by the Registry Agency, name and unified citizenship number of the person(s), representing the legal person, respectively, the registered data in cases of commercial registration under the legislation of another EU Member State;
- The type of licence to be obtained;
- A proposal for the terms of the licence supported by reasoning; and
- Information on the possession of any other licences for other licensed activities under the Energy Act.

The application should be accompanied by the following documents:

- A certificate of good standing or excerpt from the competent registration authority or copy of the applicant's UIC;
- Declarations, signed by each member of the managing bodies of the applicant, stating that:
  - The respective manager and members of the management bodies of the applicant, and, in case the member is a legal entity, its representatives in the corresponding management body, have not been deprived of the right to carry out trading activities;
  - The respective manager and members of the management bodies of the applicant, and, in case the member is a legal entity, its representatives in the corresponding management body, have not been sentenced by a judgment-at-law for offenses against property or the economy, unless discharged;
  - The applicant is not bankrupt, subject to bankruptcy proceedings and is not in liquidation proceedings;
  - The applicant has not had a licence for the same activity which has been revoked; and
  - If a prior application for the same type of licence under the Energy Act has been rejected, more than 3 (three) months have passed from the entry into force of EWRC's rejection.
- A business plan, for a period of up to 5 (five) years according to the guidelines adopted by EWRC and containing (i) an investment programme; (ii) a production programme; (iii) a mandatory social policy programme; (iv) forecast structure and volume of annual costs in accordance with the classification of expenses specified by EWRC in its guidelines on the format and content of the information, necessary for the purposes of price formation; and (v) forecasted annual financial statements;
- The annual financial statements of the applicant for the last 3 (three) years. If the applicant is recently registered, it must present evidence of sufficient financial resources (i.e. a certificate from the corresponding bank regarding active bank accounts and availability of funds); if the annual financial statement of the applicant is subject to an independent financial audit, the applicant should present the annual report together with the auditor's report;
- Information on the sources of financing of the electricity trading and evidence of the availability of those sources;

- Information about the shareholding structure of the applicant (percentage ratio between partners/shareholders) and copies of the relevant documents (articles of association, court rulings or copy of the shareholders' registry, etc.) evidencing the information;
- Information on the applicant's experience in carrying out the trading activity; if the applicant is a newly incorporated company, evidence about the experience of the partners or shareholders, who exercise control over the newly founded company, should be presented;
- Information about the management and organisational structure of the applicant and the education and qualifications of the management staff of the applicant, as well as data about the number and qualifications of the staff occupied in carrying out the activity subject to licensing;
- Evidence from the persons applying for a licence for electricity trading of the fulfilment of the requirements for a balancing group coordinator, when such activity is requested. Under the EA and the Electricity Trading Rules a balancing group coordinator is a person with an acquired licence for electricity trading, who meets the financial guarantee requirements with reference to each transaction executed by the respective person, the requirements specified in the Electricity Trading Rules and who is registered as an electricity market participant by the electricity system operator ESO; and
- Evidence from the applicant on the fulfilment of the requirements specified in the Electricity Trading Rules and the Electricity Network Access Rules for the financial guaranteeing of the transactions with electricity concluded by the applicant.

The following are specific legal requirements in the Licensing Ordinance for those who apply for an electricity Wholesale Licence (some of them covered by the general conditions), namely:

- Information and evidence on the available material resources, including information and evidence on available office equipment and materials to be used and the data network and software for carrying out the electricity trade by the applicant;
- Evidence on the availability of the technical resources for concluding transactions for electricity trading compliant with the Electricity Trading Rules; such evidence in other similar cases has been letters from the Electrify System Operator confirming that the computer, communication and software systems of the applicant comply with the requirements for electronic exchange of data with the operator;
- Evidence of availability of personnel and their qualifications for carrying out the electricity trade and of their awareness of the electricity market;
- Confirmation of payment of the official administrative fee to EWRC for processing the application; and
- When the application for a licence for electricity trading includes an inquiry for a determination to act as a balancing group coordinator, the application needs to be accompanied with documents evidencing that the applicant meets the requirements for a balancing group coordinator, as well as a draft contract for participation in a balancing group and for taking responsibility for balancing market participants' facilities, separately from the applicant's facilities, when such a contract is required under the Electricity Trading Rules. Such a draft contract should include: (i) the obligations of the balancing group coordinator; (ii) the requirements for the submission of forecast energy load schedules from the members of the balancing group; (iii) periods for performing physical and financial settlement within the balancing group; (iv) provision of information to the members of the balancing group for their participation in the overall group imbalance, including data from the commercial metering devices; billing information; disputes and payments of obligations of the balancing group members; (v) terms and conditions for balancing group coordinator shifting; and (vi) principles for allocation of total imbalance among the separate members of the balancing group.

#### **4.1.1 Time frame for the issuance of the electricity Wholesale Licence**

Within 3 (three) months of submission of an application, EWRC should review it and its administration should issue a report confirming its compliance with the requirements of the Energy Act and the Licensing Ordinance. However, in case EWRC finds the application incomplete, unless additional information is provided within a 7 (seven) day term, the application will not be reviewed and the procedure will be stopped.

The report of the administration is subject to an open session of EWRC to discuss the findings, where interested parties may provide their opinions on the contents of the report. Following the open session EWRC will issue a reasoned decision on granting or refusing a licence for electricity trading. The decision is subject to appeal within 14 (fourteen) days after it is delivered to the applicant.

The average time for the issuance of a Wholesale Licence is approximately 4–5 (four to five) months.

#### **4.1.2 Operational conditions required for the issuance and maintenance of the electricity Wholesale Licence**

##### **4.1.2.1 Personnel**

Applicants are generally required to have an organised company structure and qualified staff with knowledge of the electricity market sufficient for the continuous performance of the licensed activity. Nevertheless, the relevant legislation does not contain any specific requirements as to how many officers licence holders need or what roles these should have. It is at the licence holders' sole discretion and responsibility to ensure that they are able to pursue electricity trading.

##### **4.1.2.2 Premises**

Applicants for a Wholesale Licence do not need to have a permanent office in Bulgaria as long as the applicants are registered under the legislation of an EU Member State and they could provide evidence of premises used for their electricity trading activities.

##### **4.1.2.3 IT systems/assets**

Applicants are required to evidence and have all facilities, including IT systems/assets, necessary for the performance of the Wholesale Activities. However, the provisions of the Energy Act and the Licensing Ordinance do not specify minimum requirements for the purpose of obtaining a Wholesale Licence. It is again the sole responsibility of the licence holders to maintain such IT systems/assets which enable them to pursue the Wholesale Activities and the relating statutory obligations, e.g. reporting obligations towards the ESO, which are to be performed through the ESO's IT platform, access to which requires a certain minimum level of IT system (e.g. Windows XP/Windows 7, Explorer 7). Coordination of the IT system's (software and hardware) infrastructure and compatibility with those of ESO is coordinated with the latter prior to the submission of the application to EWRC.

#### **4.1.3 Financial guarantees**

Pursuant to the Electricity Network Access Rules, an electricity trader should maintain in a special bank account a cash deposit guarantee amounting to 1/24<sup>th</sup> of its annual turnover from trade in Bulgaria, but not less than BGN 150,000 (approximately EUR 76,700), for securing its obligations under electricity trade transactions. The amounts in the special bank account are used to secure the payment of obligations under electricity trade transactions. For the 1<sup>st</sup> (first) year of the licensed activity the guarantee deposit shall be calculated on the basis of the estimated annual turnover pursuant to the business plan attached to the application. The applicant shall present a written confirmation from a bank that the latter undertakes to provide unconditional information access to the bank account upon EWRC's request. Alternatively EWRC may accept a bank guarantee or other security for the same amount (e.g. share pledge), and under the same terms and conditions and identical liquidity, instead of a cash deposit.

In addition to the above guarantee the licensed entity should provide and maintain guarantees for securing the fulfilment of contracts concluded with the network operators for electricity transmission and access to the respective network, namely:

- With the Electricity Transmission System Operator (**ESO**).
  - A bank guarantee or cash deposit for an amount calculated according to the balancing contract based on the estimated traded electricity quantities;
  - A bank guarantee or cash deposit for an amount calculated according to the grid access contract on the basis of the foreseen monthly amount of grid access fees; and
  - A bank guarantee or cash deposit for an amount calculated according to the electricity transmission contract on the basis of the foreseen monthly amount of the transmission fees.

#### **4.1.4 Procedural costs**

The procedural administrative fee for reviewing the application for an electricity Wholesale Licence is BGN 1,000 (approximately EUR 510).

The procedural administrative fees for the acquisition and maintenance of an electricity Wholesale Licence:

- Initial fee for issuance of the electricity Wholesale Licence is BGN 15,000 (approximately EUR 7,670); and
- Annual fee – BGN 2,000 (approximately EUR 1,020) plus 0.055% (zero point zero five five percent) of the annual revenues of the company from the licensed activities according to the last annual financial statement of the company.

The administrative fees are provided in the EWRC Tariff.

#### **4.1.5 Term of the Wholesale Licence**

The term of the electricity Wholesale Licence is limited to 35 (thirty five) years. In the application, the applicant must propose the term of the licence together with an argumentation for the proposed term. However, EWRC at its own discretion may decide a term for the electricity Wholesale Licence different from the one proposed by the applicant, considering the applicant's financial status and the period of utilisation of assets to be used for the licensed activity. Usually EWRC grants extendable Wholesale Licences for 10 (ten) years. The application for extension should be made at least 1 (one) year prior to the expiry of the existing licence.

Upon failure by the licence holder to comply with its mandatory licensing obligations EWRC may withdraw the licence, as an ultimate measure. The electricity Wholesale Licence may also be withdrawn upon the licence holder's request.

### **4.2 Natural Gas**

#### **4.2.1 Annexes to the application for the gas Wholesale Licence**

As specified above, there is no mandatory requirement to acquire any licence including a Wholesale Licence for natural gas trading in Bulgaria.

#### **4.2.2 Procedural rules**

There are no applicable licensing procedural rules, since engaging in natural gas Wholesale Activities is not subject to licensing in Bulgaria.

#### **4.2.3 Operational conditions required for the issuance and maintenance of the gas Wholesale Licence**

There are no mandatory operational conditions required since engaging in natural gas Wholesale Activities is not subject to licensing in Bulgaria.

#### **4.2.4 Financial guarantees**

Pursuant to the Gas Networks and Storage Access Rules, a gas trader should provide a bank guarantee or other form of collateral in the amount of up to 50% (fifty percent) of the monthly sum of the stored natural gas in the storage facility pursuant to the nominated capacity by the trader and the actual regulated price for gas storage, approved by EWRC. The amounts in the special bank account may be used to secure the payment of obligations under gas storage contract by the trader.

Pursuant to the gas transmission and access to the grid contract, a gas trader should secure a credit limit for the fulfilment of its payment obligations therein by providing a cash deposit of a bank guarantee issued in favour of the gas transmission operator Bulgartransgaz. The minimum amount of the credit limit is BGN 5,000 (approximately EUR 2,500). The bank guarantee shall be issued in Bulgarian leva from a bank, established in the European Union with a minimum credit rating "B", according to Standard and Poor's, or equivalent to this classification of other rating companies, in accordance with the template provided in the gas transmission and access to the grid contract. The term of validity of the bank guarantee shall be no less than twelve (12) months upon issuance.

For the purposes of securing a natural gas transaction balancing traders must provide a bank guarantee or a cash deposit in a special bank account to secure its payment obligations under the gas balancing contract with the gas transmission operator. The initial collateral shall be in the amount of minimum 10% (ten percent) of the amount of the monthly gas quantities for the month with the highest gas quantity, pursuant to the yearly programme for transmission services under the contract. This programme shall be consistent with the nominated capacity products by the trader and shall be updated whenever there are changes therein. The gas transmission operator is entitled to request an update of the programme in case the quantities therein differ by more than 10% (ten percent) from the quantities during the entire usage of the nominated capacity products on a daily basis. The collateral amount shall be determined based on the natural gas regulated price, approved by EWRC to the public provider and the clients connected to the gas transmission network, save for the access to the grid and transmission price at the moment of submission of the collateral to the gas transmission operator. A bank guarantee template is provided as an integral part of the gas balancing contract.

In addition, according to the gas balancing contract, gas traders trading gas for balancing at the virtual trading point (VTP) are required to provide collateral depending on the daily trading quantities traded at this virtual trading point. For each active day of the trader at the VTP, the provided collateral shall cover at least the obligations of the specified trader to its balancer for any imbalances incurred as from the beginning of the respective month as well as the amount of the traded gas quantities for the specified gas day. The collateral amount shall be determined based on the natural gas regulated price, approved by EWRC to the public provider and the clients connected to the gas transmission network, save for the access to the grid and transmission price for the specified gas day.

## **5. DIFFERENT RULES APPLICABLE FOR SUPPLYING INDUSTRIAL END-CUSTOMERS**

Under Bulgarian legislation there is no different regime for the supply of electricity or natural gas to industrial end-customers.

The supply of natural gas to end-customers by a trader in the free market (i.e. not by an end-customer supplier or by the public provider) does not require any licences.

## 6. OBTAINING THE ADDITIONAL LICENCE(S)

Once an entity has acquired a Wholesale Licence, no Additional Licences are required to perform electricity trading in Bulgaria. Please see Point 4.1 above for the licensing requirements.

## 7. SETTING UP A LOCAL ENTITY

As described above, foreign companies registered in an EU Member State are entitled to directly apply for and hold electricity Wholesale Licences without the need for a Local entity in Bulgaria if they meet the regulatory requirements. Entities from third countries are required to establish a Local entity in Bulgaria. The most appropriate form is a limited liability company or a joint stock company. The less burdensome one is a limited liability company (*OOD* or *EOOD* if only one shareholder), as the legal rules for *OODs* are simple: minimum registered capital of only EUR 1, simple governing body structure, lower registration fees, etc.

With respect to gas Wholesale Activities, there are no limitations to the country of commercial registration of the entity. Foreign entities, intending to participate in the Bulgarian gas market and trade natural gas with other traders and/or supply end-customers are entitled to perform such activities to the extent that they have concluded the contracts required under the applicable legislation in the natural gas sector. However, there will be tax applications for such transactions.

### 7.1 Most Important Legal Rules and Operational Requirements

	JOINT STOCK COMPANY/AD	LLC/OOD/EOOD
<b>MINIMUM REGISTERED CAPITAL</b>	BGN 50,000 (approximately EUR 25,000); fully subscribed capital; at least 25% (twenty five percent) of the emission value of each share must be paid up before registration.	BGN 2 (EUR 1); fully subscribed and paid up before registration.
<b>OWNER OF THE CAPITAL REGISTRATION</b>	Publicly announced in the Commercial Register in most cases.	Publicly announced in the Commercial Register.
<b>LIABILITY OF THE OWNER</b>	Limited to the shares subscribed.	Limited to the shares in the capital.
<b>VALUE OF SHARES</b>	Emission value may differ from the nominal value of the shares. Nominal value of all shares issued by the company must be the same.	No emission value, only nominal value (the entire value of the owner's(s') contribution counts against the registered capital). Nominal value of the shares may differ.
<b>TYPE OF SHARES</b>	Registered shares (that provide the name of their first holder). Bearer shares (shares that do not provide the name of their first holder).	The capital is divided into shares which are not securities (negotiable instruments) but simply participation interest subscribed by the owner(s) of the capital.
<b>WAY OF TRANSFER OF THE SHARES</b>	Bearer shares are transferred by way of their delivery. Unless additional restrictions are provided in the company's Incorporation Deed the registered shares are transferred by way of endorsement in writing on the back of the share or on a piece of paper attached to the share. The transfer of registered shares must be registered in the Shareholders' Book.	Shares are transferred by way of a written agreement, which should be signed before a notary public. Each transfer is subject to a mandatory entry in the Commercial Register.

	JOINT STOCK COMPANY/AD	LLC/OOD/EODD
<b>TRANSFER-ABILITY OF SHARES TO THIRD PARTIES</b>	Free, unless otherwise agreed in the Incorporation Deed. The transfer of registered shares must be registered in the Shareholders' Book in order to be effective vis-à-vis the company.	In case the shares are transferred to a third party a resolution of the owner(s) of the capital should be adopted. The minutes of the general meeting/the resolution of the sole owner is subject to registration in the Commercial Register.
<b>PLEDGE ON SHARES</b>	<p>The bearer shares should be deposited in the possession of the pledgee. No special form required.</p> <p>The registered shares should be endorsed and deposited in the possession of the pledgee. The pledge must be registered in the Shareholders' Book in order to be effective vis-à-vis the company. The required form is endorsement in writing.</p> <p>The voting rights on the pledged shares are exercised by the owner(s) of the capital unless otherwise agreed in the pledge agreement.</p>	<p>The pledge should be entered into:</p> <ul style="list-style-type: none"> <li>the Commercial Register under the company's file; and</li> <li>the Registry of Special Pledges with a notarised consent of the pledger for registration attached to the request</li> </ul> <p>The pledge should be established with a contract in writing with the notarised signatures of the parties.</p>
<b>GOVERNING BODY STRUCTURE</b>	<p>The owner(s) of the capital decide(s) on all important issues regarding the company (amendment and supplement of the Incorporation Deed; increase and decrease of the capital; transformation and winding-up of the company; appointment and release of the Board of Directors/Supervisory Board; etc.). Minutes of the general meeting of the shareholders/resolution of the sole owner of the capital are required at least once per year.</p> <p><b>One-tier management system:</b> Board of directors – consists of minimum 3 directors but not more than 9 directors appointed by the general meeting/sole owner of the capital. It manages and represents the company vis-à-vis third parties. A director may be an individual or a legal entity.</p> <p><b>Two-tier management system:</b> Supervisory board – consists of minimum 3 members but not more than 7, appointed by the general meeting/sole owner of the capital. It oversees the activity of the management board. A Member of the supervisory board may be an individual or a legal entity.</p> <p>Management board – consists of minimum 3 members but not more than 9 members, appointed by the supervisory board. It manages and represents the company. A member of the management board may be an individual or a legal entity.</p> <p>Executive Director(s) – one or more individuals/legal entities. They must be Directors in the Board of Directors (in the one-tier system), or Members of the Management board (in the two-tier system). They perform the day-to-day management and legal representation of the company.</p>	<p>The owner(s) of the capital decide(s) on all important issues regarding the company (amendment and supplement of the Incorporation Deed; increase and decrease of the capital; transformation and winding-up of the company; appointment or release of Managing Directors; etc.). Minutes of the general meeting of the shareholders/resolution of the sole owner of the capital are required at least once per year.</p> <p>Managing Director, one or more individuals appointed by the general meeting/sole owner of the capital. He/she performs the day-to-day management and legal representation of the company before third parties.</p>

	JOINT STOCK COMPANY/AD	LLC/OOD/EOOD
<b>DISTRIBUTION OF PROFIT</b>	Mandatory specific preconditions: (i) audit of the annual financial statements; (ii) approval of the statements by the owner(s) of the capital; and (iii) minimum amount of the net assets of the company.	Mandatory specific preconditions: (i) audit of the annual financial statements (only in certain cases); and (ii) approval of the statements by the owner(s) of the capital.
<b>CAPITAL MAINTENANCE</b>	The public prosecutor may request the court to initiate compulsory liquidation of a JSC when the net asset of the company value falls below the amount of registered capital and within an year the owner(s) of the capital fail(s) to resolve on: capital decrease; company transformation or winding-up of the company.	The managing director must convene the owner(s) of the capital: if the losses of the company exceed 25% (twenty five percent) the amount of registered capital; and if the net asset of the company falls below the amount of registered capital.
<b>PUBLIC LISTING</b>	Company may go public.	Company may not go public.

## 7.2 Procedural Rules

### 7.2.1 List of documents for incorporation

AD	OOD/EOOD
Incorporation Deed	Incorporation Deed
Minutes of general assembly/resolution of the sole owner for the incorporation	Minutes of the general meeting/resolution of the sole owner
Evidence of the existence of the owner(s) of the capital	An up-to-date excerpt from the trade register where the owner(s) is/are registered
Articles of association (by-laws) of the owner(s) of the capital	Articles of association (by-laws) of the owner(s)
Specimen signature(s) of the appointed Executive Director(s)	Specimen signature(s) of the appointed Managing Director(s)
Management contract(s) <sup>23</sup>	Management contract(s) <sup>24</sup>
Evidence of payment of the minimum capital	Evidence of payment of the minimum capital
Decisions of the managing body/ies of the owner(s) on the incorporation	Power of attorney (optional)
Declarations under Article 160 of the Commercial Act for lack of insolvency of the owner(s)	Declaration under Articles 141 and 142 of the Commercial Act for non-compete activity of the appointed Managing Director(s) and that the Managing Director(s) has/have not been a member of the managing or controlling body of a company wound-up for bankruptcy and has/have left unsatisfied creditors.

23 Not needed for filing with the Commercial Register.

24 Not needed for filing with the Commercial Register.

AD	OOD/EOOD
Consent and declaration of each member of the board under Articles 234 and 237 of the Commercial Act confirming lack of involvement in any insolvent company with unsatisfied creditors.	Declaration under Article 13 (4) of the Commercial Register Act that the information presented before the Commercial Register is correct.
Minutes of meeting of the Board of Directors	Standard application form (A4) submitted to the Commercial Register
Passports of Managing Directors	Copy of passport(s) of Managing Director(s)
Application to the Registry Agency for registration of the AD	

### 7.2.2 Time frame for the establishment of the Local entity

A company is considered incorporated as of the date of its entry in the Commercial Register. The current practice shows that this takes approximately 5 (five) business days following the online filing of the complete set of documents in the Commercial Register.

### 7.2.3 Registration and filing costs for establishment of Local entity

#### Fixed costs (BGN)

FEE	AD	OOD/EOOD
Fee for registration	360/180*	110/55*
Fee for preparation of a stamp of the Company	50	50
Total	410/230*	160/155*

\* Applicable fees when application before the Commercial Register is made electronically

#### Variable costs (BGN)

FEE	AMOUNT
Fee for certified translation of the documents into Bulgarian (per page)	16
Fee for legalisation of the documents at the Consular Department of the Bulgarian Ministry of Foreign Affairs (per document)	20

## 8. TAXES

Holding an electricity Wholesale Licence and/or pursuing electricity/natural gas Wholesale Activities without any form of permanent establishment and fixed assets (equipment and personnel) in Bulgaria will, most likely, not create a taxable presence in Bulgaria and thus the holder of the electricity Wholesale Licence/natural gas trader will not be liable for corporate income tax.

There are no additional direct taxes applicable to the performance of natural gas trading in Bulgaria.

Due to the possibility for foreign persons to trade with electricity and natural gas in Bulgaria, there could be Bulgarian VAT implications.

Each trader supplying electricity or natural gas to end-customers has to register under the Excise Duties and Tax Warehouses Act for excise duties collecting and payment purposes. Currently, the excise rate for electricity for industrial purposes is BGN/MWh 2 (approximately EUR 1) and for natural gas BGN/GJ 0.60 (approximately EUR 0.30) per 1 GJ.

## **9. CONTRACTUAL RELATIONS**

### **9.1 Electricity**

#### **9.1.1 Access to the transmission grid and system services contracts**

For the purposes of importing and/or exporting electricity to/from Bulgaria, or concluding electricity transactions on behalf of and at the cost of end-customers, traders of electricity must enter into a contract with ESO for access to the grid.

#### **9.1.2 Electricity transmission contract**

For the purposes of importing and/or exporting electricity to/from Bulgaria, or concluding electricity transactions on behalf of and at the cost of end-customers or other traders, traders of electricity must enter into a contract with ESO for the transmission of electricity at high voltage.

#### **9.1.3 Access to the distribution grid and electricity distribution contracts**

For the purposes of concluding electricity transactions with end-customers connected to the distribution networks, traders of electricity must enter into a contract for access to the grid and the distribution of electricity contracts with the local DSOs for the use of the grid and the transportation of electricity at middle and low voltage.

#### **9.1.4 Balance group (membership) contract**

Once a Wholesale Licence has been granted by EWRC, in order to start performing Wholesale Activities for electricity, the trader has to either set up its own balance group or join an existing one. Only those Wholesale Licence holders who have been admitted by WERC as balance group coordinators and such responsibilities have been included in the Wholesale Licence may set up their own balance group. In this case, if the trader decides to set up its own balance group, it must enter into a balance group coordinator contract with ESO, for the settlement of the price of balancing energy and for scheduling the balance group. If the trader decides to join an existing balance group it must enter into a balance group membership agreement with the balance group coordinator.

#### **9.1.5 Combined contract**

The sale of electricity in combination with all or some of the services such as “access to the grid”, “transmission of electricity”, “balancing responsibility”, “green supplements and high efficiency combined cycle generation supplements” is provided by the trader of electricity to the end-customers under a combined contract.

#### **9.1.6 Framework agreement**

The rendering of network services to consumers without grid access contracts and transmission with the transmission system owner may be performed by traders under framework agreements to be concluded between the latter and the respective electricity network operator.

## 9.1.7 Other contracts

When registering as a balancing group coordinator, the trader must enter into a contract with ESO for opening and maintaining a special account for the purpose of securing the obligations related to the settlement of the imbalances of the balancing group coordinator and supplier of balancing electricity.

As coordinator of a balancing group a trader should enter into a contract with ESO for meter reading, validating and providing of data for measured quantities of electricity.

## 9.1.8 Contracts with IBEX

For the purposes of trading electricity at IBEX the traders must conclude specific agreements for the two currently available marketplaces (platforms).

In order to be admitted to participate at the **Day-Ahead Market ("DAM")**, electricity traders shall file with the IBEX a Submission for registration in the form provided on their Web site<sup>25</sup>, to which shall be attached a number of documents, including a declaration for the estimated electricity quantity for purchase and/or sale. Once the Submission for registration is reviewed and confirmed by IBEX, the trader will receive a draft **Agreement for Participation in the organised power exchange for electricity** which should be further signed between the parties. The Agreement, although available also in English, shall be concluded in Bulgarian. It provides, among others, for the obligation for the trader to provide a Performance guarantee in the form of either a bank guarantee (in the template provided by IBEX) or in the form of a deposit of an amount on the bank account of IBEX. The amount of the Performance guarantee depends on the volumes of traded electricity and its minimal amount is BGN 50,000 (approximately EUR 25,565). The amount of the Performance guarantee is to be regularly adjusted depending on the traded volumes of electricity. Further, the trader's personnel will need to undergo short introduction trainings to the IBEX platform to facilitate the operations and communication with the IBEX. Once the Agreement is executed, the training of personnel is performed and the Performance guarantee is provided, the trader may be registered as a participant and start trading.

A similar procedure shall be followed for the participation on the **Centralised market for bilateral contracts ("CMBC")**. For this purpose, apart from the Submission for registration and the trainings, traders must conclude with IBEX (i) an **Agreement for participation on a centralised market for electricity trading through bilateral contracts**; as well as (ii) a **Standard Contract for Sale/Purchase of Electricity**. Both agreements contain obligations to provide performance guarantees in the form of either a bank guarantee (in the template provided by IBEX) or in the form of a deposit of an amount on the bank account of IBEX.

In addition to the market participation agreements, traders may also conclude with IBEX agreements for the provision of data on trading, as well as agreements for the reporting of data under Article 8 of Regulation (EC) No. 1227/2011 for the purposes of REMIT compliance.

## 9.2 Natural Gas

### 9.2.1 Network usage agreements with the transmission system operator or distribution system operators

In order to conclude natural gas supply or gas storage contracts traders enter into an agreement for grid access and transmission services with the operator of the transmission system and the distribution system, as the case might be.

The standard forms of contract and/or general terms are part of the terms of business of the respective system operator, as approved by EWRC. Such sample agreements are provided at the internet pages of the transmission operator or the respective distribution company.

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<sup>25</sup> Available at the following link: [http://www.ibex.bg/bin/documents/31\\_file.xls](http://www.ibex.bg/bin/documents/31_file.xls)

If traders supply end-customers, the end-customers may require the trader to handle their network usage agreements with the respective network system operators (transmission or distribution) together with their supply contracts.

### 9.2.2 Agreement for balancing services

Balancing is managed by “Bulgartransgaz” EAD on the basis of agreements with traders, which are mandatory under the Natural Gas Trading Rules and the Gas Market Balancing Rules. Those require the natural gas traders to conclude contracts with the transmission system operator to balance their balancing status and minimise their imbalances on a daily basis.

### 9.2.3 Agreement for VTP usage

The transmission network users and the natural gas traders are entitled to purchase and sell natural gas at the VTP for the respective balancing zone in order to minimise their imbalances in their balancing portfolios. According to the Gas Market Balancing Rules, the VTP usage agreement is concluded by the gas transmission operator and the network user, using transmission capacity or other registered traders for using VTP. This agreement provides for the traders to trade natural gas virtually as registered VTP users and to submit notifications to the transmission operator for the change of ownership of the natural gas traded at the VTP. The minimum content of the VTP usage agreements is provided in the Gas Market Balancing Rules and shall consist of, among others: (i) the way of determination of the natural gas prices of the transactions performed at the VTP; and (ii) the VTP transactions information exchange terms and conditions. The transmission operator is obliged to publish on its Web site at least the list of registered participants at the VTP point along with their identification number, the registration date and status and the total number of gas balancing transactions for the respective month and the volume of the physically purchased and sold natural gas for balancing at the VTP.

### 9.2.4 Capacity booking

In line with the implementation of the obligations of Regulation (EU) No. 984/2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems, as from 1 October 2016 new capacity allocation procedures at entry and exit points of Bulgartransgaz EAD were introduced to the network users and traders, namely:

- regarding the capacity products starting 1 January, the allocation of the available capacity for transmission at the interconnection points (IPs) of Bulgartransgaz EAD gas transmission networks will be carried out via the Regional Booking Platform (RBP) in line with the requirements of Regulation (EU) No. 984/2013;
- If auctions are made at handover and acceptance points prior to publishing the access price (capacity price) for these points, the RBP auctions will start for them at a base price 0 BGN/kWh/d and a bidding step specified by Bulgartransgaz EAD and published on the RBP. All other transport tariffs adopted by EWRC at the time of transport contract implementation shall remain due;
- Firm and interruptible capacity products (yearly, quarterly and monthly, daily) at the IPs for the next gas year (1 January–1 October) will be announced at an auction via the RBP. In addition, information on the start of the daily product auctions will also be published;
- If the TSOs of the neighbouring Member States announce bundled capacity products, when announcing an auction on the platform the firm capacity products announced by Bulgartransgaz EAD shall undergo a capacity bundling procedure. When booking a bundled capacity, the user of the RBP shall get entry and exit capacity on both sides of the IP at the same time;
- If there is no possibility to ensure the bundling of the firm capacity products on the RBP, they will be offered as unbundled capacity products (ensuring capacity at the relevant IP only in Bulgartransgaz EAD gas transmission network).

The traders are required to conclude a network user membership agreement for the usage of the capacity booking platform with RBP in order to use standard and non-standard bundled and unbundled capacity products at entry and exit points as listed on RBP's official Web site (<https://rbp.eu>). In addition, if they want to do business on the Regional Booking Platform, they shall register online at the following address: <https://rbp.eu/user/register>. Network users that are interested in bundled or unbundled products on the Greek side of IP Kulata/Sidirokastro, are also required to conclude an additional agreement with RBP due to specific requirements of the Greek transmission operator DESFA.

The rules for booking of UGS Chiren storage capacity are regulated by the Rules For Access To Chiren Underground Gas Storage, adopted by Bulgartransgaz's Decision under item 4.1 of Protocol No. 120/28.03.2012 of the Board of Directors – those are available at <https://bulgartransgaz.biz/en/pages/service-conditions-85.html>. Pursuant to these rules, the traders are also entitled to transfer the booked capacity to another storage facility user.

### **9.2.5 Gas Sale contracts**

The Gas Trading Rules state that natural gas sale contracts concluded by gas traders must be in writing and contain as a minimum: (i) subject, rights and obligations of the parties; (ii) a programme containing information on the quantities of natural gas contracted – on a quarterly, monthly and daily basis; (iii) the terms and conditions for delivery with the relevant quantities and quality parameters, i.e. delivery point and metering; (iv) payment terms and conditions; (v) sanctions; (vi) financial guarantees by the client for the fulfilment of its contractual obligations; and (vii) the conditions for the unilateral cancellation of the contract by the client without any additional fees and/or sanctions.

## **10. REPORTING OBLIGATIONS**

Further to the provisions of the Bulgarian Energy Act and the Licensing Ordinance, in order to allow EWRC to perform its regulatory tasks, licence holders are required to provide data to EWRC on a regular basis and occasionally at EWRC's request.

Licence holders are required to submit annual reports to EWRC by 31 March each year. The annual report must comprise information on the fulfilment of activities under the business plan and on concluded contracts.

Upon an explicit request from EWRC, traders should provide information related to supply (e.g. active energy and availability, proposed prices for trade of electricity or natural gas, activities related to the fulfilment of contracts for the sale of electricity or gas, relations with customers – quality of service, security and reliability of supplies, contracts concluded with the balancing group members). The annual accounts must also be submitted in paper form.

In addition, all companies holding licences under the Energy Act have obligations to file quarterly, half-yearly and yearly reports under the Public Offering of Securities Act. In particular, they are under obligation to file detailed activity and financial reports, prepared according to specific templates and submitted via an online portal, maintained by the Financial Services Commission.

Electricity traders also have a reporting obligation under REMIT and MiFID II.



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CROATIA

## **1. RELEVANT LAWS AND REGULATIONS**

The most important laws regarding the Electricity and Gas Trading Licences are:

- Energy Act (*Zakon o energiji*, Official Gazette Nos. 120/12, 14/14, 95/15, 102/15);
- Act on the Regulation of Energy Activities (*Zakon o regulaciji energetske djelatnosti*, Official Gazette No. 120/12);
- Electricity Market Act (*Zakon o tržištu električne energije*, Official Gazette Nos. 22/13, 95/15, 102/15);
- Gas Market Act (*Zakon o tržištu plina*, Official Gazette Nos. 28/13, 14/14, 16/17);
- Rules on Electricity Market (*Pravila organiziranja tržišta električne energije*, Official Gazette Nos. 121/15, 48/16);
- Rules of the Gas Market (*Pravilnik o organizaciji tržišta prirodnog plina*, Official Gazette Nos. 126/10, 128/11, 88/12, 29/13);
- Rules on the Organisation of the Gas Market (*Pravila o organizaciji tržišta plina*);
- Statute of HERA (*Statut Hrvatske energetske regulatorne agencije*, Official Gazette Nos. 99/07, 137/08);
- Ordinance on permits for performance of energy related activities (*Pravilnik o dozvolama za obavljanje energetske djelatnosti*, Official Gazette Nos. 88/15, 114/15);
- Regulation on period for which an energy related permit is issued (*Uredba o razdoblju za koje se izdaje dozvola za obavljanje energetske djelatnosti*, Official Gazette Nos. 50/09, 105/09); and
- Decision on fees for regulating energy activities (*Odluka o visini naknada za obavljanje poslova regulacije energetske djelatnosti*, Official Gazette Nos. 155/08, 50/09, 103/09, 21/12).

## **2. ORGANISATION OF ELECTRICITY MARKET AND GAS MARKET**

In late 2012 and early 2013, the Croatian Parliament passed the Energy Act and the Act on the Regulation of Energy Activities, followed by the Electricity Market Act and the Gas Market Act. With these legislative changes, Croatia has fully harmonised its legislation with the EU's Third Energy Package.

Legislative efforts continued in the following years with the aim of further aligning the Croatian electricity market legislation with the European one, including, *inter alia*, protection of vulnerable customers, supervision and reporting in wholesale electricity markets, change of suppliers in electricity markets, the introduction of an electricity market exchange (Croatian Power Exchange), and general liberalisation of the electricity market, including electricity trading.

In 2017, the newly passed Gas Market Act brought about further changes in the liberalisation of the Croatian gas market, including:

- the conducting of a tender for selection of the supplier on the wholesale gas market who will be required to sell gas to public service suppliers under regulated terms;
- capped prices for public service supply of households;

- terminating the obligation of the public service suppliers to primarily purchase gas from gas producers or gas wholesale suppliers (for public service supply of households). Public service suppliers are now free to purchase gas directly from other suppliers, on an organised market or from imports; and
- terminating the obligation for gas suppliers to primarily offer their entire produced volumes to domestic suppliers.

In the Croatian energy market, the responsibility for tariff and price determination lies with the Croatian Energy Regulatory Agency ("**HERA**"). HERA develops the appropriate methodology and sets the tariffs for items on the basis of proposals made by undertakings, with the exception of the tariff system for the generation of renewable and cogeneration electrical and/or heat energy, which is set by the executive branch of the Government. Tariffs should encourage energy efficiency, consumption management and increased consumption of cogeneration and renewable energy.

According to the Energy Act, the energy price for end-customers consists of three components: (i) a freely contracted component; (ii) a regulated component (regulated by the tariff system); and (iii) other costs and fees (such as contributions for energy market organisation).

There is only one single market for electricity and for gas trading respectively in Croatia and Hrvatski operater tržišta energije d.o.o. ("**HROTE**") has the main responsibility for organising these markets.

The Ministry of Environment and Energy supervises the implementation of energy legislation.

## 2.1 Unbundling

Croatia undertook to unbundle electricity transmission from electricity generation and electricity supply. Three electricity unbundling models were available: ownership unbundling, independent system operator (ISO), or independent transmission operator (ITO). In this particular case, the ITO model was chosen.

HEP d.d. transferred the electricity transmission system to Hrvatski operater prijenosnog sustava d.o.o. ("**CTSO**") and finalised the unbundling process on 22 February 2016. On that date HERA issued a certificate to CTSO verifying its status as an independent transmission operator while prescribing four conditions that CTSO must subsequently fulfil. Up to the present day CTSO has fulfilled most of the conditions and gained the positive opinion of HERA on its progress in meeting the set out conditions. It is to be expected that, in the absence of major surprises, CTSO will meet all of the conditions by the end of 2018.

HEP d.d. also unbundled its distribution and supply businesses which were, before the unbundling, both in the ownership of HEP – Operator distribucijskog sustava d.o.o. ("**HEP-DSO**"). In order to achieve this, HEP d.d. founded a new unit, HEP Elektra, which is now in charge of the electricity supply, while HEP-DSO remains in charge of the electricity distribution.

The same unbundling models also apply to the Croatian gas transmission operator Plinacro d.o.o. Plinacro d.o.o. was established in 2001 as part of INA's restructuring, during which INA's ownership in the transmission system and its operations was spun off to Plinacro d.o.o. Plinacro d.o.o. is currently owned by the Republic of Croatia and qualifies as a transmission system operator with fully separated ownership. The process of certification for Plinacro d.o.o. is currently ongoing.

## 2.2 Electricity Market

The market participants in the Croatian electricity market are producers, suppliers, traders, the Croatian Power Exchange, and eligible customers. Each producer, supplier or trader must have a Wholesale Licence or

other relevant licence issued by HERA. The organisation of the electricity market, electricity transmission and distribution are regulated activities performed as public services:

- HROTE is responsible for the organisation of the electricity market;
- CTSO is responsible for electricity transmission, maintenance, development and construction of the transmission system, and power system control;
- Croatian Power Exchange, co-owned by HROTE and CTSO, acts as a central clearing party between the buyers and the sellers of electricity; and
- HEP-DSO is responsible for electricity distribution, maintenance, development and construction of the distribution system.

In order to provide a central location for trading electricity to market participants in a safe, reliable and transparent way, Croatian Power Exchange Ltd. ("**CROPEX**") was established in May 2014. CROPEX acts as a Central Counter Party between sellers and buyers of electricity and takes the risks of buying and selling electricity for all day-ahead and intraday trades concluded on the trading platform. CROPEX is equally owned by HROTE and CTSO.

Each producer, supplier or trader must have a Wholesale Licence or other relevant licence issued by HERA. The following permits issued by HERA are currently in place: generation – 48; transmission – 1; distribution – 1; supply – 18; and trade – 32.

### 2.3 Natural Gas Market

Gas trading is based on the Rules of the Gas Market and HROTE's Rules on the Organisation of the Gas Market. The Rules of the Gas Market include rules on balance groups, the procedure for reserving and allocating gas system capacities, rules on trading capacities and on the gas balancing system, rules on the use of operating reserves and on the procedure for switching gas suppliers and other rules concerning the third-party access regime.

Each participant in the gas market must be a member of a balance group. The interested party may join one of the already existing balance groups or start a new balance group. Every balance group must have a group leader. The balance group leaders enter into agreements with HROTE to regulate the balance group's payment obligations.

The participants in the gas market are gas producers, system operators, suppliers, gas traders, customers, and the market operator.

The main responsibilities of HROTE on the gas market include, among others:

- Organisation of the gas market in accordance with the Rules of the Gas Market;
- Keeping a register of the parties responsible for balancing (currently 17 registered entities);
- Organising and managing the trading platform; and
- Organising the balancing of the energy market.

Further, a trade platform has been established which enables trading of all balance group managers and the transport system operator with the purpose of balancing the transport system in accordance with the requirements of the Commission Regulation (EU) No. 312/2014 of 26 March 2014 on the establishment of network rules for the balancing of gas transport networks. HROTE's Rules on the Organisation of the Gas Market include rules of

the trading platform and the virtual trading point, organisation of balance groups, and the contractual relations between HROTE, the balance group leaders and the transport system operators.

Each producer, supplier or trader must have a Wholesale Licence or other relevant licence issued by HERA. The following permits issued by HERA are currently in place: generation – 1; transmission – 1; distribution – 35; supply – 54; storage – 1; and trade – 8.

### 3. CONDITIONS FOR APPLYING FOR ELECTRICITY AND NATURAL GAS WHOLESALE LICENCE(S)

#### 3.1 Electricity Licensing – Regulatory and Corporate Conditions

Electricity trading is subject to licensing in Croatia.

Before beginning of trading, a licence for carrying out energy activities (electricity trading) needs to be obtained. This licence covers all wholesale activities ("**Wholesale Licence**"); there are no other licences required (e.g. for the cross-border export/import of electricity). HERA is the licensing authority.

Only a Local Corporation or a natural person registered as an individual trader may apply for a Wholesale Licence. However, if a foreign entity is set up in the EU or the European Energy Community (including Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia), it may apply for and hold a Wholesale Licence directly, provided that it has a branch office registered in Croatia and meets the financial, technical and staffing requirements set out by the Ordinance on permits for performance of energy related activities.

There are no restrictions on the ownership of a Local Corporation by a non-Croatian company. A Local Corporation can be established by a non-EU and non-EEA company in order to successfully obtain a Wholesale Licence.

We generally propose establishing a Local Corporation in the form of a limited liability company (*d.o.o.*) as the incorporation and operation of a limited liability company is simpler and less costly than the incorporation and operation of a joint stock company (*d.d.*).

#### 3.2 Natural Gas Licensing – Regulatory and Corporate Conditions

Gas trading is subject to licensing in Croatia.

A licence for carrying out energy activities – natural gas trading ("**Wholesale Licence**") needs to be obtained. This Wholesale Licence covers all wholesale activities, and there are no other licences required (e.g. for the cross-border export/import of gas). HERA is the licensing authority.

A Local Corporation or a natural person registered as an individual trader may apply for a Wholesale Licence. However, if a foreign entity is set up in the EU or the European Energy Community (including Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia), it may apply for and hold a Wholesale Licence directly, provided that it has a branch office registered in Croatia and meets the financial, technical and staffing requirements set out by the Ordinance on permits for performance of energy related activities. There are no restrictions on the ownership of a Local Corporation by a non-Croatian company. A Local Corporation can be established by a non-EU and non-EEA company in order to successfully obtain a Wholesale Licence.

We generally propose establishing a Local Corporation in the form of a limited liability company (*d.o.o.*) as the incorporation and operation of a limited liability company is simpler and less costly than the incorporation and operation of a joint stock company (*d.d.*).

Finally we note that the same entity can obtain a Wholesale Licence for electricity and natural gas trading. Separate applications must be filed with HERA, although the procedural requirements regarding the “second” application are somewhat simpler, as its review undergoes less scrutiny by the regulator, and only copies of the documents submitted with the first application need to be provided (if these are still valid).

## **4. OBTAINING THE WHOLESALE LICENCE(S)**

### **4.1 Electricity**

#### **4.1.1 Annexes to the application for the electricity Wholesale Licence**

An applicant for HERA's electricity Wholesale Licence must submit, along with the formal application, evidence that it satisfies the following criteria:

- The applicant is registered for the performance of electricity trading (as established by an excerpt from the commercial court registry or similar evidence);
- The applicant possesses the necessary technical qualifications, including:
  - evidence of ownership of office premises or the right to use office premises based on a lease agreement or other agreement entered into with the owner of the premises;
  - any contracts or agreements with other entities which may have an impact on the technical qualifications of the applicant, if available;
  - a 3 (three) year development and investment plan for the performance of electricity trading;
- The applicant employs sufficient local employees qualified for the performance of electricity trading, including:
  - a list of employees with information on their qualifications, positions held and job descriptions;
  - the organisational scheme of the applicant;
  - any contracts or agreements with other entities which may have an impact on the professional qualifications of the applicant, if available;
- The applicant has sufficient finances for the performance of electricity trading (as established by BON-1 and BON-2 forms showing that the applicant has had on average at least HRK 20,000 (approximately EUR 2,750) in cash on its bank account during the month preceding the application);
- The applicant's management board members or other corporate officers have not been convicted with final effect of a commercial business-related crime (e.g. crimes against the payment system or business administration) within the previous 5 (five) years; and
- The applicant submits certification that the licence fee has been paid.

#### **4.1.2 Procedural rules**

The application procedure is a paper-based one. The entire procedure can be performed via attorney representation pursuant to a power of attorney.

The legal time frame is 30 (thirty) days following the submission of a complete application. The time frame may be extended to 60 (sixty) days if HERA deems it necessary to verify the information included in the documentation and/or to inspect the buildings and equipment of the applicant. However, according to the general practice of HERA, Wholesale Licences are usually issued within the 30 (thirty)-day period following the submission of the application, and verifications and inspections are almost never carried out.

#### **4.1.3 Operational conditions required for the issuance and maintenance of the electricity Wholesale Licence**

##### **4.1.3.1 Premises**

Based on unofficial information from HERA, in practice it is sufficient to have a business seat registered with a law firm or other company providing such services. In other words, in practice HERA does not conduct inspections of business premises, and an applicant for a Wholesale Licence does not have to have actual office space in Croatia.

Considering that in practice the holder of a Wholesale Licence does not have to have an actual office space in Croatia, it is technically possible to work remotely from abroad. However, if such a remote operation model includes work performed by local employees working under the terms and conditions of Croatian labour law, local labour law requirements should be observed (for example, to work from home).

##### **4.1.3.2 IT system/assets**

There are no special requirements concerning IT systems or assets.

##### **4.1.4 Financial guarantee**

The applicant must submit BON-1 and BON-2 forms showing that the applicant has had on average at least HRK 20,000 (approximately EUR 2,750) in cash on its bank account during the month preceding the application.

##### **4.1.5 Procedural costs**

The procedural costs of an application for a Wholesale Licence are HRK 10,000 (approximately EUR 1,400) plus VAT. The fee must be paid before submitting the application to HERA.

In addition, energy market participants pay an annual fee to HERA in the amount of 0.05% (zero point zero five percent) of their total annual revenue from the sale of goods and/or services in the preceding year within the scope of the electricity trading for which they hold a Wholesale Licence issued by HERA.

##### **4.1.6 Term of the Wholesale Licence**

The term/expiry period of a Wholesale Licence may range from 3–15 (three to fifteen) years. The law does not specify the criteria for determining the term of the licence in each particular case, and the determination is within HERA's discretionary power. Pursuant to unofficial information from HERA, it is most likely that a newcomer to the Croatian market will receive a Wholesale Licence only for the shortest term but that every extension of the Wholesale Licence will generally result in a longer term/expiry period being granted.

There are no other requirements for a Wholesale Licence holder (e.g. regular notifications to HERA, etc.) with respect to licence maintenance. In general, the holder of the Wholesale Licence must continuously maintain a certain level of technical, professional and financial qualifications and comply with the other conditions on the basis of which the Wholesale Licence has been granted.

## **4.2 Natural Gas**

### **4.2.1 Annexes to the application for the gas Wholesale Licence**

An applicant for HERA's Wholesale Licence must submit, along with the formal application, evidence that it satisfies the following criteria:

- The applicant is registered for the performance of natural gas trading (as established by an excerpt from the commercial court registry or similar evidence);
- The applicant possesses the necessary technical qualifications, including:
  - evidence of ownership of office premises or the right to use office premises based on a lease agreement or other agreement entered into with the owner of the premises;
  - any contracts or agreements with other entities which may have an impact on the technical qualifications of the applicant, if available;
  - a 3 (three) year development and investment plan for the performance of natural gas trading;
- The applicant employs sufficient local employees qualified for the performance of natural gas trading, including:
  - a list of employees with information on their qualifications, positions held and job descriptions;
  - the organisational scheme of the applicant;
  - any contracts or agreements with other entities which may have an impact on the professional qualifications of the applicant, if available;
- The applicant has sufficient finances for the performance of natural gas trading (as established by BON-1 and BON-2 forms showing that the applicant has had on average at least HRK 20,000 (approximately EUR 2,750) in cash on its bank account during the month preceding the application);
- The applicant's management board members or other corporate officers have not been convicted with final effect of a commercial business-related crime (e.g. crimes against the payment system or business administration) within the previous 5 (five) years; and
- The applicant submits certification that the licence fee has been paid.

### **4.2.2 Procedural rules**

The application procedure is a paper-based one. The entire procedure can be performed via attorney representation pursuant to a power of attorney.

The time frame for issuance of a natural gas trading licence is the same as that for an electricity licence (please see Point 4.1.2).

### **4.2.3 Operational conditions required for the issuance and maintenance of the gas Wholesale Licence**

The same operational conditions apply to the natural gas trading licence as to the electricity licence (please see Point 4.1.3).

#### **4.2.4 Financial guarantee**

The same requirement applies to the natural gas trading licence as to the electricity licence (please see Point 4.1.4).

#### **4.2.5 Procedural costs**

The same costs and fees apply to the natural gas trading licence as to the electricity licence (please see Point 4.1.5).

#### **4.2.6 Term of the Wholesale Licence**

The same rules apply to the natural gas trading licence as to the electricity licence (please see Point 4.1.6).

### **5. DIFFERENT RULES APPLICABLE FOR SUPPLYING INDUSTRIAL END-CUSTOMERS**

#### **5.1 Electricity Licensing – Regulatory and Corporate Conditions**

Providing supply to industrial and/or any other end-customers requires an Additional Licence.

#### **5.2 Natural Gas Licensing – Regulatory and Corporate Conditions**

Providing supply to industrial and/or any other end-customers requires an Additional Licence.

### **6. OBTAINING THE ADDITIONAL LICENCE(S)**

#### **6.1 Electricity**

In addition to the licensing requirements for obtaining an electricity Wholesale Licence as detailed under Point 4.1, an applicant for an Additional Licence also has to provide the following information: details on its IT system together with a description of its calculation system; list of business premises used in Croatia; template agreements with purchasers; and forms of invoices for electricity supplied to customers.

#### **6.2 Natural Gas**

In addition to the licensing requirements for obtaining a gas Wholesale Licence as detailed under Point 4.2, an applicant for an Additional Licence also has to provide the following information: details on its IT system together with a description of its calculation system; list of business premises used in Croatia; description of gas quality check mechanisms; description of information provided to customers on the characteristics of gas usage, and measures for the efficient and safe usage of gas; general terms and conditions for supply to customers; template agreements with customers; and forms of invoices for gas supplied to customers.

## 7. SETTING UP A LOCAL ENTITY

### 7.1 Most Important Legal Rules and Operational Requirements

	LOCAL CORPORATION/D.O.O.
<b>GENERAL DESCRIPTION</b>	As explained above, Wholesale Licences may only be obtained by (i) a Local Corporation, in which case the optimal solution would be to opt for the corporate form of a limited liability company (d.o.o.); or by (ii) a foreign entity if it has established a local branch office.
<b>MINIMUM CAPITAL</b>	<p>The minimum share capital for a d.o.o. is HRK 20,000 (approximately EUR 2,750). The share capital can be paid in cash or in kind. Compared to a cash payment, contribution in kind requires certain additional steps in the incorporation process and is associated with higher costs.</p> <p>A local branch office does not require a minimum capital payment.</p>
<b>LIABILITY FOR DEBTS</b>	<p>Liability for the debts of the d.o.o. is limited to the company's assets and does not extend to the personal assets of any of its shareholders (limited liability). However, a shareholder may exceptionally be liable for the company's debts if the shareholder misuses the fact that the company's liability is otherwise limited.</p> <p>The local branch office is not liable itself, but assumes rights and obligations directly for its parent.</p>
<b>MANAGEMENT/ REPRESENTATION</b>	<p>The management board of a d.o.o. may have one or more members (managing directors) at the discretion of the founder/shareholder. A local managing director in Croatia is not required. The managing director of a Local Corporation may be a foreign citizen with no permanent residence in Croatia.</p> <p>Apart from a few exceptions (e.g. if a company (i) has more than 200 employees; or (ii) has a registered share capital above HRK 600,000 (approximately EUR 82,045) and more than 50 shareholders), the establishment of a supervisory board is not compulsory.</p> <p>A local branch office may have authorised representatives appointed by its parent.</p>
<b>PREMISES</b>	As regards seat requirements, please see Point 4.1.3.1.
<b>BANK ACCOUNT OPENING REQUIREMENT</b>	Prior to starting any business activities in Croatia, the management board members must open a bank account for the Local Corporation and the branch office. This procedure may be completed with a power of attorney.
<b>TAX NUMBER REQUIREMENT</b>	In addition to the above regulations, the Local Corporation and the branch office have to fulfil several registration duties with the Croatian Tax Administration, the Croatian Bureau of Statistics, the Croatian National Bank, the Croatian Pension Fund, and the Croatian Health Insurance Fund.
<b>FOREIGN EMPLOYEES</b>	If the company wishes to employ foreigners for positions other than as key personnel, the company must be able to obtain work permits in case of an internal transfer of personnel from the parent company to the Local Corporation or the local branch.

## 7.2 Procedural Rules

The required incorporation documentation consists of documents that need to be signed by: (i) the founder/shareholder; (ii) the prospective members of the management board; and (iii) the prospective members of the supervisory board (if applicable).

- The founders of a limited liability company must sign:
  - the company's articles of association, or in the case of a sole founder, a deed of incorporation (in case of a branch office, it is substituted by a decision on establishing a branch office);
  - a decision on the appointment of the management board (one or more members) and of the supervisory board (a minimum of three members; the number of members must be an odd number) or the authorised representative of the branch office; and
  - a statement that the founder, or any of its subsidiaries, does not have any outstanding tax or employment related liabilities in Croatia.

The signing must take place before a notary public in Croatia and can be executed personally or delegated to attorneys by a power of attorney.

- The management board members must sign:
  - a statement of acceptance of the appointment made by the founder;
  - a model certified signature protocol (i.e. a document showing the standard signature of each of the company's authorised representatives, certified by a notary public);
  - a list of founders/shareholders;
  - a list of management board members;
  - a list of supervisory board members (if applicable); and
  - the application to register the company/branch with the competent commercial court.

The first two documents mentioned above can only be signed personally by the management board members; however, it is acceptable if the documents are signed before a foreign notary public, apostilled, if needed, and then officially translated into Croatian.

- The Supervisory Board members must sign:
  - a statement of acceptance of the appointment made by the founder; and
  - the minutes of the first supervisory board meeting electing the president and the deputy president of the supervisory board.

The president of the supervisory board must co-sign the application to register the company with the competent commercial court. All documents, except the statements of acceptance, can be signed using a power of attorney. The statement of acceptance, as in the case of the Management Board, must be notarised, apostilled, if needed, and officially translated into Croatian.

Along with the incorporation documentation described above, the application must be accompanied by an original of the founder's excerpt from the commercial court registry, duly certified, apostilled if needed, and officially translated into Croatian. The excerpt must not be older than 30 (thirty) days on the day the application is submitted to the commercial court.

The registration procedure usually takes between 2 (two) weeks and 1 (one) month.

The court fees for establishing the entity amount to HRK 1,300 (approximately EUR 178). Notary fees vary, and depend on the amount of share capital, the number of founders and the number of management board and supervisory board members.

## **8. TAXES**

Local Corporations and branch offices are treated as Croatian tax residents.

There are no additional direct taxes applicable to the performance of Wholesale Activities in Croatia.

## **9. CONTRACTUAL RELATIONS**

### **9.1 Trading platforms**

A trader can purchase electricity from a producer, a supplier, another trader, the Croatian Power Exchange, or can import it from abroad. A trader can sell electricity to a supplier, to another trader, to a producer, to the Croatian Power Exchange, to CTSO for system services, transmission network losses, compensation plans or system balancing or to HEP-DSO for distribution network services or distribution network losses, or it can export it abroad.

In order to participate in the electricity market, a potential trader needs to enter into an agreement on the regulation of relations on the electricity market with HROTE. As a prerequisite for such agreement, the potential trader needs to undertake the following:

- Obtain an EIC code from the Issuing Office authorised by ENTSO-E;
- Register with the Centralised European Register of Energy Market Participants (CEREMP);
- Enter into an agreement with CTSO or the balance group leader on system balancing.

The market participants are currently using the standardised transaction documents available on HROTE's Web site.

In order to participate in the gas market, a potential trader needs to undertake the following:

- Acquire an energy licence for gas trading from HERA;
- Become a member of a balance group.

If a potential trader wants to form a new balance group in which it will be in the position of a balance group manager then the potential trader also needs to, besides the acquisition of an energy licence for gas trading from HERA and notifying HROTE on the new balance group existence, conclude:

- An agreement on payment of balancing energy with HROTE;
- An agreement on transport capacities with the Croatian gas transmission operator, Plinacro d.o.o.; and
- An agreement on gas storage with Podzemno skladište plina d.o.o., a wholly-owned subsidiary of Plinacro d.o.o.

In order to accelerate and simplify the gas market process, and all in accordance with Regulation (EU) No. 312/2014 and the Rules on the organisation of the gas market in Croatia, HROTE has developed a gas trading platform. A trading platform is a place of organised trade with short-term standardised products where balance group managers may trade with each other or with the transport system operator. The platform is enabled and maintained by HROTE and it can be accessed only with a previous agreement on access to the information system. The platform is available in Croatian and English. The quantities of gas from the products can be offered for delivery within the same gas day or for the next gas day (day-ahead). The minimum amount of gas that can be offered is 1 MWh/day.

The market participants are currently using the standardised transaction documents available on HROTE's Web site.

## 10. REPORTING OBLIGATIONS

There are no requirements for the holder of a Wholesale Licence with respect to licence maintenance (e.g. regular notifications to HERA, etc.); however, HERA may request certain documents and information which it needs for the performance of its task as regulator, including an entity's financial data and other confidential information.



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# CZECH REPUBLIC

## **1. RELEVANT LAWS AND REGULATIONS**

The most relevant laws and regulations in the Czech Republic are:

- Act No. 458/2000 Coll., on Business Conditions and Public Administration in the Energy Sector, as amended ("**Energy Act**");
- Act No. 500/2004 Coll., Administrative Procedure Code, as amended;
- Act No. 90/2012 Coll., on Commercial Companies and Cooperatives ("**Business Corporations Act**");
- ERO Regulation No. 8/2016 Coll., on Details of Awarding Licences for Carrying Out Business in the Energy Sector, as amended ("**ERO Regulation on Licences**");
- ERO Regulation No. 408/2015 Coll., on Electricity Market Rules, as amended ("**Electricity Market Rules**");
- ERO Regulation No. 349/2015 Coll., on Gas Market Rules, as amended ("**Gas Market Rules**");
- Act No. 634/2004 Coll., on Administrative Fees, as amended;
- Act No. 549/1991 Coll., on Court Fees, as amended; and
- Act No. 586/1992 Coll., on Income Taxes, as amended ("**Act on Income Taxes**").

## **2. ORGANISATION OF ELECTRICITY MARKET AND GAS MARKET**

The Czech administrative authority exercising regulatory powers in the energy sector is the Energy Regulatory Office ("**ERO**"). The ERO is managed by the Council of the ERO, which has five members appointed by the Government on a proposal of the Minister of Industry and Trade of the Czech Republic. One member of the Council is appointed as Chairman. The term of office of the members of the Council is 5 (five) years.

ERO is the regulatory authority for both the electricity and the gas sector. The competences of the ERO include, among others:

- Price regulation;
- Licence issuing;
- Support for the use of renewable and secondary energy sources and combined heat and power generation;
- Protection of interests of customers;
- Protection of justified interests of licence holders;
- Survey into competition conditions;
- Cooperation with the Czech Antitrust Office (ÚOHS);
- Promotion of competition in the energy sector; and
- Supervision of markets in the energy sector.

Apart from ERO, the Ministry of Industry and Trade of the Czech Republic (and the subordinated administrative authority called The State Energy Inspection Board) also have certain powers in the energy sector. Their competences, among others, include:

- Developing state energy policy;
- Communication with the European Commission; and
- Granting authorisations to build new energy generating facilities.

Although the Ministry of Industry and Trade develops state energy policy, ERO is an independent office and is bound by law only. Furthermore, it cannot take orders from other administrative authorities including from the Government or the ministries.

## 2.1 Electricity Market

Key legislation applying to the electricity sector in the Czech Republic includes the Energy Act and the Electricity Market Rules.

There are over 20,000 electricity producers registered in the Czech Republic. ČEZ, a. s. is the largest electricity producer. The ČEZ Group is one of the 10 largest energy companies in Europe, both in terms of installed capacity and in the number of customers. It has a leading role in the electricity market in Central Europe. The Czech Republic is the largest shareholder of ČEZ, a.s. with a nearly 70% (seventy percent) stake.

ČEPS, a.s., a joint stock company controlled by the Czech government, is the only electricity transmission system operator in the Czech Republic.

There are around 380 distribution system operators in the Czech Republic varying in network size from small local networks to larger regional networks. The regional distribution networks are operated by the ČEZ Group (in central and northern parts of the Czech Republic), E.ON (in the south) and Pražská energetika (in Prague).

For the purpose of balancing, the majority of electricity/gas traders enter into contracts for the settlement of imbalances with market operators and become subjects of settlement. OTE, a.s., a joint stock company controlled by the Government, is the market operator in the Czech Republic.

POWER EXCHANGE CENTRAL EUROPE, a.s. ("**PXE**"), established in 2007, offers electricity trading with Czech, Slovak and Hungarian power. The exchange offers anonymous trading with standardised products with secured settlement. The subject of trading at PXE is electricity with an hourly output of 1 MW for each hour of each day of the agreed delivery period. The delivery locations are the electricity systems in the Czech Republic (CZ), Slovakia (SK) and Hungary (HU). Products include annual, quarterly and monthly commodity futures with physical settlement (CZ, SK, HU) and with financial settlement (CZ) and spot contracts (CZ, HU). Depending on the type of delivery, they also differentiate between base load and peak load products.

To become a trading participant on PXE, the trader has to hold an electricity trading licence and comply with the admission requirements set out in the relevant Regulations of PXE. The sign-up fee for dealing on PXE is EUR 15,000. There are also monthly fees and transaction fees.

Electricity trading is also offered by the Czech Moravian Commodity Exchange Kladno Energy Exchange ("**CMKKBK**"). There are two products of electric power that may be traded on the CMKKBK Energy Exchange:

- Electricity supply from high-voltage grids; and
- Electricity supply from low-voltage grids.

Anyone interested in trading has to use the services of a broker who has a licence to represent traders on the CMKBB Energy Exchange and to act as intermediary in concluding exchange trades. There are currently three licensed brokers. The sign-up fee for becoming a participant (i.e. to be represented by a broker) is CZK 2,000 (approximately EUR 80).

## **2.2 Natural Gas Market**

Key legislation applying to the gas sector in the Czech Republic includes the Energy Act and the Gas Market Rules.

There are 15 gas generators in the Czech Republic; mainly in northern Moravia.

NET4GAS, s.r.o. is the only gas transmission system operator in the Czech Republic.

There are around 200 distribution system operators in the Czech Republic varying in network size from small local networks to larger regional networks. The regional distribution networks are operated by RWE (in central and northern parts of the Czech Republic), E.ON (in the south) and Pražská plynárenská (in Prague).

On the Czech gas market there are two key storage system operators (out of four in total): RWE Gas Storage, s.r.o. and MND Gas Storage a.s.

Gas trading is offered by the Czech Moravian Commodity Exchange Kladno Energy Exchange ("**CMKBB**"). The exchange offers trading with the following products:

- Gas offtake up to 630 MWh yearly/delivery point; and
- Gas offtake over 630 MWh yearly/delivery point.

Anyone interested in trading has to use the services of a broker who has a licence to represent traders on the CMKBB Energy Exchange and to act as intermediary in concluding exchange trades. There are currently 3 licensed brokers. The sign-up fee for becoming a participant (i.e. to be represented by a broker) is CZK 2,000 (approximately EUR 80).

Moreover, Austria's Central European Gas Hub ("**CEGH**") and PXE will cooperate to launch an exchange-based gas market in the Czech Republic in 2013. The newly established exchange will offer gas derivative products for delivery in the Czech Republic.

## **3. CONDITIONS FOR APPLYING FOR ELECTRICITY AND NATURAL GAS WHOLESALE LICENCE(S)**

### **3.1 Electricity Licensing – Regulatory and Corporate Conditions**

The Wholesale Activities carried out in the territory of the Czech Republic are subject to licensing in the Czech Republic, if carried out:

- on a permanent, continuous and systematic basis; and
- independently, in one's name, on one's account and in order to make a profit.

Under Czech law, the licence for electricity trading covers all Wholesale Activities ("**Wholesale Licence**").

The relevant licensing authority is ERO.

The Wholesale Licence cannot be obtained by a foreign company directly. Under Czech law, foreign companies are required to have a local presence. They have to set up at least a Local Branch Office in order to apply for a Wholesale Licence and to carry out Wholesale Activities in the territory of the Czech Republic. In this case, the founder of the Local Branch Office (i.e. the foreign company) will be the holder of the Wholesale Licence. Under Czech law, the Local Branch Office itself does not have legal capacity and is only a part of the foreign company.

Further, a foreign company may also establish a new Local Corporation or acquire an existing Local Corporation. In such a case the applicant for and holder of the Wholesale Licence will be the Local Corporation. If the existing Local Corporation (in which the foreign company acquired a shareholding) already holds the Licence, no further licensing requirements shall be met.

A foreign company may apply to ERO for recognition of its Wholesale Licence issued in another EU Member State (not applicable to non-EU Member States of the EEA). If the Wholesale Licence is recognised, it is deemed to be a Wholesale Licence issued by ERO under Czech law. However, the local presence is still required.

It is irrelevant whether the foreign company is an EU/EEA or a non-EU/non-EEA company. A foreign company may carry out Wholesale Activities in the territory of the Czech Republic through its Local Branch Office under the same conditions and to the same extent as a Local Corporation.

From the perspective of Czech energy law, there are no special advantages or disadvantages for foreign applicants for a Wholesale Licence in choosing to set up a Local Branch Office or a Local Corporation.

From the perspective of Czech corporate law, the main advantage of a Local Corporation is that it has its own legal capacity. It is, therefore, solely liable for any obligations arising from its Wholesale Activities.

From the perspective of Czech tax law, there are differences between a Local Corporation and a Local Branch Office but there are no particular advantages or disadvantages to either option. Any income arising in the Czech Republic is subject to income tax in both cases.

From an accounting point of view, it may be easier to establish a Local Corporation. Both a Local Corporation and a Local Branch Office shall keep their accounts in accordance with the Czech Act on Accounting. The Local Branch Office shall, moreover, also keep its accounts under the law of the state of the company's seat as part of the company.

As to the form of the Local Corporation, it is worth considering, depending on the particularities of each case, to choose either a Czech limited liability company (*s.r.o.*), or a Czech joint stock company (*a.s.*).

The principal differences between a Local Branch Office and a Local Corporation (in the form of a limited liability company) are as follows:

	LOCAL BRANCH OFFICE	LOCAL CORPORATION/S.R.O.
<b>LIABILITY</b>	Foreign company is liable for obligations of the Local Branch Office.	The foreign company is not liable for obligations of the Local Corporation, except for (i) liability up to the amount of unpaid capital; and (ii) liability for damages caused by the Local Corporation's management following instructions from the foreign company.
<b>CORPORATE MAINTENANCE</b>	No requirement to hold annual general meetings. Less filing obligations.	Must hold annual general meeting. More filing obligations.

	LOCAL BRANCH OFFICE	LOCAL CORPORATION/S.R.O.
<b>DISPOSAL</b>	Can be sold by way of a sale of business, which is a more time consuming process than a sale of shares.	Ownership interest can be readily sold in line with the articles of association/founders deed and Business Corporation Act.
<b>SET UP TIME</b>	<p>The registration should not take more than 5 (five) business days from filing the application with the Czech Commercial Register.</p> <p>The entire process including the application for the Wholesale Licence takes approximately 1–2 (one to two) months.</p>	<p>After gathering all necessary documents, the establishment of a Local Corporation takes approximately 2–3 (two to three) weeks.</p> <p>It is also possible to acquire an existing shelf company and then apply for the Wholesale Licence.</p>

### 3.2 Natural Gas Licensing – Regulatory and Corporate Conditions

The Wholesale Activities carried out in the territory of the Czech Republic are subject to licensing in the Czech Republic, if carried out:

- on a permanent, continuous and systematic basis; and
- independently, in one's name, on one's account and in order to make profit.

Under Czech law, the licence for natural gas trading covers all Wholesale Activities ("**Wholesale Licence**").

The relevant licensing authority is ERO.

The Wholesale Licence cannot be obtained by a foreign company directly. Under Czech law, foreign companies are required to set up at least a Local Branch Office in order to apply for a Wholesale Licence and to carry out Wholesale Activities in the territory of the Czech Republic. In this case, the founder of the Local Branch Office (i.e. the foreign company) will be the holder of the Wholesale Licence. Under Czech law, the Local Branch Office itself does not have legal capacity and is only a part of the foreign company.

Further, a foreign company may also establish a new Local Corporation or acquire an existing Local Corporation. In such a case the applicant for and holder of the Wholesale Licence will be the Local Corporation. If the existing Local Corporation (in which the foreign company acquired a shareholding) already holds the Licence, no further licensing requirements shall be met.

A foreign company may apply to ERO for recognition of its Wholesale Licence issued in another EU Member State (not applicable to non-EU Member States of the EEA). If the Wholesale Licence is recognised, it is deemed to be a Wholesale Licence issued by ERO under Czech law. However, the establishment of a Local Branch Office is still required.

It is irrelevant whether the foreign company is an EU/EEA or a non-EU/non-EEA company. A foreign company may carry out Wholesale Activities in the territory of the Czech Republic through its Local Branch Office under the same conditions and to the same extent as a Local Corporation.

As regards the practical (dis)advantages to be considered when deciding on the corporate form of the applicant, please refer to Point 3.1.

Finally, we note that the same Entity may obtain Wholesale Licences for both electricity and natural gas trading. There is no limitation in this respect.

## **4. OBTAINING THE WHOLESALE LICENCE(S)**

### **4.1 Electricity**

#### **4.1.1 Annexes to the application for the electricity Wholesale Licence**

The following documents need to be submitted to ERO when applying for a Wholesale Licence for electricity trading, among others:

- Application form (available on the Web site of ERO);
- Extract from the Czech commercial or other register (of the Entity) or from a similar foreign register (of the foreign company) and/or foundation documents of the Entity, as applicable;
- Statement of criminal records of members of the statutory body and of the representative;
- Declaration of the representative's consent to be appointed as representative and his/her declaration that he/she is not appointed as a representative for the licensed activity by another licence holder; and
- Documents evidencing the financial and technical requirements as enumerated in the ERO Regulation on Licences (e.g. bank account statements and last annual balance sheet report).

#### **4.1.2 Procedural rules**

The application procedure at ERO is governed by Act No. 500/2004 Coll., Administrative Procedure Code, as amended. The procedure is generally paper-based but ERO is entitled to request a personal hearing if it considers it necessary for the purpose of the procedure and to exercise the rights of its participants.

The Wholesale Licence should be issued without undue delay, within 30 (thirty) days from the submission of the application at the latest. In complicated cases, the time frame may be prolonged to up to 60 (sixty) days.

#### **4.1.3 Operational conditions required for the issuance and maintenance of the electricity Wholesale Licence**

##### **4.1.3.1 Personnel**

Members of the statutory body of the applicant (legal entity) must fulfil the following conditions: (i) minimum age of 18 (eighteen) years; (ii) full legal capacity; (iii) no criminal record (*bezúhonnost*); and (iv) the professional competence of the applicant for the licence or the appointed responsible representative.

The applicant (legal entity) must appoint a representative. The appointment of the representative is subject to the approval of ERO. The representative must not be a member of the supervisory board or another supervisory body of the applicant. There are no other personnel requirements, such as qualified staff and local employees.

##### **4.1.3.2 Premises**

The Entity is obliged to hold the title to use the premises where its seat is located at all times while carrying out its Wholesale Activities and to be able to prove this to the Czech Commercial Register.

It is permitted to have a virtual seat. The only restriction basically consists of the fact that a company cannot claim to have its registered seat elsewhere against anyone who invokes their registered seat entered in the Commercial Register.

##### **4.1.3.3 IT system/assets**

There are no special requirements under Czech law regarding the applicants' IT systems/assets.

#### **4.1.4 Financial guarantee**

An applicant for a Wholesale Licence needs to demonstrate its ability to provide sufficient funding to financially secure the activities for which the licence is required as well as its ability to cover current and future liabilities for a period of at least 5 (five) years.

Documents evidencing the fulfilment of the financial requirements of the applicant which are to be provided to the ERO are enumerated in the ERO Regulation on Licences. As an example, the applicant needs to provide evidence of the total amount of available funds and the last audited financial statements (if applicable).

The Energy Act stipulates when an applicant is deemed not to meet the requirement of “availability of sufficient funds”; for example, if the applicant has failed to pay Czech taxes, custom duties, or mandatory social security and health insurance payments as they fell due.

#### **4.1.5 Procedural cost**

The administrative fee for applying for a Wholesale Licence is CZK 100,000 (approximately EUR 4,000).

#### **4.1.6 Term of the Wholesale Licence**

The Wholesale Licence is granted for a time period of 5 (five) years. The time period can be extended for another 5 (five) years upon applying for an extension. The application must be filed within 6 (six) months and 90 (ninety) days before the date of expiry of the Wholesale Licence.

There are no requirements for Wholesale Licence holders with respects to licence maintenance. However, the holder of the Wholesale Licence is required to fulfil its duties under Czech law.

### **4.2 Natural Gas**

#### **4.2.1 Annexes to the application for the gas Wholesale Licence**

The following documents need to be submitted to ERO when applying for a Wholesale Licence for natural gas trading:

- Application form (available on the Web site of ERO);
- Extract from the Czech commercial or other register (of the Entity) or from a similar foreign register (of the foreign company) and/or foundation documents of the Entity, as applicable;
- Statement of criminal records of members of the statutory body and of the representative;
- Declaration of the representative's consent to be appointed as representative and his/her declaration that he/she is not appointed as a representative for the licensed activity by another licence holder; and
- Documents evidencing the financial and technical requirements as enumerated in the ERO Regulation on Licences (e.g. bank account statements and last annual balance sheet report).

#### **4.2.2 Procedural rules**

The application procedure at ERO is governed by Act No. 500/2004 Coll., Administrative Procedure Code, as amended. The procedure is generally paper-based but ERO is entitled to request a personal hearing if it considers it necessary for the purpose of the procedure and to exercise the rights of its participants.

The Wholesale Licence should be issued without undue delay, within 30 (thirty) days from the submission of the application at the latest. In complicated cases, the time frame may be prolonged to up to 60 (sixty) days.

#### **4.2.3 Operational conditions required for the issuance and maintenance of the gas Wholesale Licence**

##### **4.2.3.1 Personnel**

Members of the statutory body of the applicant (legal entity) must fulfil the following conditions: (i) minimum age of 18 (eighteen) years; (ii) full legal capacity; (iii) no criminal record (*bezúhonnost*); and (iv) the professional competence of the applicant for the licence or the appointed responsible representative.

The applicant (legal entity) must appoint a representative. The appointment of the representative is subject to the approval of ERO. The representative must not be a member of the supervisory board or another supervisory body of the applicant. There are no other personnel requirements, such as qualified staff and local employees.

##### **4.2.3.2 Premises**

The Entity is obliged to hold the title to use the premises where its seat is located at all times while carrying out its Wholesale Activities and to be able to prove this to the Czech Commercial Register.

It is permitted to have a virtual seat. The only restriction basically consists of the fact that a company cannot claim to have its registered seat elsewhere against anyone who invokes their registered seat entered in the Commercial Register.

##### **4.2.3.3 IT system/assets**

There are no special requirements under Czech law regarding the applicants' IT systems/assets.

#### **4.2.4 Financial guarantee**

An applicant for a Wholesale Licence needs to demonstrate its ability to provide sufficient funding to financially secure the activities for which the licence is required as well as its ability to cover current and future liabilities for a period of at least 5 (five) years.

Documents evidencing the fulfilment of the financial requirements of the applicant which are to be provided to ERO are enumerated in the ERO Regulation on Licences. As an example, the applicant needs to provide evidence of the total amount of available funds and the last audited financial statements (if applicable).

The Energy Act stipulates when an applicant is deemed not to meet the requirement of "availability of sufficient funds"; for example, if the applicant has failed to pay Czech taxes, custom duties, or mandatory social security and health insurance payments as they fell due.

##### **4.2.5 Procedural costs**

The administrative fee for applying for a Wholesale Licence is CZK 100,000 (approximately EUR 4,000).

#### **4.2.6 Term of the Wholesale Licence**

The Wholesale Licence is granted for a time period of 5 (five) years. The time period can be extended for another 5 (five) years upon applying for an extension. The application must be filed within 6 (six) months and 90 (ninety) days before the date of expiry of the Wholesale Licence.

There are no requirements for Wholesale Licence holders regarding licence maintenance. However, the holder of the Wholesale Licence is required to fulfil its duties under Czech law.

## **5. DIFFERENT RULES APPLICABLE FOR SUPPLYING INDUSTRIAL END-CUSTOMERS**

### **5.1 Electricity Licensing – Regulatory and Corporate Conditions**

In the Czech Republic there is only one type of electricity trading licence which entitles its holder both to pursue Wholesale Activities and to supply end-customers, so no Additional Licence is needed for supplying industrial end-customers.

### **5.2 Natural Gas Licensing – Regulatory and Corporate Conditions**

In the Czech Republic there is only one type of natural gas trading licence which entitles its holder both to pursue Wholesale Activities and to supply end-customers, so no Additional Licence is needed for supplying industrial end-customers.

## **6. OBTAINING THE ADDITIONAL LICENCE(S)**

### **6.1 Electricity**

In the Czech Republic there is only one type of electricity trading licence. Licensing requirements are detailed under Point 4.1.

### **6.2 Natural Gas**

In the Czech Republic there is only one type of natural gas trading licence. Licensing requirements are detailed under Point 4.2.

## **7. SETTING UP A LOCAL ENTITY**

### **7.1 Most Important Legal Rules and Operational Requirements**

There are no capitalisation requirements in relation to Local Branch Offices. A Local Branch Office is not a standalone legal entity; it is only an organisational unit of a foreign legal entity. A Local Branch Office does not have its own legal capacity. The foreign legal entity acts through its Local Branch Office while carrying out business in the Czech Republic. Therefore, all obligations vis-à-vis Czech authorities and rights and obligations arising out of contracts entered into by the Local Branch Office will directly pertain to the foreign legal entity itself. The foreign company is authorised to carry out Wholesale Activities in the Czech Republic as of the day on which its Local Branch Office is registered in the Czech Commercial Register. However, the respective court will register the Local Branch Office of a foreign legal entity with its object of business in the energy sector only after a Wholesale Licence has been issued. Therefore, following a resolution to set up a Local Branch Office, the foreign company applies for a Wholesale Licence with ERO by submitting its resolution on setting up a Local Branch Office. Once the Wholesale Licence is granted, the Local Branch Office may be registered with the Czech Commercial Register.

The head of the Local Branch Office is entitled to undertake all legal actions related to the Local Branch Office on behalf of the foreign company.

No bank account is required for the registration of the Local Branch Office with the Czech Commercial Register. A foreign company that has a permanent establishment (*stálá provozovna*) in the Czech Republic will need to

register (through its Local Branch Office) with the relevant tax authority. A permanent establishment is defined by a tax treaty or by the Act on Income Taxes.

There are no requirements on the nationality and permanent residence of the head of the Local Branch Office.

Generally, a physical office is not required. However, the seat should be accessible to the public. In this respect an agent can be contracted to receive mail on behalf of the company and to maintain its "virtual" office. The company is obliged to hold the title to use the premises, where its seat is located, at all times while carrying out its business (e.g. through a valid lease agreement) and to be able to prove this to the Czech Commercial Register.

The seat of the Local Branch Office must be located in premises recorded in the Czech Commercial Register. This may also be an apartment.

## 7.2 Procedural Rules

Documents that need to be attached to an application for registration of a Local Branch Office in the Czech Commercial Register include as follows:

- Extract of the foreign company from the foreign Commercial Register;
- Decision of the foreign company establishing a Local Branch Office in the Czech Republic and appointing the head of the Local Branch Office;
- The Wholesale Licence;
- Documents certifying the company's entitlement to use the premises where the seat of the Local Branch Office is located; and
- Declaration of the consent of the head of the Local Branch Office to act as the head of the Local Branch Office.

The registration proceedings at the Czech Commercial Register should not take more than 5 (five) business days from filing the application.

The administrative/court fees are as follows:

- Application for registration CZK 6,000 (approximately EUR 240); and
- Other administration fees (e.g. translations, verification of signatures, apostille).

## 8. TAXES

A foreign company that has a permanent establishment (*stálá provozovna*) in the Czech Republic creates a taxable presence in the Czech Republic. A permanent establishment is defined by a tax treaty or by Act No. 586/1992 Coll., on Income Taxes, as amended; consequently, a Local Branch Office creates a taxable presence.

In addition to the general tax liabilities, there is a special tax pursuant to Act No. 261/2007 Coll., on Stabilisation of Public Budgets, as amended. Electricity and gas traders are subject to this tax when they sell electricity/gas to the end-customer.

## 9. CONTRACTUAL RELATIONS

Contracts a trader compulsorily has to conclude in order to pursue Wholesale Activities include contracts on the settlement of imbalances with the market operator (OTE, a.s.).

Other than the above, a trader usually enters into the following contracts under the Energy Act:

- Electricity/gas supply contracts under which the trader undertakes to supply electricity/gas to another market participant and the other market participant undertakes to pay the price;
- Contracts on joint services under which the trader undertakes to supply the customer with electricity/gas and to ensure the transport of electricity and the relating services/transmission, distribution or storage of gas, and the customer undertakes to pay the price;
- Electricity transmission contracts/gas transport contracts under which the transmission system operator/gas producer undertakes to reserve a certain capacity of the transmission system and to transport for the trader the agreed amount of electricity/gas and the trader undertakes to pay the price;
- Contracts on cross-border electricity/gas transmission under which the transmission system operator undertakes to export from or import into the Czech Republic the agreed amount of electricity/gas for another contract party and the other contract party undertakes to observe the terms and conditions for cross-border electricity transmission/pay the gas price;
- Contracts on distribution of electricity/gas under which the distribution system operator undertakes to transport electricity/gas and the trader undertakes to pay the price; and
- Contracts on gas storage under which the gas storage operator undertakes to store gas for a market participant and the market participant undertakes to pay the price.

## 10. REPORTING OBLIGATIONS

There is no regular reporting obligation towards ERO. However, Wholesale Licence holders are required to provide information and documents to ERO and other authorities at their written request and within the provided time period in order to allow these to perform their regulatory tasks.

Gas traders are also obliged to keep information on the fulfilment of contracts entered into with other gas market participants as set forth by the Energy Act for a period of 5 (five) years.



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WOLF THEISS

HUNGARY

## **1. RELEVANT LAWS AND REGULATIONS**

The most relevant laws and regulations governing the electricity and gas market in Hungary are the following:

- Act LXXXVI of 2007 on electricity ("**Hungarian Electricity Act**");
- Act XL of 2008 on natural gas supply ("**Hungarian Gas Act**");
- Act V of 2013 on the Civil Code; ("**Hungarian Civil Code**");
- Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings;
- Act CXXXII of 1997 on Hungarian branch offices and commercial representative offices of foreign-registered companies ("**Hungarian Branch Act**");
- Act LXVII of 2008 on increasing the competitiveness of district heat supply;
- Act LXVIII of 2016 on excise tax;
- Government Decree 273/2007 (X. 19.) on the implementation of certain provisions of the Hungarian Electricity Act;
- Government Decree 19/2009 (I. 30.) on the implementation of the Hungarian Gas Act;
- Decree 1/2014. (III. 4.) of the Hungarian Energy and Public Utility Regulatory Office on the rate of administration service fees of the Hungarian Energy and Public Utility Regulatory Office and on the rules applicable to the collection, management, registration and reimbursement of administration service, supervisory and other fees
- Decree 11/2017. (VIII. 25.) of the Hungarian Energy and Public Utility Regulatory Office on the data supply obligation;
- Operational and Commercial Code of the Hungarian natural gas system ("**ÜKSZ**").

## **2. ORGANISATION OF ELECTRICITY MARKET AND GAS MARKET**

The Hungarian energy markets have been liberalised in accordance with the requirements of the relevant EU laws. The markets are supervised and controlled by the Hungarian Energy and Utility Regulatory Office ("**HEO**"), which is a central public administration body with independent functions and authority. At the time of its establishment, the main functions of HEO were licensing and supervision of power and natural gas companies in the energy infrastructure sector, consumer protection and the preparation of regulated prices for natural gas and electricity. In parallel with the new challenges of market liberalisation, the role and activities of HEO have gradually changed, and growing importance is now given to the supervision of the competitive market, promotion and preservation of fairness of competition, the enforcement thereof, and continuous monitoring of and changing or triggering changes when necessary on the competitive market environment. Recently HEO has been given power to set network tariffs, however, the autonomous exercise of this power is somewhat hindered by political expectations regarding the level of household customer prices.

While HEO is the national regulator, the Ministry of National Development also plays an important role in the energy markets through the adoption of energy market regulations and by setting supply prices for end-customers entitled to universal service.

## 2.1 Electricity Market

There are around 170 licensed electricity traders, including Wholesale Licence holders whose number is constantly growing.

The transmission system operator in the electricity market is MAVIR Zrt. which is part of MVM's vertically integrated undertaking. MAVIR Zrt. is responsible for the balancing and provision of ancillary services and for cross-border capacity allocation (together with other TSOs and partly in a centralised manner).

The distribution systems are operated by 6 regional distribution system operators.

Hungary has one nuclear power plant at Paks with four reactor units, each with an initial capacity of 440 MW, which came into operation between 1982 and 1987. Following the capacity upgrade of all units to 500 MW the nominal power of the power plant is now 2,000 MW. The Paks power plant has a leading role in Hungary's electricity supply: it represents more than 40% (forty percent) of national energy production. In order to maintain the nuclear power generation in the long-term, in January 2014 Hungary signed an agreement with Russia on the peaceful use of nuclear energy and the extension of the Paks Nuclear Power Plant with two new additional reactor units. The new units (each with a capacity of 1,200 MW) are expected to be put into operation in 2026 and 2027.

In addition to the Paks nuclear power plant, Hungary has significant gas-fired power plant capacity (e.g. Dunamenti Power Plant) and coal-fired power plants. Since Hungary has undertaken to cover 14.65% (fourteen point sixty five percent) of its gross energy consumption from renewable energy sources at the latest by 2020, in recent years multiple renewable energy support schemes were adopted in order to encourage investments into renewable and in particularly solar energy projects. By the end of December 2016 hundreds of new applications (with a capacity of in total 2,000 MW) have been submitted by solar project developers for participation in the previous, very favourable renewable energy support scheme. Experts estimate however that renewable projects with in total only 600-900 MW capacity will be completed.

HUPX Zrt. (Hungarian Power Exchange Ltd.), the Hungarian organised electricity market, was set up in mid-2010. The products traded on HUPX are spot intraday products (15 (fifteen) minute products and 1 (one) hour blocks), and day-ahead hourly contracts. The central counterparty designated by HUPX Zrt. is European Commodity Clearing AG.

In 2017, HUDEX Zrt. (Hungarian Derivative Energy Exchange Ltd.) was established in order to comply with the changing European Union regulations, as physical futures products of HUPX and CEEGEX have fallen under the scope of markets in the financial instruments directive (MiFID II) applicable in EU Member States as of 3 January 2018. The products of HUDEX – previously traded on HUPX – are physical futures (4 (four) front weeks, 3 (three) front months, 4 (four) front quarters and 3 (three) front years) with optional physical delivery of electricity within the Hungarian transmission system.

## 2.2 Natural Gas Market

Due to the simplified licensing regime for Wholesale Activities the number of licenced gas traders has increased significantly and at this point in time there are more than 90 licensed natural gas traders on the market.

The transmission system operator in the gas market is FGSZ Zrt. which is part of MOL's vertically integrated undertaking. Magyar Gáz Tranzit Zrt., which was part of the MVM group but is owned by the Hungarian State since 2014, is also licensed for natural gas transmission and manages the operation and the trading activity of the Hungarian-Slovakian Interconnector Gas Pipeline. Balancing is managed by FGSZ Zrt. either on the basis of bilateral agreements with traders or through the daily natural gas and capacity market operated by it ("NFKP").

There are 10 distribution system operators, out of which 5 are larger with significant regional networks; the rest operate smaller local networks typically related to industrial areas.

There are 2 storage system operators, Magyar Földgáztároló Zrt. (formerly E.ON Földgáz Storage Zrt.) and MMBF Zrt., who together operate 5 commercial storage facilities. The security storage is currently operated by MMBF Zrt., which also used to be part of the MOL group. However, due to certain changes in the law, which envisaged that in the future the security storage facility may only be in the ownership of the State, at the end of 2013 MOL sold its shares in MMBF Zrt. to MFB (Hungarian Development Bank). MFB now holds a 51% (fifty one percent) share in MMBF Zrt., while the remaining MOL shares were purchased by the existing minority shareholder, MSZKSZ (Hungarian Hydrocarbon Storage Association).

CEEGEX Zrt. (Central Eastern European Gas Exchange Ltd.), a wholly-owned subsidiary of HUPX Zrt., is operating as an organised natural gas market (gas exchange) where virtual spot contracts (next-hour, within-day, day-ahead, weekend and holiday) and locational products (locational next-hour, within-day, locational next-day) are traded. The central counterparty designated by CEEGEX Zrt. is KELER KSZF Zrt. Due to a recent change in the European Union regulations applicable in the EU Member States as of 3 January 2018, the physical futures products – previously traded on CEEGEX – are traded on HUDEX (Hungarian Derivative Energy Exchange Ltd) and all open positions of the physical futures (3 (three) front months, 4 (four) front quarters) products were transferred to HUDEX.

### 3. CONDITIONS FOR APPLYING FOR ELECTRICITY AND NATURAL GAS WHOLESALE LICENCE(S)

#### 3.1 Electricity Licensing – Regulatory and Corporate Conditions

Trading in electricity, which is defined by the Hungarian Electricity Act as for-profit business operations involving the buying and selling of electricity and the related capacity for purposes other than own use, is subject to licensing in Hungary and requires a licence issued by HEO.

The Hungarian Electricity Act distinguishes between a so-called restricted electricity trading licence, which entitles its holder to pursue wholesale electricity trading only ("**Wholesale Licence**") and a so-called full scale electricity trading licence, which entitles its holder, in addition to Wholesale Activities, to directly supply customers, including both industrial and household end-customers (referred to as "**Additional Licence**" for the purpose of this guide).

Thus, in order to engage in electricity Wholesale Activities in Hungary a Wholesale Licence needs to be obtained from HEO. This licence entitles its holder to pursue all aspects of the Wholesale Activities.

According to Section 88 (2) of the Hungarian Electricity Act, a restricted trading licence to engage in wholesale trading in electricity, without an entitlement to supply users directly (i.e. the Wholesale Licence), may be granted to – among others – a non-resident economic operator duly incorporated in any Member State of the European Union or in a State that is a party to the Agreement on the European Economic Area and which

- lawfully pursues electricity trading activities in the country of its incorporation;
- is represented in Hungary at least through an agent for service of process at all times; and
- meets all other statutory requirements.

The above means that foreign economic operators incorporated and lawfully pursuing electricity trading in a Member State of the EU/EEA are entitled to directly apply for and hold an electricity Wholesale Licence in Hungary without the need for any Local Corporation or Local Branch Office. However, foreign economic operators incorporated in a non-EU/EEA Member State (e.g. in Switzerland) cannot apply directly for a Wholesale Licence. Such non-EU/EEA companies can only apply for and hold a Wholesale Licence in Hungary through a Local Company. The Local Company may be established in the form of either a limited liability company (*Korlátolt felelősségű társaság* or *Kft.*) or a public limited company (*Részvénytársaság*). The less burdensome solution is setting up a *Kft.* rather than a *Részvénytársaság* as the *Kft.* is a simpler form of corporate cooperation.

### 3.2 Natural Gas Licensing – Regulatory and Corporate Conditions

Trading in natural gas, which is defined by the Hungarian Gas Act as for-profit business operations involving the buying and selling of natural gas for purposes other than own use, is subject to licensing in Hungary and requires a licence issued by HEO.

The Hungarian Gas Act distinguishes between a so-called restricted natural gas trading licence, which entitles its holder to pursue wholesale trading activities only ("**Wholesale Licence**") and a so-called full scale natural gas trading licence, which entitles its holder, in addition to Wholesale Activities, to directly supply customers, including both industrial and household end-customers (referred to as "**Additional Licence**" for the purpose of this guide).

Thus, in order to engage in natural gas Wholesale Activities in Hungary a Wholesale Licence needs to be obtained from HEO. This licence entitles its holder to pursue all aspects of the Wholesale Activities.

According to Section 28 (4) of the Hungarian Gas Act, in addition to Local Companies the natural gas Wholesale Licence may be granted to – among others – a non-resident economic operator incorporated in any State that is a party to the Agreement on the European Economic Area, that lawfully and actually conducts natural gas supply activities in such State, provided that:

- it is represented in the territory of Hungary through an agent for service of process; and
- it is able to comply with the requirements set out in the government decree on the implementation of the Hungarian Gas Act.

The above means that foreign economic operators incorporated and lawfully pursuing natural gas trading in a Member State of the EU/EEA are entitled to directly apply for and hold a natural gas Wholesale Licence in Hungary without the need for any Local Corporation or Local Branch Office. However, foreign economic operators incorporated in a non-EU/EEA Member State (e.g. in Switzerland) cannot apply directly for a Wholesale Licence. Such non-EU/EEA companies can only apply for and hold a Wholesale Licence in Hungary through a Local Company. The Local Company may be established in the form of either a limited liability company (*Korlátolt felelősségű társaság* or *Kft.*) or a public limited company (*Részvénytársaság*). The less burdensome solution is setting up a *Kft.* rather than a *Részvénytársaság* as the *Kft.* is a simpler form of corporate cooperation.

The same entity (whether foreign economic operator or Local Corporation/Local Branch Office) may hold both an electricity and a natural gas Wholesale Licence or Additional Licence, respectively.

## 4. OBTAINING THE WHOLESALE LICENCE(S)

### 4.1 Electricity

#### 4.1.1 Annexes to the application for the electricity Wholesale Licence

An application for an electricity Wholesale Licence must be submitted electronically through the company gate (*Cégkapu*); the central online platform of the administrative authorities. According to the Electricity Act and its implementation decree, the following documents need to be attached to the application:

- Applicant's deed of foundation (articles of association);
- Original company extract or a certification of the registration authority/court of registration on:
  - the incorporation of the Applicant in the commercial register and
  - the validity (and effectiveness) of the provided corporate data;

- Receipt confirming the payment of the due procedural fees (e.g. bank transfer notice);
- Detailed description of the business plan for the given and the next calendar year, as verified by an independent auditor;
- Declaration of authorisation or licence which entitles the Applicant to carry out electricity trading activities in the country of incorporation and, if applicable, a certified copy of the licence;
- Declaration confirming that the Applicant is not subject to any bankruptcy, enforcement, voluntary dissolution or insolvency proceedings;
- Declaration of the Applicant on prior licences not having been revoked in the last 10 (ten) years; and
- Document certifying that the Applicant is represented at least through a delivery agent, and containing the contact details of the agent (address, telephone, fax, email).

#### **4.1.2 Procedural rules**

The application is an electronic procedure. HEO is required to pass a decision on the application within 30 (thirty) days. If HEO finds the application incomplete, it may request the applicant to provide additional information, which may delay the licensing procedure. Notwithstanding this, if the documentation is well prepared, HEO usually issues the Wholesale Licence within 2–3 (two to three) weeks.

#### **4.1.3 Operational conditions required for the issuance and maintenance of the electricity Wholesale Licence**

##### **4.1.3.1 Personnel**

Applicants are generally required to have the facilities and qualified staff necessary for the continuous and long-term pursuit of the licensed activity. Nevertheless, the relevant laws do not contain any specific requirements as to how many officers are necessary, and what roles these should have. It is the licence holders' sole discretion and responsibility to ensure that they are able to pursue electricity trading and applicants are no longer required to demonstrate the capacity of the personnel they wish to engage for performing the Wholesale Activities.

##### **4.1.3.2 Premises**

As mentioned above, applicants for a Wholesale Licence need to have a permanent representation in Hungary. According to the relevant provisions of the Hungarian Electricity Act, a foreign entity incorporated and lawfully pursuing electricity trading in a Member State of the EU/EEA may satisfy the permanent representation requirement through an agent for service of process (delivery agent). This may be an organisation or a natural person with a registered office or permanent residence in Hungary (i.e. an attorney-at-law). The duties of the agent are to receive documents relating to the licensed activity on behalf of the licence holder and to forward these to the licence holder. Nevertheless, it is necessary to duly certify the legal relationship between the Applicant and the legal representative, as well as the contact details of the agent.

##### **4.1.3.3 IT systems/assets**

As mentioned above, applicants are required to have all facilities, including IT systems/assets necessary for the performance of the Wholesale Activities. However, the provisions of the Hungarian Electricity Act and its implementation decree do not specify any minimum requirements for the purpose of obtaining the Wholesale Licence. It is again the sole responsibility of the licence holders to maintain such IT systems/assets which enable them to pursue the Wholesale Activities and to comply with the respective statutory obligations, e.g. reporting obligations through HEO which are to be performed via HEO's IT platform, access to which requires a certain minimum level of IT system.

##### **4.1.4 Financial guarantee**

Applicants are not required to provide a financial guarantee to HEO.

However, licence holders are required to provide a financial guarantee to MAVIR, the TSO, if they decide to set up their own balance group and contract MAVIR for transmission system operation services.

#### **4.1.5 Procedural costs**

The procedural fee for obtaining the electricity Wholesale Licence is HUF 6 million (approximately EUR 20,000).

In addition to this one-off licence application fee, licence holders also have to pay a recurring annual supervision fee, which amounts to 0.06% (zero point zero six percent) of the net sales revenue (i.e. consideration for the electricity without VAT) of the licensed activity for the previous year. Newly established and licensed traders have to pay an advance fee amounting to 0.06% (zero point zero six percent) of the estimated net sales revenue indicated in the business plan for the given year. In case of any difference between the net revenue indicated in the business plan and the actually achieved revenue, the amount of the supervision fee payable for the following year has to be adjusted by 0.06% (zero point zero six percent) of the difference as appropriate.

#### **4.1.6 Term of the Wholesale Licence**

The Wholesale Licence is issued for an indefinite period.

There are no additional requirements for Wholesale Licence holders with respect to licence maintenance. However, the licence holder is required to continuously satisfy the requirements for obtaining the Wholesale Licence. Upon failure by the licence holder to do so or to comply with its statutory obligations HEO may withdraw the licence, as an ultimate measure.

The Wholesale Licence may also be withdrawn upon the licence holder's request.

### **4.2 Natural Gas**

#### **4.2.1 Annexes to the application for the gas Wholesale Licence**

An application for a natural gas Wholesale Licence must be submitted to HEO electronically through the company gate (*Cégkapu*). According to the Hungarian Natural Gas Act and its implementation decree, the following documents need to be attached to the application:

- Applicant's deed of foundation (articles of association);
- Business report relating to the previous year or in the absence of such a report, a business plan for 1 (one) year, which describes the gas trading activity and the related costs and cash-flow separately from other activities;
- Independent auditor's opinion of the business plan in accordance with the criteria specified in the implementation decree of the Hungarian Gas Act;
- Description of the IT and data exchange system;
- Description of the qualified staff carrying out the natural gas trading;
- Cooperation agreement with the TSO, or, if this is not available when filing the application, a letter of intent to enter into an agreement on the balancing activity, access to the data exchange and IT system, and the performance of intraday balancing trading;
- Declaration confirming that the Applicant is not subject to any bankruptcy, enforcement, voluntary dissolution or insolvency proceedings;

- Declaration of the Applicant on prior licences not having been revoked in the last 10 years;
- Contact details (telephone, email) of the applicant's representative and delivery agent, and a copy of the delivery agent mandate agreement;
- Document evidencing the payment of the procedural fee to HEO;
- Declaration that the applicant acknowledges and shall comply with the rules set out in the Operational and Commercial Code ("ÜKSZ") of the Hungarian natural gas system; and
- Certificate issued by the competent authority which certifies that the applicant effectively and lawfully pursues natural gas trading activities in the Member State of the EU/EEA where it is incorporated.

#### **4.2.2 Procedural rules**

The application is an electronic procedure. HEO is required to pass a decision on the application within 75 (seventy five) days. If HEO finds the application incomplete, it may request the applicant to provide additional information, which may delay the licensing procedure.

#### **4.2.3 Operational conditions required for the issuance and maintenance of the gas Wholesale Licence**

##### **4.2.3.1 Personnel**

Applicants are generally required to have the facilities and qualified staff necessary for the continuous and long-term pursuit of the licensed activity. Nevertheless, the relevant laws do not contain any specific requirements as to how many officers are necessary and what roles these should have. It is the licence holder's sole discretion and responsibility to ensure that they are able to pursue natural gas trading; however, applicants are required to briefly demonstrate the qualified staff they wish to engage for performing the Wholesale Activities in the course of the application.

##### **4.2.3.2 Premises/Agent for service of process**

Applicants for a natural gas Wholesale Licence are required to have an agent for service of process (delivery agent), who may be a natural person resident in or legal entity registered in Hungary. The duties of the agent are to receive documents relating to the licensed activity on behalf of the licence holder and to forward these to the licence holder.

##### **4.2.3.3 IT systems/assets**

As part of the licence application, applicants are required to describe their IT and data exchange systems and to ensure that these meet the requirements for connecting to the IT platform of the competent system operator. The minimum requirements are set out in the Operational and Commercial Code. The current minimum requirements are:

- computer equipment (PC) suitable to run the recommended Internet browser;
- MS Windows XP/7 operating system or later versions;
- MS Office 2003 application;
- Internet Explorer version 7.0;
- Internet access (with appropriate bandwidth);
- Adobe Flash Player;
- PDF reader; and

- a digital certificate issued by an independent, external certified digital certification provider, containing the necessary substantive elements, which is imported by the entitled entity into its own system, and imported to the IT platform by the designated transmission system operator.

#### **4.2.4 Financial guarantees**

Applicants for and holders of a Wholesale Licence are not required to provide a financial guarantee to HEO.

Notwithstanding this, licence holders have a statutory and/or contractual obligation to provide a financial guarantee to the competent system operator when signing up for their services.

#### **4.2.5 Procedural cost**

The procedural fee for obtaining the restricted trading licence is HUF 2 million (approximately EUR 6,400).

In addition to this one-off licence application fee, licence holders also have to pay a recurring annual supervision fee which amounts to 0.06% (zero point zero six percent) of the net sales revenue (i.e. consideration for the natural gas without VAT) of the licensed activity for the previous year. Newly established and licensed traders have to pay an advance fee amounting to 0.06% (zero point zero six percent) of the estimated net sales revenue indicated in the business plan for the given year. In case of any difference between the net revenues indicated in the business plan and the actually achieved revenue, the amount of the supervision fee payable for the following year has to be adjusted by 0.06% (zero point zero six percent) of the difference as appropriate.

#### **4.2.6 Term of the Wholesale Licence**

The natural gas Wholesale Licence is issued for an indefinite period.

There are no additional requirements for Wholesale Licence holders with respects to licence maintenance. However, the licence holder is required to continuously satisfy the requirements for obtaining the Wholesale Licence. Upon failure by the licence holder to do so or to comply with its statutory obligations HEO may withdraw the licence, as an ultimate measure.

The Wholesale Licence may also be withdrawn upon the licence holder's request.

## **5. DIFFERENT RULES APPLICABLE FOR SUPPLYING INDUSTRIAL END-CUSTOMERS**

### **5.1 Electricity Licensing – Regulatory and Corporate Conditions**

In order to supply industrial end-customers (as well as any other end-customer) economic operators are required to hold an Additional Licence. A modification of the Hungarian Electricity Act has significantly facilitated the process for obtaining an Additional Licence for foreign entities. According to the prior regulation a foreign company could only apply for an Additional Licence through a business association vested with legal personality (i.e. a Kft. or Rt. registered in Hungary) or through the branch of the company provided that it has been established in a Member State of the EU/EEA and the branch has been registered in Hungary. Thus, a foreign company was not able to obtain an Additional Licence directly, regardless of whether it was an EU/EEA or a non-EU/EEA company.

The current regime of the Hungarian Electricity Act in force however makes the application process easier for foreign entities.

According to Section 88 (1) of the Hungarian Electricity Act, a full-scale trading licence to engage in trading in electricity, with the entitlement to supply users directly (i.e. the Additional Licence), may be granted to a

non-resident economic operator duly incorporated in any Member State of the European Union or in a State that is a party to the Agreement on the European Economic Area and which

- lawfully pursues electricity trading activities in the country of its incorporation;
- is represented in Hungary at least through an agent for service of process at all times; and
- meets all other statutory requirements.

The Hungarian Electricity Act therefore allows foreign economic operators incorporated and lawfully pursuing electricity trading in a Member State of the EU/EEA to directly apply for and hold an electricity Additional Licence in Hungary without the need for any Local Corporation or Local Branch Office.

However, foreign economic operators incorporated in a non-EU/EEA Member State cannot apply directly for an Additional Licence. Such non-EU/EEA companies can only apply for and hold an Additional Licence in Hungary through a Local Company or a Local Branch Office. Foreign companies incorporated in a non-EU/EEA Member State can decide whether to establish a Local Corporation or a Local Branch Office in order to apply for the Additional Licence. While it initially appears that the establishment of a Local Branch Office may be more attractive based on potential tax advantages, when making a decision on the corporate form the following considerations need to be taken into account. If a non-EU/EEA company decides to establish a Local Branch Office, the holder of the Additional Licence is the Local Branch Office which also determines the framework for engaging in electricity trading. Although the branch does not have its own legal personality per se and is only a part of the foreign entity, the Hungarian Branch Act nevertheless recognises the branch office as an organisational unit of a foreign company with individual trading capacity and thus, requires the operations of the foreign company and the branch to be separate. In this respect Section 3 (1) of the Hungarian Branch Act provides that the foreign company is entitled to conduct business activities in Hungary through its branch and in the course of this activity the branch may engage in legal relationships with authorities and with third parties in connection with the branch. Therefore, trade transactions within the Hungarian regulatory zone also need to be entered into by the Local Branch Office holding the Additional Licence. In addition, according to the Hungarian Branch Act the branch may not perform representational activities on behalf of the foreign company, and the foreign business entity may only dispose of the assets acquired and liabilities assumed under the name of the branch when the branch is dissolved or if it becomes subject to insolvency proceedings, or when proceedings have been commenced in connection with such assets or liabilities abroad. This may be relevant when analysing the contracting capabilities of the branch and the foreign company.

In our experience, beyond the potential tax advantages, foreign companies prefer to participate in the market through Local Branch Offices in order to benefit from the single agreement concept and close-out netting provisions of master trading agreements (e.g. EFET). However, we are of the view that in the event of entering into such master agreements as a “multi-branch” party, the enforceability of the single agreement concept as well as the close-out netting could still be challenged based on the provisions of the Hungarian Branch Act mentioned above, which limit the foreign company’s right to dispose of the assets of the Local Branch Office to certain specific conditions such as insolvency. Only so-called “financial branches” of foreign companies seated in the EEA are exempt under the Hungarian Branch Act from the above restriction. A branch qualifies as a “financial branch” if the foreign company is a foreign credit institution, financial enterprise, insurance company, insurance agency company, insurance advising company, or if the Hungarian branch of the foreign company provides investment or supplementary investment services or carries out commodity exchange, investment fund management, clearing house, exchange or public warehousing activities.

## **5.2 Natural Gas Licensing – Regulatory and Corporate Conditions**

In order to supply industrial end-customers (as well as any other end-customers) economic operators are required to hold an Additional Licence. According to Section 28 (3) b) of the Hungarian Gas Act, the natural gas Additional

Licence may be granted to a non-resident economic operator duly incorporated in any Member State of the European Union or in a State that is a party to the Agreement on the European Economic Area provided that:

- it lawfully pursues natural gas trading activities in the country of its incorporation;
- it is represented in the territory of Hungary through an agent for service of process; and
- it is able to comply with the requirements set out in the government decree on the implementation of the Hungarian Gas Act.

The above means that foreign economic operators incorporated and lawfully pursuing natural gas trading in a Member State of the EU/EEA are entitled to directly apply for and hold a natural gas Additional Licence in Hungary without the need for any Local Corporation or Local Branch Office.

However, foreign economic operators incorporated in a non-EU/EEA Member State (e.g. in Ukraine) cannot apply directly for an Additional Licence. Such non-EU/EEA companies can only apply for and hold an Additional Licence in Hungary through a Local Company or a Local Branch Office registered in Hungary. Thus the Additional Licence cannot be obtained by a non-EU/EEA company directly.

Foreign companies incorporated in a non-EU/EEA Member State can decide whether to establish a Local Corporation or a Local Branch Office in order to apply for the Additional Licence. As for the considerations to be taken into account when deciding on the corporate form, please refer to Points 3.2 and 5.1 above.

The same Entity may hold an Additional Licence for both electricity and natural gas.

## **6. OBTAINING THE ADDITIONAL LICENCE(S)**

### **6.1 Electricity**

#### **6.1.1 Annexes to the application for the electricity Additional Licence**

The documents to be attached to the application for the electricity Additional Licence are similar to those to be attached to the application for the electricity Wholesale Licence. Due to a recent modification, non-Hungarian applicants also need to submit the authorisation certifying their right to trade in electricity in their country of incorporation. Moreover, applicants are required to submit to HEO for approval their terms of business which describe in detail the scope of activity and services to be provided by the applicants. The mandatory content of the terms of business is regulated in the implementation decree of the Hungarian Electricity Act. Prior to submitting the terms of business to HEO for approval, applicants are required to make these available to customer representative organisations. Any comments from the customer representative organisations are submitted together with the terms of business to HEO. Upon request, HEO may exempt a trader from the obligation to prepare terms of business and have it approved, if this trader only supplies electricity to an authorised operator, or a single end-customer, and the contract of the parties is in conformity with all statutory requirements.

#### **6.1.2 Procedural rules**

HEO is required to pass a decision on the application for an Additional Licence within 75 (seventy five) days. If HEO finds the application incomplete, it may request the applicant to provide additional information, which may delay the licensing procedure.

### **6.1.3 Operational conditions required for the issuance and maintenance of the electricity Additional Licence**

Holders of an electricity Additional Licence are required to set up and operate a customer service department for handling customer notices, to investigate and remedy complaints lodged by customers and for providing information to them at the licence holder's main offices or at any other suitable place defined in their standard terms of business. In addition, it should feature a call centre and on-line helpline, as well as facilities for receiving customers in person. For Additional Licence holders serving customers eligible for universal services the Hungarian Electricity Act prescribes even more detailed obligations to set up permanent customer service centres or customer service branch offices.

### **6.1.4 Procedural costs**

In addition to the procedural fee for obtaining an Additional Licence of HUF 6 million (approximately EUR 19,200), applicants are required to pay a fee of HUF 1 million (approximately EUR 3,200) for the approval of their terms of business.

## **6.2 Natural Gas**

### **6.2.1 Annexes to the application for the gas Additional Licence**

In order to obtain the natural gas Additional Licence, the following set of documents must be submitted to HEO electronically through the company gate (Cégkapu):

- Deed of foundation of the applicant;
- Description of the available appropriately qualified staff;
- Declaration of the applicant that
  - it is not subject to bankruptcy, enforcement, liquidation or voluntary dissolution proceedings;
  - its licence has not been withdrawn by HEO within the past 10 (ten) years due to the applicant's attributable conduct;
  - it acknowledges and shall comply with the provisions of the Commercial and Operational Code;
- Contact details (telephone and e-mail address) of the applicant entity and its representative;
- Document confirming the payment of the procedural fee;
- Annual accounts for the year preceding the submission of the application;
- Business plan for 1 (one) year;
- Opinion of an independent auditor on the business plan prepared in accordance with Annex 7 to the Decree;
- Description of the data exchange and IT system necessary for the applicant to perform its duties;
- Organisational chart of the applicant, internal organisational and operational regulations, competence and decision making process, description of the internal organisational units which are responsible for the licensed activity, list of the staff indicating the relevant qualifications;
- Description of the methods and procedures necessary to conduct the licensed activity;

- Draft terms of business, the mandatory content of which is regulated in the implementation decree of the Hungarian Gas Act and which must be made available to customer representative organisations prior to submitting to HEO for approval, together with any comments from the customer representative organisations;
- Action plan for emergency supply situations, system breakdown, restrictions;
- Description of the settlement system; and
- Cooperation agreement with the TSO or, if this is not available when filing the application, a letter of intent to enter into an agreement on the balancing activity, access to the data exchange and IT system, and the performance of intraday balancing trading.

#### **6.2.2 Procedural rules**

HEO is required to pass a decision on the application within 75 (seventy five) days. If HEO finds the application incomplete, it may request the applicant to provide additional information, which may delay the licensing procedure.

#### **6.2.3 Operational conditions required for the issuance and maintenance of the gas Additional Licence**

Holders of a natural gas Additional Licence are required to set up and operate a customer service department for handling user notices, to investigate and remedy complaints lodged by users and for providing information to them at the licence holder's main offices or at any other suitable place defined in their standard terms of business. In addition, it should feature a call centre and on-line helpline, be able to deal with written correspondence, as well as have facilities for receiving customers in person. For Additional Licence holders serving customers eligible for universal services the Hungarian Gas Act prescribes even more detailed obligations to set up permanent customer service centres or customer service branch offices.

Holders of a natural gas Additional Licence are required to draw up a detailed strategy relating to the supply of customers and to verify that they have the necessary resources at their disposal to cover the amounts of natural gas the licence holder is committed to supply under the agreement, taking into account the guaranteed level of service and consistent with the annual consumption of customers in the given gas year ("resources plan"). The resources plan must specify the quantities fixed in the relevant resources agreements for the supply of customers, together with the respective funding information broken down into months or shorter periods, as specified in the Additional Licence. HEO has the authority to check the resources plan.

#### **6.2.4 Financial guarantee**

From September 2015 holders of a natural gas Additional Licence are not obliged to keep any special financial guarantee.

#### **6.2.5 Procedural costs**

The procedural fee for obtaining the Additional Licence is HUF 4 million (approximately EUR 12,800). Moreover, the following additional procedural fees apply in the course of an application for an Additional Licence: HUF 1 million (approximately EUR 3,200) for the approval of the terms of business.

## **7. SETTING UP A LOCAL ENTITY**

As described under Point 3 above, foreign companies registered in the EU/EEA are entitled to directly apply for and hold either a Wholesale Licence or an Additional Licence without the need for an Entity but only with an agent for service of process in Hungary if they meet the regulatory requirements.

If a foreign company registered in a non-EU/EEA country wishes to pursue the wholesale gas trading activity in Hungary it has to first establish a Local Corporation (note that non-EU/EEA companies cannot apply for a Wholesale Licence through a Local Branch Office). Similarly, if a foreign company registered in a non-EU/EEA country wishes to supply end-customers, and thus needs to obtain an Additional Licence, it has to first establish a Local Branch Office or a Local Corporation (e.g. a Kft. which is the simplest form).

## 7.1 Most Important Legal Rules and Operational Requirements

	LOCAL CORPORATION/KFT	LOCAL BRANCH OFFICE
<b>GENERAL DESCRIPTION</b>	A business association established with a registered capital consisting of capital contributions of a pre-determined amount. The obligation of members (quotaholders) to the company extends only to the provision of their capital contributions and to other possible contributions as set forth in the articles of association. Subject to the exceptions prescribed by law, quotaholders are not liable for the obligations of the company. A Kft. may have one quotaholder or several quotaholders.	An organisational unit of a foreign company, without legal personality, vested with financial autonomy and registered as an independent form of company in the Hungarian Commercial Register as the branch office of a foreign company.
<b>MINIMUM CAPITAL</b>	HUF 3,000,000 (approximately EUR 9,600)	No minimum requirement. The actual amount must however be reported once a year to the court of registry. In practice, it is usually around HUF 100,000 (approximately EUR 320).
<b>LIABILITY FOR DEBTS</b>	As a general rule the quotaholder's liability is limited to the quota it has supplied.	The founder has to assume all costs and expenses of the Local Branch Office's operations and the founder and the Local Branch Office bear unlimited and several liability for any outstanding amounts owed by the Local Branch Office.
<b>MANAGEMENT/ REPRESENTATION</b>	<p>The Local Corporation is represented by the managing director(s) appointed by the quotaholder(s). Managing directors may perform their duties under an employment contract or a civil law mandate (or, if the sole quotaholder is a natural person, he/she can represent the Local Corporation without an employment contract).</p> <p>The managing director does not have to be Hungarian or have his or her permanent residency in Hungary.</p>	<p>The Local Branch Office is represented by the branch office representative appointed by the founder. The representative may be a person with an employment contract or be delegated by the founder, or have a long-term mandate and permanent address in Hungary.</p> <p>The representative does not have to be Hungarian or have his or her permanent residency in Hungary.</p>
<b>EMPLOYEES</b>	There is no requirement to have employees in Hungary. Although it is necessary to have a representative (managing director) the duties do not necessarily have to be performed under an employment agreement (please see above).	

	LOCAL CORPORATION/KFT	LOCAL BRANCH OFFICE
<b>PREMISES</b>	Both the Local Corporation and the Local Branch Office need to have a seat registered in the Commercial Register. The registered seat functions as the Entity's mailing address, where all business and official documents are received, filed, safeguarded and archived, and which is marked by a company sign. This entails the physical availability of the Entity to the extent that its official correspondence must be available there (for instance, in the event of a tax authority inspection) but does not mean that the Entity must directly lease premises; it can also enter into a seat usage agreement with a service provider. As of 1 March 2012, law firms are no longer entitled to provide seat services	
<b>BANK ACCOUNT OPENING REQUIREMENT</b>	Both the Local Corporation and the Local Branch Office are required to open a bank account in Hungary.	
<b>TAX NUMBER REQUIREMENT</b>	Both the Local Corporation and the Local Branch Office receive a tax number upon registration with the court of registry and subsequent registration with the tax authority.	

## 7.2 Procedural Rules

Except if the Local Corporation limited liability company (Kft.) is set up in a simplified procedure by using the template deed of foundation (which to some extent limits the content of the deed of foundation but makes the procedure cheaper and faster as the court decides on the application within 2-3 (two to three) working days from filing), the procedural rules and the documentation for establishing a Local Branch Office or a Local Corporation are very similar.

	LOCAL CORPORATION/KFT	LOCAL BRANCH OFFICE
<b>SET UP TIME</b>	The court of registry decides on the application within 15 (fifteen) working days (this may be extended by a maximum of 45 (forty five) days if the court requires the submission of additional information).	
<b>DOCUMENTS TO BE FILED</b>	<ul style="list-style-type: none"> <li>▪ Completed application form</li> <li>▪ Founder's resolution on the establishment and nomination of the representatives</li> <li>▪ Deed of foundation</li> <li>▪ Declaration of acceptance from representatives</li> <li>▪ Specimen signatures of the representatives</li> <li>▪ Power of attorney from the subsidiary to the representative</li> <li>▪ Power of attorney to the Hungarian delivery agent for any private individuals resident abroad to be entered into the Commercial Register (e.g. representatives)</li> <li>▪ Document evidencing the entitlement to use the property designated as the registered seat</li> <li>▪ Declaration on the preferred VAT status</li> <li>▪ Members' list</li> <li>▪ Statement on the provision of capital contribution</li> </ul>	<ul style="list-style-type: none"> <li>▪ Completed application form</li> <li>▪ Founder's resolution on the establishment and nomination of the representatives</li> <li>▪ Deed of foundation</li> <li>▪ Declaration of acceptance from representatives</li> <li>▪ Specimen signatures of the representatives</li> <li>▪ Power of attorney from the branch to the representatives</li> <li>▪ Power of attorney to the Hungarian delivery agent for any private individuals resident abroad to be entered into the Commercial Register (e.g. representatives)</li> <li>▪ Document evidencing the entitlement to use the property designated as the registered seat</li> <li>▪ Declaration on the preferred VAT status</li> <li>▪ Deed of foundation of the founder</li> </ul>

	LOCAL CORPORATION/KFT	LOCAL BRANCH OFFICE
<b>COSTS</b>	The registration of a Kft. is free of charge. The publication of the establishment of the Kft. is free of charge.	Registration fee: HUF 50,000 (approximately EUR 160) Publication fee: HUF 5,000 (approximately EUR 16)

## 8. TAXES

Holding a Wholesale Licence and pursuing Wholesale Activities without any form of permanent establishment and fixed assets (equipment and personnel) in Hungary will, most likely, not create a taxable presence in Hungary and thus the holder of the Wholesale Licence will not be liable for corporate income tax and the so-called "Robin Hood tax" of energy suppliers.

However, in case of holding an Additional Licence, due to the minimum local presence and other operational requirements for obtaining the Additional Licence, a holder of the latter will, most likely, be liable for corporate income tax and the Robin Hood tax. The Robin Hood tax is payable after the profit before tax (as increased/decreased by certain elements). The rate of the Robin Hood tax is 31% (thirty one percent) of the positive profit before tax.

Additional Licence holders supplying electricity/natural gas to non-household customers are also liable to pay excise tax amounting to HUF 310.50 per MWh (electricity) or HUF 0.3366 per kWh (natural gas) (as per December 2017).

## 9. CONTRACTUAL RELATIONS

### 9.1 Electricity

#### 9.1.1 Balance group (membership) contract

Once the Wholesale Licence has been obtained from HEO, in order to start pursuing Wholesale Activities for power, the trader has to either set up its own balance group or join an existing one. If the trader decides to join an existing balance group it has to enter into a balance group membership agreement with the balance group representative. According to the relevant provisions of the Hungarian Electricity Act and the Commercial Code of the electricity sector, the conclusion of a balance group membership agreement is mandatory and the parties must be able to evidence the fact (existence) of the contract. In addition, HEO has the right to request data from the traders and to inspect the documents related to the licensed activity. Nevertheless, the terms and conditions are rather subject to the parties' agreement.

If a trader decides to set up its own balance group, it has to enter into a balance group contract with MAVIR, as the Hungarian TSO in the electricity market, for the settlement of balancing energy and scheduling. The balance group contract with MAVIR is a standard contract which forms part of MAVIR's terms of business as approved by HEO. This means that the contract is non-negotiable. The provision of a financial guarantee to MAVIR is a prerequisite for concluding the contract.

#### 9.1.2 Registration for capacity auctions

In order to participate in capacity auctions and export/import electricity from/to Hungary, traders have to register with MAVIR and request access to the IT platform through which capacity auctions are organised by MAVIR/Central Allocation Office.

### **9.1.3 Admission to exchanges**

In Hungary it is not mandatory to participate in exchange trade, so traders are free to decide if, in addition to entering into electricity sale and purchase agreements on a bilateral basis, they also wish to trade on the local organised electricity market, HUPX. In order to start trading on HUPX, traders have to fulfil the admission requirements set by HUPX and European Commodity Clearing AG (ECC), who has been designated by HUPX as the central counterparty of HUPX. The admission requirements of HUDEX – the recently established derivative energy exchange – and the applicable admission forms are available on HUDEX's Web site.

### **9.1.4 Other contracts**

If a trader acquires an Additional Licence and supplies end-customers, the customers may require the trader to handle their network usage agreements with the competent system operators (transmission or distribution system operator, depending on the type of connection) together with their supply contracts with the trader; in which case the trader is required by law to do so.

## **9.2 Natural Gas**

### **9.2.1 Cooperation agreement with the TSO**

As mentioned under Point 4.2.1 above, applicants for a Wholesale (or Additional) Licence are required to enter into a cooperation agreement with the TSO. The standard form of contract is part of the terms of business of FGSZ, as the Hungarian TSO in the natural gas market, as approved by HEO.

### **9.2.2 Agreement on data exchange**

In order to be granted access to the IT platform of FGSZ and be able to submit nominations and receive allocations, traders have to enter into a contract with FGSZ on access to the IT platform and data exchange.

### **9.2.3 "KFSZR"**

In order to start physically trading in gas, licence holders are required to enter into an agreement with FGSZ for the basic services provided in consideration for regulated tariffs. This is the so-called "KFSZR", the capacity contracting, natural gas transmission, odourisation and system operation contract which may be entered into for various terms. The standard form of contract is part of the terms of business of FGSZ as approved by HEO.

### **9.2.4 Agreement for balancing services**

Balancing is managed by FGSZ either on the basis of bilateral agreements with the trader or through the daily natural gas and capacity market ("NFKP") operated by it. In order to trade in natural gas, the trader has to either enter into a bilateral agreement with FGSZ on balancing or become a member of the NFKP.

### **9.2.5 Agreement on title transfer services**

In order to transfer title (right of disposal) of a given gas volume between two traders (system users) at a virtual trading point or a physical point of the transmission/distribution system, the trader has to enter into an agreement on title transfer services.

### **9.2.6 Agreements with other system operators**

If traders wish to trade not only at the entry/exit points of the transmission system but also on the distribution system, they have to enter into capacity contracts with the competent distribution system operator. In addition, if traders wish to use the services offered by the storage system operators, they have to enter into a contract with them for capacity booking or for the other services provided by them.

### **9.2.7 Admission to exchanges**

In Hungary it is not mandatory to participate in exchange trade, so traders are free to decide if, in addition to entering into bilateral natural gas sale and purchase agreements, they also wish to trade on the local organised gas market, CEEGEX. In order to start trading on CEEGEX, traders have to fulfil the admission requirements set by CEEGEX and KELER KFSZ, who has been designated by CEEGEX as the central counterparty of CEEGEX. Bilingual Hungarian-English language admission forms are available on CEEGEX's Web site. The admission requirements of HUDEX – the recently established derivative energy exchange – and the applicable admission forms are available on HUDEX's Web site.

## **10. REPORTING OBLIGATIONS**

Further to the provisions of the Hungarian Electricity and the Hungarian Gas Act, in order to allow HEO to perform its regulatory tasks, licence holders are required to supply data to HEO on a regular basis and occasionally also at HEO's request.

Licence holders are required to submit annual reports to HEO by 31 March each year. The annual report must analyse and describe the trader's annual trading activity and the traded quantities. The report must also contain the trader's business plan for the actual and for the following calendar year. There are also some elements of the annual report which only relate to retail supply (e.g. information provided to customers, handling of customer complaints, customer demand forecasts).

Additionally, licence holders are obliged to supply data to HEO monthly, quarterly semi-annually and annually through HEO's electronic platform. These data supply requests concern traded quantities, financial figures (preliminary accounts, audited annual accounts for the whole company and annual accounts relating to the licensed activity (management accounts), cost monitoring), ownership structure, headcounts, contact details and corporate data of the licence holder. The annual accounts also have to be submitted in paper form.



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POLAND

WOLF THEISS

## **1. RELEVANT LAWS AND REGULATIONS**

- Energy Law dated 10 April 1997;
- Act on Freedom of Economic Activity dated 2 July 2004;
- The Commercial Companies Code dated 15 September 2000;
- Stock exchange Act dated 26 October 2000;
- Act on Stocks of Crude Oil, Petroleum Products and Natural Gas dated 16 February 2007;
- Ordinance on detailed conditions for the operation of the power system dated 4 May 2007;
- Geological and Mining Law Act dated 9 June 2011;
- Ordinance on detailed conditions for the operation of the gas system dated 2 July 2012;
- Renewable Energy Sources Act dated 20 February 2015; and
- Energy Efficiency Act dated 20 May 2016.

## **2. ORGANISATION OF ELECTRICITY MARKET AND GAS MARKET**

Due to the appointment of a new Polish government, effective from 27 November 2015, the responsibilities of the Ministry of Economy were taken over by a newly established Ministry of Energy. In the case of both the gas and energy markets, the government is represented by the Minister of Energy, whose competences as a supreme authority of governmental administration are of a more general and strategic nature. The Minister drafts energy policy, and coordinates and supervises its implementation, but is also responsible for the supervision of state-owned energy and coal companies (except for the gas and electricity Transmission System Operators). The Minister determines the details of the planning and operation of gas and energy supply systems, supervises the security of such supplies, and coordinates cooperation between local authorities and international governmental organisations in relation to energy matters. Finally, the Minister adopts executory provisions (*akty wykonawcze*) pursuant to the Energy Law.

The President of URE is a central authority of governmental administration entrusted with the competences of the energy regulatory body. The President is appointed by the Prime Minister upon a motion by the Minister of Energy. The President is the direct executive authority for fuel and energy economy regulation, as well as with regard to the promotion of competition within these sectors. The President's main competences include:

- Granting and withdrawing licences;
- Approval and control of tariffs regarding households;
- Controlling the fulfilment of particular obligations by energy market participants such as payment of substitution fees, sale of certain amounts of energy determined by the Energy Law, as well as obligations resulting from European regulations;
- Dispute resolution with regard to the refusal by energy market participants to enter into any energy or gas market contracts (e.g. grid connection agreements, purchase agreements, agreements on gas storage services, agreement on gas transport services, etc.);

- Appointment of system operators such as transmission and distribution system operators, storage system operators, etc.;
- Cooperation with the respective authorities in counteracting practices which limit competition on the market;
- Data collection relating to energy entities, energy infrastructure, energy prices, as well as monitoring the functioning of gas and power systems;
- Powers concerning European gas network codes;
- Ability to influence the construction of national gas pipelines; and
- Issuance and redemption of certificates of origin.

The URE President is obliged to deliver a report to the Minister of Energy on the status of economic activity in relation to the production, transmission, and distribution of electricity, as well as on the realisation of plans in relation to energy demand. The URE President also presents a separate report to the Minister of Energy on his/her activities together with an assessment of the safety of gas and energy supply and the realisation of goals related to renewable energy resources and their share in the overall energy production.

According to the amendment of the Energy Law called “small tri-pack” (“**Small Tri-Pack**”), signed by the President of Poland on 14 August 2013, the URE President shall be appointed to his/her function for a period of 5 (five) years with a right to be reappointed only once. The same regulation applies to the Vice-President of URE. Moreover, the amendment provides for a list of reasons justifying the revocation of the URE President by the Prime Minister. All these provisions are aimed at the consolidation of independence of the URE President. Additionally, the scope of competence of the URE President has been broadened to also include duties provided in Directives 2009/72/EC and 2009/73/EC. These duties include, among others, granting certificates of independence to system operators, carrying out control over system operators, as well as cooperation with regulatory bodies of other Member States of the European Union.

With regard to the duties of the Minister of Economy related to renewable energy matters, the Small Tri-Pack added the preparation of a national action plan on energy from renewable resources, which indicates national goals regarding the share of the energy from renewable resources used in transport, electricity, and heating/cooling sectors by 2020.

Energy trading, for both electricity and gas, is carried out on TGE, which was established at the end of 1999. In the first 6 (six) months following the registration of its business operations, TGE launched the Day Ahead Market (electricity spot market). In 2003, it was the first – and is still the only – entity to have obtained a licence to run a commodity exchange market.

Transactions on TGE may only be carried out by entities that have concluded a membership agreement with TGE and who have been allowed to operate on the commodity exchange by the TGE Board of Directors after fulfilling the relevant statutory conditions. In addition to entities specialising in exchange transactions, such as brokerage houses, TGE membership may also be obtained by companies which have a licence to generate, transfer, distribute or trade gas and electricity.

The following commodities can be traded on TGE<sup>1</sup>:

- Electricity;
- Solid, liquid and gaseous fuels;

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1 Source: [www.polpx.pl](http://www.polpx.pl)

- Production limits pertaining, in particular, to electricity;
- Pollution emission limits; and
- Property rights, the value of which depends directly or indirectly on the value of electricity, liquid or gaseous fuels, production limits and air emission limits, as well as property rights resulting from certificates of origin.

TGE also manages the register for certificates of origin (renewable energy sources, cogeneration and bio-gas).

The key areas of TGE's operations are:

- Day Ahead Market ("**DAM**");
- Intraday Market ("**IDM**");
- Day Ahead Market gas ("**DAMg**");
- Commodity Forward Instruments Market with Physical Delivery ("**CFIM**");
- Commodity Forward Instruments Market with Physical Delivery gas ("**CFIMg**");
- Property Rights Market for Renewable Energy Sources and Co-generation ("**PRM**"); and
- CO<sub>2</sub> Emission Allowance Market ("**EAM**").

## **2.1 Electricity Market**

The process of creating a competitive energy market in Poland began in 1997, when a new energy law was adopted ("**Energy Law**"). Since then, the energy market underwent fundamental changes, which included the unbundling of the state companies into separate generation, transmission, distribution and suppliers subsectors, the privatisation of state-owned entities and the liberalisation of markets, e.g. the liberalisation of the electricity market in 2007, when the Third Party Access rule was implemented by law.

Electricity production in Poland in 2016 was estimated at 162,626 GWh (a 0.5% (zero point five percent) increase in comparison to 2015), whereas electricity consumption was estimated at 164,625 GWh (a 2% (two percent) rise in comparison to 2015). Coal remains the largest energy source with continued increase of renewable energy sources.

Electric power transmission in Poland continues to be a natural monopoly; there is one transmission system operator – PSE Operator S.A. ("**PSE**") – a state-owned company, which owns all the transmission grids in the country. Other electricity market areas are more competitive, although particular sectors of electricity generation and trading are still highly concentrated, due to the presence of vertically integrated capital groups on both markets. The changes in law in late 2010 introduced an obligation for power generators to sell generated power through a power exchange (i.e. Towarowa Giełda Energii, hereinafter "**TGE**"). In 2011, TGE became a major electricity trading platform. Today, TGE members can trade electricity, natural gas and property rights that are supporting renewable energy, cogeneration and energy efficiency, as well as guarantees of origin and carbon emissions in one market place. The TGE operates both the futures market and the spot market for electricity and natural gas. It has also introduced a financial market for electricity. In 2015, the TGE ended with the highest volumes in history on spot markets for electricity and gas. The volume on the spot electricity market achieved 25,140,254 MWh in 2015 and was 5.5% (five point five percent) higher than a year earlier, and at the same time the highest in the history of the TGE.

## 2.2 Natural Gas Market

The wholesale gas market in Poland continues to be heavily dominated by a single entity. The wholesale gas trade is carried out predominantly by the state-owned Polskie Górnictwo Naftowe i Gazownictwo SA ("PGNiG") and most of the gas trade transactions in Poland are completed exclusively within the PGNiG capital group. In 2016, about 74% (seventy four percent) of the overall gas sales were carried out by PGNiG (the data for 2017 has not been published yet). The outstanding 26% (twenty six percent) of sales was split between several entities seeking to develop and strengthen their market position (among which the biggest are: Hermes Energy Group SA, DUON Marketing and Trading SA, PGE Obrót SA, Innogy Polska SA, Energia Obrót SA, TAURON Sprzedaż sp. z o.o., Handen sp. z o.o., ENEA SA).

In 2016, the greatest share of natural gas sales (61% (sixty one percent)) went to industrial consumers. 28% (twenty eight percent) of natural gas was sold to households. In 2012 the Polish authorities opened up the wholesale gas market and enhanced competition in order to comply with European requirements. An important step towards liberalisation was made in December 2012 when gas trading was launched on the power exchange, i.e. TGE. The stock market is mostly comprised of gas trading companies and end-customers who can act on their own after concluding an agreement with TGE SA or through brokerage houses. In 2016, as a result of the execution of contracts concluded on TGE SA, the volume of gas transactions amounted to 118,372,614 MWh.

The supervision over state-owned gas transmission system operators falls within the competences of the Minister of Energy. This ensures that different governmental bodies have ownership rights towards system operators and state-owned gas or energy market participants.

Gas trading companies are obliged to sell a certain percentage of gas via the commodity exchange. The percentage of gas sold via the commodity exchange should be 55% (fifty five percent).

This obligation, however, does not refer to:

- Natural gas which constitutes obligatory gas stocks;
- Natural gas leaving, in a given year, the transmission network at exit points of the national transmission system through connection points with transmission systems of other countries, in an amount equal to the natural gas entering the transmission network in the same year;
- Natural gas sold to gas system operators in order to perform their duties as specified in the Energy Law; and
- Natural gas used for own purposes.

According to recent amendments of the Energy Law, the following changes have been made:

- Since September 2016, entities that import natural gas from abroad have a duty to maintain mandatory reserves. Such obligation also applies to entities that import gas for their own use. If the entity does not have its own storage capacity, it is possible to entrust the obligation to hold stocks to another company;
- In January 2017, amendments were introduced to gradually abolish the obligation to set and gain approval for tariffs on gas prices from the President of the Energy Regulatory Office. Since 1 January 2017, prices for companies have been released in respect of: wholesale, virtual sale (including commodity), sale of compressed natural gas (CNG) and liquefied natural gas (LNG), and sales through tenders, auctions and public auctions. Since 1 October 2017, prices for other customers (except for households) have been released. This provision does not refer to households for which the prices of natural gas will continue to be controlled by the President of the Energy Regulatory Office until 1 January 2024.

### 3. CONDITIONS FOR APPLYING FOR ELECTRICITY AND NATURAL GAS WHOLESALE LICENCE(S)

#### 3.1 Electricity Licensing – Regulatory and Corporate Conditions

In Poland, Wholesale Activities are generally subject to holding a licence. There are a few statutory exceptions, such as trading electricity through a low voltage (below 1 KV) installation belonging to the recipient.

The electricity trading licence covers both wholesale and retail trading. Thus, obtaining a separate licence for selling electricity to end-customers is not required. An electricity trading licence authorises both domestic and cross-border trading, as opposed to licences issued for the wholesale activities of gas, where a separate licence for cross-border trading with natural gas is required.

A licence is granted by the URE President for a period of 10-50 (ten to fifty) years. There are no statutory criteria that would determine the term of a licence. The President of URE decides on the licence term at his/her own discretion, taking into account, however, the desired term as indicated in the application.

A licence may be granted to an entity that has its corporate seat (or domicile, in case of individuals) within the territory of one of the EU Member States, the Swiss Confederation or a Member State of both the European Free Trade Association ("EFTA") and the EEA ("**Privileged Jurisdictions**").

In addition, each entity that intends to conduct any Wholesale Activities in the future may apply for a promise of a licence ("**Promise**"), which is an official undertaking from the URE President to issue a licence to a given Entity. The Energy Law does not indicate a maximum term for the Promise, stating only a minimum term of 6 (six) months. Within the term of the Promise, the URE President may not refuse a licence to an Entity that has obtained a Promise, unless factual or legal circumstances have changed in comparison to those presented in the application. Although a Promise does not allow the performance of any Wholesale Activities, it may be beneficial e.g. when arranging the financing of the project.

Companies that have their corporate seat in one of the Privileged Jurisdictions may conduct Wholesale Activities directly, i.e. without establishing a Local Branch Office or a Local Corporation.

With regard to other foreign companies, according to information from URE, establishing a Local Branch Office should be sufficient to obtain a licence. However, in view of the current wording of the Energy Law, this interpretation may be challenged. To be on the safe side, foreign companies from outside the Privileged Jurisdictions are recommended to establish a Local Corporation (or a corporation within any of the Privileged Jurisdictions). So far, no licence has been granted to a Local Branch Office of a company from outside the Privileged Jurisdictions.

Pursuant to the Act on Freedom of Economic Activity, foreign entities may establish a Local Corporation in Poland. However, the permissible legal forms of foreign-owned corporations are limited to the following: limited partnership (*spółka komandytowa*), limited joint-stock partnership (*spółka komandytowo-akcyjna*), limited liability company (*spółka z ograniczoną odpowiedzialnością*) and joint-stock company (*spółka akcyjna*). Registered partnerships (*spółka jawna*) or professional partnerships (*spółka partnerska*) are therefore not permitted. This restriction applies to all foreign entities (legal and natural persons) establishing a Local Corporation in Poland, unless they have a registered seat (domicile) in one of the EU Member States or in a Member State of both the EFTA and the EEA, or unless their state of incorporation/domicile has entered into a bilateral agreement with the EU, which allows it to conduct economic activities on the same terms as Polish citizens.

The most popular form is a limited liability company (*spółka z ograniczoną odpowiedzialnością*). On the one hand, it allows the company's owners (shareholders) to limit their liability arising from their involvement in the company (as opposed to partnerships (*spółki osobowe*), where the liability is unlimited), and on the other hand it is less formalised and easier to establish than a joint-stock company.

### 3.2 Natural Gas Licensing – Regulatory and Corporate Conditions

In Poland, a licence is required for the performance of an economic activity that concerns:

- Trading of gaseous fuels, however, there are a few statutory-listed exceptions, including, amongst others, trading gaseous fuels when the annual turnover does not exceed EUR 100,000, and trading LPG when the annual turnover does not exceed EUR 10,000;
- Cross-border natural gas trading;
- Local LPG storage in installations with a capacity of more than 1 MJ/s; and
- Transmission or distribution of heat if the total power ordered by the customer exceeds 5 MW.

As opposed to an electricity trading licence, which covers both domestic and cross-border trading of electricity, there is a separate licence required for the external trading (exporting or importing) of natural gas. While it is possible for one entity to hold more than one licence, the activities are licensed separately, and each of the licence applications is also subject to separate fees. In addition, in order to apply for a cross-border trading licence a company must already hold a licence for trading gaseous fuels within the country.

In this chapter, a reference to a **“Wholesale Licence”** will include both types of licences relating to the Wholesale Activities of gas, unless an express distinction is made.

A Wholesale Licence is granted by the URE President for a period of 10-50 (ten to fifty) years, with the possibility of requesting a Wholesale Licence for a shorter period of time. There are no statutory criteria that would determine the Wholesale Licence term. The President of URE decides on the Wholesale Licence term at his/her own discretion, however he/she will take the desired term as indicated in the application into account.

A Wholesale Licence may be granted to an entity that has its corporate seat (or domicile, in case of natural persons) within the territory of one of the Privileged Jurisdictions.

Similarly to electricity, each entity that intends to conduct any of the above-mentioned licensed activities in the future may apply for a promise of being granted a Wholesale Licence (**“Promise”**). For further details please see Point 3.1 above.

Companies having their corporate seat within one of the Privileged Jurisdictions may conduct Wholesale Activities directly, i.e. without establishing a Local Branch Office or a Local Corporation.

With regard to other foreign companies, according to information from the URE, establishing a Local Branch Office should suffice to obtain a Wholesale Licence. However, in view of the current wording of the Energy Law, this interpretation may be challenged. To be on the safe side, companies from outside the Privileged Jurisdictions are recommended to establish a Local Corporation (or a corporation within one of the Privileged Jurisdictions). So far, no Wholesale Licence has been granted to a Local Branch Office of a company from outside the Privileged Jurisdictions.

For the preferred legal form of a Local Corporation, please see Point 3.1 above.

The same Entity can hold Wholesale Licences for both electricity and natural gas trading.

## **4. OBTAINING THE WHOLESALE LICENCE(S)**

### **4.1 Electricity**

#### **4.1.1 Annexes to the application for the electricity Wholesale Licence**

##### **4.1.1.1 Documents proving fulfilment of organisational requirements:**

- Excerpt from the Commercial Register (for Polish companies) or an excerpt from the relevant register of businesses from the state where the business is registered (for foreign applicants) issued not later than 3 (three) months prior to submission;
- Articles of association (required only in case of partnerships);
- Up-to-date certificate from the Polish National Criminal Record ("certificate of no criminal record"), issued with respect to:
  - All management board members (in case of corporations) or all shareholders (in case of partnerships);
  - The applicant itself (the corporation/partnership as such); and
  - In addition to the above, if the applicant has its registered seat outside of Poland, a certificate proving the absence of a criminal record of the management board members should be obtained both in Poland and in the country of the applicant's registered seat, and in case the management board members are not citizens of the state of the company's incorporation, certificates from the countries where the board members hold citizenship. In such case, a certificate that the applicant (the corporation as such) does not have a criminal record should also be obtained both from the Polish National Criminal Record and from the relevant register maintained in the country of the applicant's incorporation (if such register exists). If a national criminal record does not exist in the country of origin, a statement in this respect should be submitted to URE;
- Declaration that, within the past 3 (three) years, the applicant has not been removed from the Register of Regulated Activity due to exhaustively listed statutory breaches;
- Declaration that no application for declaring insolvency has been filed against the applicant, and that the applicant is not in a state of liquidation;
- Description of the previous activity of the applicant, and the activity for which the licence is being applied, together with the financing plan relating to the licensed activities and a description of suppliers and recipients;
- Indication of time period for which the licence shall be granted;
- The tax identification number of the applicant;
- Decision of a tax authority granting a tax identification number, which may be obtained either from the Polish tax authority or in the country of the company's incorporation (in case of foreign companies);
- Power of attorney and payment confirmation of stamp duty of PLN 17 (EUR 4) (if applicable); and
- Confirmation of payment of the application fee.

**4.1.1.2 Documents proving fulfilment of requirements relating to the financial standing:**

- Indication of the financial means of the applicant that will ensure proper performance of the activities, for which the licence is being applied;
- Summary of planned annual income and costs connected with the performance of the licensed activities, presented for a minimum period of 3 (three) years;
- Summary of planned sales of electricity in MWh;
- Financial statements for the last 3 (three) years, and in case the entrepreneur has been carrying out the business activity for a period shorter than 3 (three) years – the aforementioned documents for the period from the date of commencement of business;
- Other documents confirming holding or evidencing the possibility of acquisition of funds sufficient for the proper performance of the licensed activity (bank guarantees, insurance guarantees and guarantee agreements);
- Certificate from the bank in which the main bank account is maintained for the applicant, specifying the amount of turnover on the side of Debit and Credit, financial capacity, credit worthiness, and containing information on loans granted to the entrepreneur and information on whether the account is encumbered with enforcement proceedings (issued not earlier than 3 (three) months before submission);
- Certificate issued by the relevant branch of the Social Security Authority confirming that the entrepreneur is not in arrears with the payment of social security payments; in case of civil companies, a certificate for each shareholder and for the company are required (issued not earlier than 3 (three) months before submission); and
- Certificate issued by the relevant tax authority confirming that the entrepreneur is not in arrears with any tax payments (issued not earlier than 3 (three) months before submission).

**4.1.1.3 Additional requirements for companies from the Privileged Jurisdictions:**

- An applicant domiciled abroad or having its registered seat abroad, must either appoint an attorney-at-law (proxy) in Poland, or indicate a process agent (i.e. a representative upon whom the correspondence with the authority may be served). In case the applicant fails to do so, all the correspondence intended for that entrepreneur will be left in the records of the case and deemed to be delivered;
- All documents submitted in a foreign language must be accompanied by a certified translation into Polish. In addition, all certificates proving no criminal record should be obtained within 3 (three) months prior to their submission to the licensing authority; and
- The compliance of the submitted documents with the law of the place of their issuance must be confirmed by apostille (Article 3 Sentence 1 of the Hague Convention dated 5 October 1961). However, an apostille is not required when Poland and the other relevant country are both parties to the Hague Convention and have agreed to abolish or simplify the legalisation process or to release a particular document from legalisation.

**4.1.1.4 A licence cannot be granted to a company/entrepreneur which:**

- is undergoing insolvency or winding-up proceedings;
- has had its licence revoked within the past 3 (three) years due to a gross breach of the licence terms or other regulations relating to the licensed activities, or has been removed from the Register of Regulated Activity due to exhaustively listed statutory breaches; or
- has been convicted of a crime relating to any economic activities as described in the Energy Law.

**4.1.2 Procedural rules**

The procedure for granting a licence is paper-based.

The statutory term for issuing a decision on the licence is 1 (one) month (in particularly complicated cases 2 (two) months). However, when calculating the duration of the proceedings, delays not attributable to URE (e.g. requesting additional documents) are not taken into account. In practice, licence proceedings for granting a licence usually last for 2–3 (two to three) months.

**4.1.3 Operational conditions required for issuance and maintenance of the electricity Wholesale Licence**

There are no particular requirements relating to either IT systems or premises that need to be met in order to apply for a licence. However, an entrepreneur having its registered seat abroad must either appoint an attorney-at-law (proxy) in Poland, or indicate a process agent (i.e. a representative upon whom the correspondence with the authority may be served), for the purpose of communication with URE.

Polish law has special requirements relating to the qualifications of persons employed in the operation of grids, as well as exhaustively listed facilities and equipment. However, the requirements are mostly relevant with regard to producing, transmitting, and distributing electricity, and therefore they will normally not apply to entities engaging purely in wholesale electricity trading activities. The same holds true with regard to gas trading.

**4.1.4 Financial guarantees**

At the discretion of URE, the issuance of a licence may be conditional upon the submission of a financial security to secure third party claims and in particular environmental damage claims, which may arise due to the improper performance of the licensed activities. There are three admissible forms of financial security: (i) bank guarantee; (ii) insurance guarantee; and (iii) a guarantee agreement concluded with a third party. In practice, URE often asks for the submission of additional security, in particular with regard to newly established companies which cannot present any documentary evidence of their financial history (and/or standing).

**4.1.5 Procedural costs**

The administrative fees connected with the Wholesale Licence application include:

- For the Promise of a licence – PLN 98 (approximately EUR 25);
- For the licence – PLN 616 (approximately EUR 154); and
- Stamp duty of PLN 17 (approximately EUR 4), in case the licensee is represented by a proxy.

In addition, licensees are obliged to pay an annual licence fee in the amount of 0.006% (zero point zero zero six percent) of the company's revenues derived from the performance of the Wholesale Activities covered by the scope of the licence. The actual fee must not be lower than PLN 200 (approximately EUR 50) or higher than PLN 1 million (approximately EUR 250,000).

#### **4.1.6 Maintenance of the Wholesale Licence**

In general, there is no regular maintenance of the licence, except from the general duty to inform URE in case any of the following data has changed:

- Licensee's name, seat and/or address, as well as main address, where the economic activities of a given licensee are conducted;
- Registration number of the licensee in the Commercial Register or Tax Identification Number (NIP); or
- Type and scope of the economic activity conducted by the licensee, which is covered by the scope of the licence.

In addition, the licensee must at all times comply with the terms and conditions of the licence and with the legal regulations that apply to the given type of activities conducted. The licensee must also pay an annual fee, referred to in Point 4.1.5 above.

#### **4.1.7 Term of the Wholesale Licence**

The licence is generally granted for a term between 10 (ten) and 50 (fifty) years, unless the application is for a shorter term. The applicant must indicate the desired licence term, as well as the date of commencing its economic activities. An extension may be applied for not later than 18 (eighteen) months prior to the expiry of an existing licence.

URE may order an energy company to conduct its business activities in spite of the expiry of the licence for up to 2 (two) years, if such conduct is required in the interest of society. If conducting the licensed activities brings a loss to the company, the reasonable costs of conducting the licensed activities may be covered by the State, upon approval of the URE President.

### **4.2 Natural Gas**

#### **4.2.1 Annexes to the application for the gas Wholesale Licence**

The documents that should be submitted to the authority are the same for the domestic gas trading licence as for the electricity trading licence. Please refer to Point 4.1.1 above.

There are additional documents that should be presented together with the cross-border trading licence application, namely:

- A detailed description of the envisaged activity relating to cross-border trading, in particular the minimum level of diversification of cross-border gas supplies. Entities importing gas to Poland are required by law to have a diverse import portfolio. As specified in the Regulation of the Council of Ministers, the maximum share of the natural gas imported from one country of origin compared to the overall volume of natural gas imported in the given year, cannot exceed:
  - 59% (fifty nine percent) – in the years 2015–2018;
  - 49% (forty nine percent) – in the years 2019–2025.
- Information on the envisaged volume of natural gas import (except for licences granted solely for the export of natural gas);
- Proprietary security;

- Information on how the company is going to maintain mandatory storage obligations (entities importing gas to Poland and selling it onwards – either to retail customers or to wholesale traders - must maintain mandatory gas stocks. The volume of mandatory gas stocks, as a general rule, must be equal to the average volume of natural gas imported by a given entity during a 30 (thirty) day period); and
- Documentation confirming the legal title to the storage capacities required to conduct the licensed activities or a preliminary agreement on gas storage.

#### **4.2.2 Procedural rules**

The procedure for granting a licence is paper-based.

For the time frame for the issuance of gas trading Wholesale Licences, please see Point 4.1.2 above.

#### **4.2.3 Operational conditions required for the issuance and maintenance of the gas Wholesale Licence**

Please see Point 4.1.3 above. Although not expressly provided for in the statutory laws, URE requires that a company applying for a cross-border trading licence must already hold a licence for trading gas within Poland.

#### **4.2.4 Financial guarantees**

Please see Point 4.1.4 above.

#### **4.2.5 Procedural costs**

The fee for the issuance of a cross-border trading licence amounts to PLN 4,244 (approximately EUR 1,061).

For other fees, please see Point 4.1.5 above.

#### **4.2.6 Maintenance of the Wholesale Licence**

Please see Point 4.1.6 above.

#### **4.2.7 Term of the Wholesale Licence**

Please see Point 4.1.7 above.

### **5. DIFFERENT RULES APPLICABLE FOR SUPPLYING INDUSTRIAL END-CUSTOMERS**

#### **5.1 Electricity Licensing – Regulatory and Corporate Conditions**

There is no distinction in Poland between wholesale trading and the supply of electricity to end-customers. As a result, a wholesale trader is also allowed to supply electricity to end-customers on the basis of one single licence.

#### **5.2 Natural Gas Licensing – Regulatory and Corporate Conditions**

There is no distinction in Poland between wholesale trading and the supply of gas to end-customers. As a result, a wholesale trader is also allowed to supply gas to domestic end-customers on the basis of one single licence. As detailed in Point 3.2 above; a separate licence is required for cross-border trading.

## 6. OBTAINING THE ADDITIONAL LICENCE(S)

### 6.1 Electricity

N/A

### 6.2 Natural Gas

N/A

## 7. SETTING UP A LOCAL ENTITY

### 7.1 Most Important Legal Rules and Operational Requirements

As described under Point 3 above, foreign companies registered in the Privileged Jurisdictions are entitled to directly apply for and hold an electricity/natural gas trading licence without the need for an Entity in Poland if they meet the regulatory requirements. In all other cases, foreign companies are required to set up a Local Corporation in order to apply for an electricity/natural gas trading licence.

A limited liability company (*sp. z o.o.*) is the most common form of Local Corporation established in Poland in order to obtain a licence and to undertake activity related to wholesale trading (see also Point 3.1 above).

An *sp. z o.o.* can be established by any foreign company with the limitation that it must not be formed solely by a single-shareholder limited liability company.

Upon execution of the articles of association, the company becomes a limited liability company "under the process of organisation" (*w organizacji*). It may acquire rights in its own name, incur obligations, sue and be sued. However, legal personality is obtained only after registration of the company in the National Court Register (*Krajowy Rejestr Sądowy*).

Before the *sp. z o.o.*'s registration in the National Court Register, the company also needs to arrange the following matters:

- Open a bank account in order to pay in the share capital;
- Have a legal title (ownership, lease) to office premises; and
- If the company does not manage bookkeeping itself – arrange for a book keeper.

Apart from the registration in the National Court Register, the *sp. z o.o.* also needs to file the respective applications to the tax office and statistical office in order to receive a tax identification number ("**NIP**") as well as a number at the National Official Register of Business Entities ("**REGON**"). Registration at the Social Security Office is also required in case the company plans to have employees.

The minimum capital required is PLN 5,000 (approximately EUR 1,250). The nominal value of one share must not be lower than PLN 50 (approximately EUR 12).

The *sp. z o.o.*'s mandatory corporate bodies are the shareholders' meeting and the management board. A supervisory board is only obligatory if the *sp. z o.o.*'s share capital (cumulatively) exceeds PLN 500,000 (approximately EUR 125,000) and there are more than 25 shareholders.

An sp. z.o.o. is represented by a management board. If the articles of association do not provide otherwise and there is more than one management board member, the company is represented by two members of the management board acting jointly or one management board member acting together with a proxy as another management board member.

As a general rule, shareholders are not liable for the debts of a sp. z.o.o. An exception exists for any obligations of the company which arose before its registration i.e. while still a limited liability company "under the process of organisation" (*w organizacji*). In such a case, the shareholder(s) of such a company "under the process of organisation" shall be jointly and severely liable for the company itself and, in addition, any persons who acted in its name are liable for the obligations of the company up to the value of the contribution financing the subscribed shares, which has not yet been made.

Additionally, in some cases a member of the management board may also be liable for the obligations of a sp. z.o.o. Namely, if an enforcement against the company proves to be ineffective, the members of the management board shall be jointly and severely liable for the company's obligations. However, members of the management board may release themselves from such liability under certain circumstances, such as filing for bankruptcy in due time.

The managing director of an sp. z.o.o. may be a foreign citizen without a permanent residence in Poland. However, from a practical point of view it is always easier to have at least one management board member in Poland.

The sp. z.o.o. may have a so-called "virtual office space", which, depending on the sp. z.o.o.'s requirements, may constitute only a post box or at least one desk in an office building. There are numerous companies in Poland which offer such services.

Another issue which is important from a practical point of view is opening a bank account in Poland. In general, it is possible for an sp. z.o.o. to open a bank account at any bank (also abroad). However, tax offices often refuse to make tax refunds to foreign bank accounts. Thus, it is advisable to open a bank account at a bank which has a branch in Poland and offers a Polish bank account number.

## 7.2 Procedural Rules

For an sp. z.o.o. to be established and registered at the National Court Register, the following documents are required:

- Articles of association (notarisation required);
- Resolutions appointing members of the management board (if not included in the articles of association) and/or members of supervisory board and/or proxies;
- Specimen signatures of all members of the respective governing bodies, certified by a notary;
- Declaration by the management board members that the share capital contributions of the shareholders have been made in full;
- List of shareholders and book of shares; both documents should be signed by all members of the management board; no proxies are allowed; the book of shares stays in the company's files while the list of shareholders is filed with the National Court Register;
- Lease agreement or other document proving that the company has the rights to use the registered office premises;
- Bank certificate on opening a bank account; and
- In addition to the documents presented above, the company should file with the National Court Register all documents necessary to obtain a tax identification number (i.e. the articles of association, certificate

from the bank regarding the sp. z.o.o.'s bank account, lease agreement or other document proving that the company has the rights to use the registered office premises), the statistical number (simple application) and the registration with the social insurance institution (simple application; the company should be registered at the social insurance institution if it plans to employ employees).

Registration of the company in the National Court Register takes no longer than 2 (two) weeks from the date of filing a complete application. Within 3 (three) days of said registration, the National Court Register transfers the documents necessary for the company to obtain a tax identification number and the statistical number to the appropriate authorities. The tax authorities then notify the National Court Register of the tax identification number (which is also registered by the National Court Register), following which the National Court Register transfers the relevant documents to the social insurance institution.

The administrative/court fees are as follows:

- Articles of association – notarial deed required; notary fees plus taxes depend on the share capital and length of the document; for a share capital of PLN 5,000 it is usually around PLN 250 plus excerpts of the notarial deed (usually four) which cost in total around PLN 200; together – PLN 450;
- Specimen signature of a board member – PLN 25 per signature;
- Power of attorney to act on behalf of the foreign company to sign the articles of association – notarial deed required; around PLN 100;
- Register court fee – PLN 600; and
- Registration of a company as a VAT payer – PLN 170.

Thus, the costs of establishment in total amount to approximately PLN 1,345 (approximately EUR 336). This amount may differ depending on the number of shareholders (and thus the number of powers of attorney), number of governing body members, etc.

## **8. TAXES**

### **8.1 VAT**

The sale of natural gas and electricity is subject to VAT. Generally a tax rate of 23% (twenty three percent) shall apply.

The law provides for a specific timing for the establishment of a tax obligation. The tax obligation arises according to Article 19a(5)(4)(a) and 19a(5)(4)(b) indent 6 of the VAT Act at the moment of issuance of an invoice resulting from (i) the supply of electricity or gas; or (ii) from rendering a service of distribution of electricity or gas but no later than upon the lapse of the term of payment as stipulated in the contract.

### **8.2 Corporate Income Tax**

A limited liability company, having its registered office or management within the territory of Poland, is subject to tax on the entirety of its income, regardless of where this income was generated. If the income is generated outside the territory of Poland, the relevant Dual Tax Treaty should be applicable (if it exists) in order to avoid double taxation. Generally, the subject of taxation is income, which is revenue minus tax deductible costs.

Taxpayers are obliged to pay monthly or quarterly advance income tax payments throughout the fiscal year and shall submit their annual tax returns to the tax offices no later than the end of the 3<sup>rd</sup> (third) month of the following tax year. The tax rate is 19% (nineteen percent).

### **8.3 Excise Duty – Electricity**

According to the European Union Council Directive 2003/96/EC regarding taxation of energy products and electricity, excise duty shall be payable at the time of delivery for consumption. This rule has been implemented into the Polish Excise Duty Act so that excise duty shall be due at the moment of the supply of electricity to the end-customers in Poland. The former delivery from the producer to the wholesale trader, as well as delivery made between wholesale traders, shall not be treated as a chargeable event.

The issue of taxation of electricity, which due to its characteristics is a special excise product, is specifically regulated. According to the Act, the following are taxed:

- intra-Community acquisition of electricity by the final purchaser;
- sale of electricity to the final purchaser within the territory of the country, including by an entity not licensed to produce, transmit, distribute or trade in electricity within the meaning of the Energy Law of 10 April 1997 that produced the energy;
- electricity consumption by an entity holding the licence referred to in Point 2;
- electricity consumption by a non-concessionaire referred to in Point 2 who produced energy;
- import of electricity by a final purchaser; and
- consumption of electricity by a final purchaser, if excise duty has not been paid to it and the entity who sold the electricity to the final purchaser cannot be determined.

On the other hand, loss resulting from the transmission or distribution of electricity, excluding energy consumed in connection with its transmission or distribution, and electricity consumed illegally, is not considered as electricity consumption.

In the case of carbon products, excise duty is applicable to the:

- sale of coal products in the territory of Poland to a final purchaser of coal;
- acquisition of intra-Community coal products by a final coal buyer;
- import of coal products by a final coal buyer;
- use of carbon products by an indirect carbon entity;
- use of carbon products by a final coal buyer:
  - acquired under the exemption referred to in Article 31a. 1, for purposes other than those exempted under this provision, but such use shall also be regarded as an infringement of the conditions referred to in Article 1. 31a. 3, as well as the sale, export or intra-Community supply of carbon products by a final purchaser of coal instead of using them for the purposes referred to in Article 31a. 1;
  - obtained in a way other than by acquisition; or
  - if it is not possible to determine the entity that sold the carbon products to a final purchaser, and as a result of tax audits, customs or tax inspections or tax proceedings, it was not established that tax was paid for the due amount;
- use or sale of carbon products obtained by the act of forbidden penalties; and
- loss of carbon products.

## 8.4 Excise Duty – Gas

### 8.4.1 Fuel Package

The provisions of the European Union tax system require that the Member States, with regard to the structure and rates of excise duty, apply a minimum level of taxation for each product. However, Member States can always set and apply higher excise rates based on their own fiscal policy. This means that in the European Union there is a large variation in the fiscal burden for individual excise goods. In addition, in order to meet the criterion of the minimum level of taxation, Poland, like other Member States that have not adopted the single currency, is obliged to annually review the level of taxation of excise goods on the basis of the euro exchange rate applicable to the national currency and the possible adjustment of the excise tax rates.

On 1 August 2016, a “Fuel Package” was introduced as a revision of the former legislation. The main purpose of the “Fuel Package” is to eliminate a number of loopholes in the VAT, excise taxes, and concession that regulate the trading of liquid fuels.

In the case of gas products, the following are subject to excise duty in accordance with Article 9c of the Excise Duty Act:

- intra-Community acquisition of gas products by a final gas purchaser;
- sale of gas products to a final purchaser of gas;
- import of gas products by a final gas buyer;
- use of gas products by an intermediary gas entity; and
- use of gas products by a final gas buyer:
  - obtained in a way other than by acquisition;
  - if it is not possible to establish an entity that sold these products to the final gas purchaser, and as a result of a tax audit, fiscal or tax audit, it was not established that excise duty was paid in due amount; or
  - acquired under the exemption referred to in Article 31b. For purposes other than those exempted under those provisions, such use shall also be considered as an infringement of the condition referred to in Article 4, 31b Section 5-7 or 9, as well as sale, export or intra-Community supply of gas products by the final gas purchaser instead of using them for the purposes referred to in Article 31b Section 1-4.

## 9. CONTRACTUAL RELATIONS

Wholesale traders can carry out their activity through the following main forms of market activity:

- Bilateral agreements where a trader either buys the energy or gas from the producer or sells it to its recipients;
- Power exchange – i.e. TGE. It is also possible to trade energy on the energy trade platform of the Polish Stock Exchange as well as through internet platforms; and
- Balancing market.

The mandatory contractual arrangements are:

## **9.1 Transmission Service Agreement**

Transmission service agreements play an important role in the wholesale energy trade market. They are concluded with the transmission system operator, i.e. with PSE on the basis of a model transmission service agreement (available on PSE's Web site). The conclusion of this agreement automatically results in a trader's access to the balancing arrangements established by the transmission system operator. It is also obligatory to conclude this agreement in case a trader wishes to trade energy on TGE, unless it participates in the power exchange market through a brokerage house. Finally, this agreement also includes the energy nomination duties of a trader towards the transmission system operator and thus no separate agreement in this case is required (nor any separate payment).

The situation is similar in the case of gas as there is only one transmission system operator i.e. Gaz-System which is fully owned by the State Treasury. According to the recently updated Transmission Network Code of Gaz-System, there will now be only one framework transmission service agreement to be concluded with Gaz-System, whereas the individual schedules attached thereto shall be adjusted to particular contractors. The main content of such an agreement will be published on the Gaz-System's Web site.

## **9.2 Distribution Service Agreement**

In comparison to transmission service agreements, distribution service agreements are more relevant for those traders who are also interested in retail market participation and sales to end-customers. The agreement is concluded with distribution system operators. Contrary to the transmission system operator, there are several distribution companies (although these are largely still concentrated and mostly owned by the State Treasury). The most typical and common agreement is a general distribution agreement between the distribution system operator and the energy seller. The conclusion of this agreement is especially crucial in relation to the Third Party Access rule. Additionally, in case of agreements concluded on the power market, it should also indicate the entity responsible for commercial balancing (*bilansowanie handlowe*), if such entity is not a party to this agreement.

## **9.3 Registration to Participate in Capacity Auctions for Cross-border Inter-connection Capacity**

In order to perform a cross-border electricity exchange, the trader must hold the relevant interconnection capacity, which is allocated by means of transmission capacity reservation auctions. Participation in an auction requires registration and acceptance of the auction rules published on the Web site of the auction office (i.e. Central Allocation Office GmbH), the fulfilment of solvency requirements and risk management as provided in the auction rules as well as submitting bids for reservation of capacity.

It is also possible to take part in auctions for cross-border gas interconnection capacity according to the network code (CAM NC) prepared by ENTSO-G.

## **9.4 Agreement with Polish Power Exchange (TGE)**

In order to become a TGE participant, a trader needs to enter into a membership agreement, as well as to receive approval from the TGE Board of Directors. Also, it must hold a permit issued by the Polish Financial Supervision Authority ("KNF") for keeping exchange commodities registers or accounts, or hold a permit for carrying out brokerage activities. Finally, it must employ a commodity exchange broker. If a trader cannot fulfil these requirements, it may also trade energy on TGE through a brokerage house. According to the Small Tri-Pack, gas traders can now also participate in TGE directly, and not only through a brokerage house.

As the Small Tri-Pack includes also an amendment of the Act on Commodity Exchange dated 29 October 2000 (Journal of Laws 2010, No. 48, item 284), it has now become possible for TGE to open a financial market with regard to energy. It means that energy can be traded not only as a commodity, but also as a financial instrument (derivative).

## 9.5 Gas Storage Agreement

According to the Act on Stocks of Crude Oil, Petroleum Products and Natural Gas dated 16 February 2007, entities importing gas to Poland in order to further resell it are obliged to maintain gas reserves.

In practice, basically all gas storages are maintained by PGNiG and – since 1 June 2012 – by its special purpose vehicle, i.e. Operator Systemu Magazynowania sp. z o.o. which operates a storage capacity equal to 300 million m<sup>3</sup>.

## 10. REPORTING OBLIGATIONS

There are two main sources of reporting obligations for entities engaged in wholesale activities towards regulators – firstly, the Energy Law and the respective ordinances, and secondly, a particular licence granted to an entity, which imposes on its addressee obligations indicated therein.

Statutory reporting obligations of wholesale traders of gas and electricity are directly related to the powers and obligations of the URE President who is responsible for, among others, control and data collection regarding energy and gas markets. As a result, the URE President is authorised to have insight into the accounting documents of the trading entities, as well as to request information regarding their wholesale activities.

Additionally, the URE President may request documents and data related to the performance of obligations of, among others, wholesale traders relating to the redemption of certificates of origin, payment of substitution fees or providing data to brokerage houses on the amount of electricity purchased, both for its own purposes and for further sale.

Usually, all the information is collected by the URE President in the form of letters delivered to selected entities, as well as by announcements on the URE webpage where market participants can find the detailed scope of information they are expected to provide. Most of the information is requested periodically (once a year or once a month). However, the URE President may also request such information ad hoc in case certain circumstances arise which justify such request. Some data requests (questionnaires) are directed only to the main market players, the activities of which influence energy and gas market conditions to the greatest extent.

Another source of reporting obligations is usually a licence granted to the trading entity by URE. The scope of information that such entity is obliged to provide to URE includes any changes in the entity's activity, especially any change in the company's name, seat or scope of activity, as well as an intention to discontinue the licensed activity. Moreover, it is obligatory to inform URE about any failure to undertake the licensed activity within the time frame stated therein.

Trading entities are also obliged to provide URE with data according to which licence fees are calculated.

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WOLF THEISS

ROMANIA

## 1. RELEVANT LAWS AND REGULATIONS

### Wholesale Electricity Market and Wholesale Gas Market

- Law No. 123/2012 regarding energy and gas as further amended ("**Law 123/2012**" or "**Energy Law**");
- Law No. 220/2008 regarding the establishment of a system to promote electricity generation from renewable energy sources, as further amended and supplemented ("**Law 220/2008**");
- ANRE Order No. 12/2015 regarding the approval of the Regulation for obtaining the licences and authorisations in the electricity field ("**Order 5/2015**");
- ANRE Order No. 91/2015 regarding the approval of the Procedure for the confirmation of the participation right to the energy markets in Romania of certain foreign legal entities having their headquarters in a EU Member State ("**Order 91/2015**");
- ANRE Order No. 8/2014 regarding the approval of the General Conditions for the licensing of the electricity supply activity ("**Order 8/2014**");
- ANRE Order No. 13/2015 regarding the approval of the General Conditions for the licensing of the activity of the electricity trader ("**Order 13/2015**");
- ANRE Order No. 32/2016 regarding the approval of the Methodology for the preparation of the annual report by the titleholders of licences in the field of electrical and thermal energy, as further amended ("**Order 32/2016**");
- ANRE Order No. 61/2016 regarding the approval of the Regulation for the labelling of electricity ("**Order 61/2016**");
- ANRE Order No. 25/2004 regarding the approval of the Commercial Code for the Wholesale Electricity Market as further amended ("**Commercial Code for the Wholesale Electricity Market**");
- ANRE Order No. 34/2013 regarding the approval of the Regulation for obtaining the setting-up authorisations and licences in the gas field as further amended ("**Order 34/2013**");
- ANRE Order No. 16/2013 regarding the approval of the National Gas Transport Code as further amended and supplemented ("**National Transport Code**");
- ANRE Order No. 35/2016 regarding the approval of the Methodology in relation to the minimum quota of natural gas subject to storage applicable to holders of supply licences ("**Order 35/2016**");
- ANRE Order No. 12/2013 regarding the approval of the Rules in relation to transport of backhaul gas ("**Order 12/2013**");
- ANRE Order No. 77/2009 regarding the approval of the framework agreement for supply of gas as further amended ("**Order 77/2009**");
- ANRE Order No. 50/2013 for the approval of the General Rules regarding the Gas Centralised Market as further amended and supplemented ("**Order 50/2013**");
- ANRE Order No. 51/2013 for the approval of the Regulation regarding trading on the Centralised Gas Market administrated by the Romanian Commodities Exchange as further amended ("**Order 51/2013**");
- ANRE Order No. 54/2017 for the approval of the Regulation regarding trading on the Centralised Gas Market administrated by OPCOM (Centralised Market for Bilateral Gas Contracts) ("**Order 54/2017**");

- ANRE Order No. 118/2016 regarding the approvals of fees and contributions required to be paid to ANRE ("**Order 118/2016**");
- ANRE Order No. 118/2014 for the approval of the Methodology for the establishment of the obligation for the producers and supply for the trading of natural gas on the central platforms in Romania ("**Order 118/2014**");
- Government Ordinance No. 7/2013 regarding the approval of the additional income required to be paid following the liberalisation of the gas market ("**GO 7/2013**"); and
- Law No. 31/1990 on commercial companies, as further amended and supplemented ("**Company law**").

## 2. ORGANISATION OF ELECTRICITY MARKET AND GAS MARKET

The Romanian electricity market was fully liberalised at the end of 31 December 2017 when the final step of price deregulation for household clients was completed. The gas energy market is still undergoing the process of full liberalisation in accordance with EU regulations. It is currently scheduled to take place by 1 April 2020, although the schedule is expected to further change.

In Romania, the energy market is regulated by the Romanian Energy Regulatory Authority ("**ANRE**") which acts as a central and independent administrative unit, competent in establishing, drafting and applying regulations at a national level so that the electricity, gas and thermal markets will operate in conditions of efficiency, competitiveness, transparency and for the protection of the consumers.

Due to the liberalisation process ANRE also has the authority to monitor the energy market in order to protect and preserve competition and the access of new participants. Please note most of the data provided throughout this Guide is based on the ANRE 2016 Market Report published on 25 September 2017.

In terms of system operators, Romania has chosen the "Independent System Operator" (ISO) model for both the electricity and natural gas sectors, given the public ownership of the transmission networks. This model allowed for the certification of the transmission system operator ("**TSO**") as complying with EU requirements while maintaining the current ownership regime over the networks but ensuring at the same time an effective separation between transmission, generation and supply activities.

### 2.1 Electricity Market

On the wholesale electricity market there are 210 licensed operators, out of which 195 hold a wholesale Supply Licence and 15 hold a wholesale Trading Licence.

The transmission system operator on the electricity market is **Transelectrica S.A.** ("**Electricity TSO**") which acts as an administrator and operator of the electricity transmission system and ensures electricity exchange between the countries of Central and Eastern Europe, in its capacity as a member of ENTSO-E<sup>1</sup>. It is also responsible for electricity transmission, for the functioning of the system and of the electricity market and for ensuring the safe operation of the National Electro-Energetic System.

The electricity distribution in Romania is performed by 8 regional distribution system operators<sup>2</sup>.

1 European Network of Transport and System Operators for Electricity.

2 Distribuție Energie Oltenia S.A., E-Distribuție Banat S.A., E-Distribuție Dobrogea S.A., E-Distribuție Muntenia S.A., Delgaz Grid S.A., SDEE Electrica Distribuție Muntenia Nord S.A., SDEE Electrica Distribuție Transilvania Sud S.A., SDEE Electrica Distribuție Transilvania Nord S.A.

Romania has one nuclear power plant located in Cernavoda, Constanta County. The nuclear power plant was designed to have five units, each of them with a total capacity of 706 MW. Currently, only two units out of the five are operational, producing around 17.5% (seventeen point five percent) of Romania's electricity.

In 2015, Nuclearelectrica SA (the operator of the Cernavoda plant) signed a new memorandum of understanding for the development, construction and operation of units 3 and 4 with China General Nuclear Power Corporation by way of a joint venture in which Nuclearelectrica will hold a minimum of 30% (thirty percent) of the shares. However, the status of this joint venture is currently uncertain.

Within the mix of technologies for producing electricity, Romania still has a majority share allocated to conventional electricity (coal, nuclear, natural gas, oil fuel, other conventional sources) with coal having the largest share with 24.47% (twenty four point forty seven percent). However, renewable electricity ("**RES-Electricity**") substantially increased its share in the past years to over 40% (forty percent) (most of it from hydro power with 28.86% (twenty eight point eighty six percent) and wind power with 10.15% (ten point fifteen percent)). Romania has already reached its RES-Electricity target which was set at 24% (twenty four percent). Currently, however, its electricity interconnection level with neighbouring countries is below its 2020 target.

The electricity market in Romania is comprised of (i) the regulated electricity market; and (ii) the competitive electricity market which is divided into the competitive wholesale electricity market and the retail electricity market.

As mentioned above, as of 1 January 2018, Romania's electricity market is fully liberalised. Therefore, ANRE no longer approves the regulated tariffs, which are currently included in the price of electricity. Instead, household consumption is invoiced at the tariffs/prices for the universal service endorsed by ANRE. However, household consumers have the option to change their electricity supplier and conclude electricity supply contracts with any active supplier on the electricity market.

Law 123/2012 stipulates the general conditions under which trading of electricity may be performed in Romania.

On the competitive wholesale electricity market, trading may be performed by transactions that are agreed by way of bilateral contracts concluded by public auctions on the OPCOM, which includes the following trading platforms: Day Ahead Market, Intra-Day Market, the Centralised Market for Bilateral Electricity Contracts, the balancing market, and the electricity market for large consumers. By exception, producers of RES-Electricity operating power plants with a capacity not exceeding 1 MW or 2 MW in case of high efficiency cogeneration power plants can sell their electricity directly to end-customers (outside the OPCOM markets).

Recently a new market referred to as the centralised market for RES-Electricity and green certificates ("**GC**") was regulated and started operating from September 2017. This market operates as a centralised and anonymous market where competitive, transparent, public, centralised and non-discriminatory trading of RES-Electricity is ensured along with the GCs corresponding to the amount of electricity traded on this platform.

## **2.2 Natural Gas Market**

There are 79 licensed gas suppliers on the competitive natural gas market out of which 38 are acting on the regulated gas market. The number is expected to increase given the ongoing liberalisation trends of the gas market.

Recent amendments to the Energy Law, state that starting from 1 April 2017, the price of gas sold by domestic producers in Romania is to be determined freely based on market supply and demand factors. The liberalisation process started in late 2007 and was completed for non-households in 2014. Following such amendments, the Government may only intervene to regulate the price of natural gas sold by suppliers to household consumers.

Another important measure that became effective on 1 April 2017 is the elimination of legal restrictions on natural gas exports. Nevertheless, producers and suppliers must sell/buy a certain quota of natural gas through centralised markets.

The transmission system operator for the natural gas market is Transgaz S.A. ("**Gas TSO**"), a Romanian legal entity which implements national strategy for the transport, international transit, natural gas dispatch and research-design of natural gas. In addition, Gas TSO acts as the technical operator of the national transport system and is responsible for its safe, qualitative, efficient and environmental operation. The gas balancing regime of the market is also managed by Gas TSO through a specialised platform where the beneficiaries of Wholesale Licences are obliged to submit relevant information used for the balancing of the market.

The distribution of natural gas in Romania is performed by 39 licensed distribution system operators. The largest distributors of natural gas in Romania are Distrigaz Sud Retele and E.ON Gaz Distribuție, which operate large regional networks.

The storage of natural gas is carried out by two licensed operators, Romgaz and Depomures. The largest storage operator is Romgaz which covers most of the natural gas storage services in Romania.

Law 123/2012 stipulates the general conditions under which trading of natural gas may be performed in Romania.

The natural gas market in Romania is comprised of (i) the regulated natural gas market; and (ii) the competitive natural gas market. Natural gas transactions can be wholesale or retail.

On the regulated natural gas market, trading can be performed via framework contracts approved by ANRE.

On the competitive wholesale natural gas market trading may be done (i) on the basis of bilateral contracts freely negotiated by the parties; (ii) on the basis of bilateral contracts concluded by public auctions on the OPCOM<sup>3</sup> which includes the following trading platforms: the Centralised Market for Natural Gas and the Day Ahead Market for Natural Gas; and (iii) on the centralised market administrated by the Romanian Commodities Exchange.

On the retail natural gas market, traders sell natural gas to end-customers based on negotiated contracts or standard-type offers (*oferte tip*).

### **3. CONDITIONS FOR APPLYING FOR ELECTRICITY AND NATURAL GAS WHOLESALE LICENCE(S)**

#### **3.1 Electricity Licensing – Regulatory and Corporate Conditions**

In Romania, trading of electricity may be done by the electricity suppliers or traders. To this end, in order to be authorised to perform electricity trading, the interested party must first obtain a Supply or a Trading Licence ("**Wholesale Licence**") for the activity of electricity supply.

According to the Energy Law, the holder of a Supply Licence is entitled to sell electricity to clients and to supply electricity to consumption locations owned by the supplier. Although the definition under the Energy Law refers only to transactions on the retail market, according to the general conditions attached to the Supply Licence approved by ANRE Order No. 8/2014, the holder(s) of Supply Licence(s) also have the right to trade electricity on the wholesale electricity market and to carry out electricity import and export operations. The holder of a Trading Licence is entitled to (i) sell and purchase electricity exclusively on the wholesale electricity market; and/or (ii) carry out electricity import and export operations.

A legal entity established in an EU Member State which holds a valid licence or similar document for carrying out supply or trading activities may do so in Romania without having to obtain an additional licence from ANRE, provided that the applicant declares on its own liability that it will observe the technical and commercial norms applicable in Romania for the respective activity. ANRE must formally confirm by way of a decision<sup>4</sup> such participation right in the electricity markets in Romania.

<sup>3</sup> Governmental Emergency Ordinance No. 64/2016 for the amendment of Law 123/2013.

<sup>4</sup> In accordance with Order 91/2015.

Foreign entities which are not established in an EU Member State may obtain a Wholesale Licence only subject to the incorporation of a Local Branch Office or a Local Corporation (as defined in Point 7 below). A Local Corporation may be incorporated, amongst others, as a joint stock company (*societate pe actiuni*) or as a limited liability company (*societate cu raspundere limitata* or “SRL”).

The incorporation of a Local Corporation in the form of an SRL is the solution most widely used in practice due to its simple organisation rules. Both such entities (i.e. a Local Branch Office and a Local Corporation) are entitled to apply for a Wholesale Licence. However, if a Wholesale Licence is granted to a Local Branch Office, the holder of the Wholesale Licence will be its founder.

According to Romanian legislation, the main practical advantages in choosing a Local Corporation are the following: in contrast to a Local Corporation, a Local Branch Office (*sucursala*) does not have legal personality; acting as an extension of the parent company. Foreign trading companies may set up Local Branch Offices in Romania, if the legislation governing their articles of association provides for such right. The Local Branch Office must observe both the relevant legislation applicable to the parent company in its country of origin, and the imperative provisions set forth in the relevant Romanian legislation (e.g. the Local Branch Office may perform an activity as long as such is permitted in the country of origin of the parent company, as well as in Romania).

For details regarding the differences between incorporating a Local Branch Office and a Local Corporation, please refer to Point 7 below.

Wholesale Licence holders have regulated access to the public grid. Such access represents a right which the Electricity TSO and the electricity distribution system operators must grant in regulated conditions. The grid access may be restricted only if the safety of the national grid is endangered or the Electricity TSO or the distribution system operators do not have the necessary capacities.

Wholesale Licence holders must inform the Electricity TSO should they wish to perform import, export and transit activities.

### 3.2 Natural Gas Licensing – Regulatory and Corporate Conditions

In Romania, trading of natural gas may be done by gas suppliers. To this effect, in order to perform gas trading, the interested party must first obtain a Wholesale Licence for the activity of gas supply.

The current legal provisions in Romania do not distinguish between traders of gas and suppliers of gas and, thus, the Wholesale Licence for gas supply activities is sufficient to engage in natural gas trading and perform Wholesale Activities.

A Wholesale Licence may be granted to foreign entities (including entities established in an EU Member State) subject to the incorporation of a Local Branch Office or of a Local Corporation.

Wholesale Licences will not be granted to applicants who are subject to insolvency procedures or to applicants from whom ANRE withdrew a Wholesale Licence within the 5 (five) years preceding the submission of the new application.

For details regarding the main practical advantages in choosing a Local Corporation, please refer to Point 3.1 above and to Point 7 below.

Pursuant to Romanian legislation, there are no interdictions for the same entity to obtain Wholesale Licences for both electricity and natural gas trading.

Wholesale Licence holders have regulated access to the public gas system. The access to the public gas system, namely to transport and distribution systems, has two components: (i) booking of capacity; and (ii) connection to the system. Access to the system shall be performed based on access approval followed by the conclusion

of a connection agreement. The system access may be restricted only if the safety of the public gas system is endangered or the Gas TSO or the distribution system operators do not have the necessary capacities.

## **4. OBTAINING THE WHOLESALE/ LICENCE(S)**

### **4.1 Electricity**

#### **4.1.1 The application for the electricity Wholesale Licence**

The application for the electricity Wholesale Licence may be submitted to ANRE in a physical form or in an electronic format and must be in accordance with the applicable requirements. In order for the application to be analysed, the applicant must pay a fee no later than 10 (ten) days from the application date.

According to Order 12/2015, the following documents need to be attached to the application for any type of licence:

- company extract issued by the registry of commerce with complete information reflecting the up to date status of the applicant;
- if the applicant does not hold a different ANRE licence, excerpts (in copy) from the latest financial statements filed by the applicant together with evidence of their filing with the fiscal authorities, the balance sheet and profit and loss account. If the applicant was registered during the respective year, a copy of the latest monthly balance sheet will be provided;
- statements on their own liability in standard form of the controlling shareholders of the application, as well as, statements from the members of the applicant's board of directors or supervision board, as the case may be; and
- specific documents depending on the respective licence respectively as mentioned under Point 4.1.2 for the Supply Licence and under Point 4.1.3 below for the Trading Licence.

#### **4.1.2 Additional Documentation for the Supply Licence**

In addition to the above, in order to obtain a Supply Licence, the applicant must submit the following documents:

- Presentation of the organisational framework and personnel for the performing of electricity supply activities which must include:
  - specification of the applicant's offices where the electricity supply activity will be performed;
  - specification of the public relations offices including information units (additional location conditions must be fulfilled by the applicants to be designated as suppliers of last resort);
  - organisational chart of the applicant, as of the application date indicating the department responsible for the supply activity; and
  - personnel chart with the personnel structure per specialities, attesting to the qualification of the personnel designated for the carrying out of the activities for which the licence is requested;
- documents demonstrating that the applicant has available funds of at least EUR 1 million, at the exchange rate established by the National Bank of Romania as of the date of the application. Such funds can originate from one or more of the following sources: (a) own capital; (b) credit lines; and/or

(c) financial resources provided by its shareholders by way of loan/financing agreements or other types of contracts; and

- an estimation of the turnover for the 1<sup>st</sup> (first) year of activity.

#### **4.1.3 Additional Documentation for the Trading Licence**

In addition to the above, in order to obtain a Trading Licence, the applicant must submit the following documents:

- Presentation of the organisational framework and personnel for the performing of electricity supply activities which shall include:
  - specification of the applicant's offices where the electricity trading activity will be performed; and
  - organisational chart of the applicant, as of the application date indicating the department responsible for the trading activity;
- documents demonstrating that the applicant has available funds of at least EUR 500,000, at the exchange rate established by the National Bank of Romania as of the date of the application. Such funds can originate from one or more of the following sources: (a) own capital; (b) credit lines; and/or (c) financial resources provided by its shareholders by way of loan/financing agreements or other types of contracts; and
- an estimation of the turnover for the 1<sup>st</sup> (first) year of activity.

#### **4.1.4 Procedural rules**

If the documentation is complete and the applicant has paid the invoice issued in respect of the licence application, ANRE issues the Wholesale Licence within 60 (sixty) calendar days as of the moment the fulfilment of the conditions mentioned herein are confirmed.

In the process of analysing the application, ANRE has the right:

- to request the presence of the applicant representatives at its headquarters to clarify certain aspects in relation to the filed documentation;
- to check at the location, the status/existing documents; and/or
- to request any other documents which must be filed following the adoption of subsequent legislation or which verification is necessary in order to clarify the information from the documentation filed by the applicant.

#### **4.1.5 Operational conditions required for the issuance and maintenance of the electricity Supply Licence**

In accordance with the Energy Law, for the entire duration of the Supply Licence, the titleholders must observe all applicable legislation and the underlying conditions for the issuance of its licence, the most important ones being presented below.

##### **4.1.5.1 Contractual conditions for supply of electricity**

The licence titleholder must supply electricity to end-customers only after concluding a supply agreement containing certain mandatory provisions such as the unilateral right of the end-customer to terminate the contract by giving notice. The licence titleholder must undertake the balancing responsibility towards the Electricity TSO in accordance with the relevant regulations.

#### **4.1.5.2 Intermediation of access to public grid**

Among other obligations, the licence titleholder has the obligation to insure the intermediation of the end-customer relationship with the grid operator in certain conditions. Also, it can only supply electricity if an electricity meter is installed, which must fulfil all conditions imposed by the applicable regulations.

#### **4.1.5.3 Information obligations**

The licence titleholder has various informational obligations such as:

- to deliver the Electricity TSO consumption prognosis to its end-customers in accordance with the regulations in force;
- to inform the grid operator as soon as possible of any incident which may cause a deterioration of the electrical installations in its exploitation such as malfunctioning of the measuring groups, electricity theft, etc.;
- to notify ANRE in relation to any changes to its assets as further detailed under Point 4.1.5.8 below;
- to prepare and submit to ANRE an annual report in a standard format and content;
- to submit to ANRE periodically any other data required for the evaluation of the market in accordance with the various regulations in this regard; and
- to inform ANRE of various other changes such as: any deed that may be in breach of the licence conditions, change of the legal representative, corporate changes (merger, demerger, name change, changes in the shareholders structure, etc.), changes to contact details, insolvency.

#### **4.1.5.4 Invoicing of the supplied electricity**

The invoices to its end-customers must be issued in accordance with the legal provisions in force and contain sufficient data for the identification of the consumption location and justification of the total amount. Among other information, the invoices must clearly state the value of the (i) electricity supplied; (ii) related transportation/distribution services; (iii) taxes provided for by applicable legislation; and (iv) any other amounts invoiced.

#### **4.1.5.5 Labelling obligations**

The titleholder has the obligation to specify annually the origins<sup>5</sup> of the electricity acquired in the previous calendar year.

#### **4.1.5.6 Client information obligations**

The titleholder has the obligation to maintain a specialised structure in relation to its end-customers, which must have appropriate personnel and equipment, as well as communication means known to the public. In addition, the licence titleholder must inform ANRE, until 15 February of the locations and contact data of the client information centres for household clients.

Also, through its client information centres, the titleholder must record, the applications, notifications and client complaints in connection with the services provided as well as the way such records are handled.

#### **4.1.5.7 Separation of financial statements**

For those activities for which the licence was issued, the titleholder must prepare separate financial statements as if the respective activities were each carried out by separate companies.

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5 In accordance with Order 61/2016.

**4.1.5.8 Asset preservation**

The titleholder must notify the competent authorities with 60 (sixty) days' advance notice, of any intent to carry out operations (including mergers or demergers) which may result in:

- the corporate assets assigned for carrying out the authorised activities being transferred or belonging to other persons; or
- the existing share capital (i.e. the initial share capital as of the date the licence was issued or any subsequent increases or decreases of such capital) decreasing, by way of a single operation or in tranches, by at least 25% (twenty five percent).

**4.1.5.9 Cross subsidies**

The titleholder is not allowed to cross-subsidise between regulated activities as well as between the regulated and unregulated activities which it carries out.

**4.1.5.10 Financial guarantee**

As mentioned above under Point 4.1.1, applicants are required to provide and maintain the financial guarantees necessary for the participation in the gross electricity market as insurance for the continuity in carrying out the supply activities. The value of the financial guarantee may not be at any time lower than the necessary funds needed in order to execute for 30 (thirty) days the on-going contracts of the Wholesale Licence holder. By exception, the suppliers of last resort must maintain financial guarantees in a value of no less than 10% (ten percent) of the average turnover for the previous year.

**4.1.5.11 Personnel**

Applicants must ensure that the personnel engaged in the management of the company and the personnel that will actually supervise and operate the Wholesale Licence activities are qualified to carry out the activities for which the licence is requested.

**4.1.6 Operational conditions required for the issuance and maintenance of the electricity Trading Licence**

In accordance with the Energy Law, for the entire duration of the Trading Licence, the titleholders must observe all applicable legislation and the underlying conditions of the licence for its issuance, the most important of these being presented below.

**4.1.6.1 Contractual conditions for trading of electricity**

The licence titleholder must supply electricity only after concluding a formal agreement in this respect. The provisions of such agreement cannot derogate from its licence obligations. The licence titleholder must undertake the balancing responsibility towards the Electricity TSO in accordance with the relevant regulations.

**4.1.6.2 Information obligations**

The licence titleholder has various information obligations such as:

- to prepare and submit to ANRE an annual report in a standard format and content;
- to submit to ANRE periodically any other data required for the evaluation of the market in accordance with various regulations in this regard; and
- to inform ANRE of various other changes such as: any deed that may be in breach of the licence conditions, change of the legal representative, corporate changes (merger, demerger, name change, changes in the shareholders structure, etc.), changes to contact details, insolvency, etc.

**4.1.6.3 Invoicing of the supplied electricity**

The invoices to its customers must be issued in accordance with the legal provisions in force and contain sufficient data for the justification of the invoiced amount.

#### **4.1.6.4 Information obligations towards its contractual partners**

The titleholder has the obligation to maintain a communication system in relation to its contractual partners and public authorities. Such system must be functional before starting the licenced activities.

#### **4.1.6.5 Separation of financial statements**

For the activities for which the licence was issued, the titleholder must prepare separate financial statements as if the respective activities were each carried out by separate companies.

#### **4.1.6.6 Cross subsidies**

The titleholder is not allowed to cross-subsidise between regulated activities as well as between the regulated and unregulated activities which it carries out.

#### **4.1.6.7 Financial guarantee**

As mentioned above under Point 4.1.1, applicants are required to provide and maintain financial guarantees necessary for the participation to the wholesale electricity market as an insurance for the continuity in carrying out the trading activities. The value of the financial guarantee may not at any time be lower than the funds needed in order to execute on-going contracts of the Trading Licence holder for 30 (thirty) days.

#### **4.1.6.8 Personnel**

Applicants must ensure that the personnel engaged in the management of the company and the personnel that will actually supervise and operate the Trading Licence activities are qualified to carry out those activities for which the licence is requested.

#### **4.1.7 Procedural costs**

The procedural fee for obtaining a Wholesale Licence for either electricity supply or trading activities is RON 2,500 (approximately EUR 550), payable upon the submission of the application<sup>6</sup>.

In addition to the above one-off fees, in order to carry out a licensed activity, ANRE requires each licence holder to pay an annual contribution amounting to: (i) 0.08% (zero point zero eight percent) of the turnover generated by the owner, for the previous year; or (ii) a minimum of approximate RON 2,500 (approximately EUR 550), if the percentage applied to the turnover is lower than such minimum. In case of foreign companies which apply for the recognition of their licences issued by another EU Member State, the turnover is calculated in relation to the activities carried out in Romania.

#### **4.1.8 Duration of the Wholesale Licence**

The validity of the licence is for a maximum of 10 (ten) years for both the Supply and Trading Licence.

A Wholesale Licence for electricity supply may be extended for a minimum of 60 (sixty) days prior to its expiration date.

The request for extension should be accompanied by:

- a letter regarding the necessity for the extension;
- a company extract no older than 30 (thirty) days;
- a statement regarding the amendment or maintaining the information on the basis of which the licence was initially issued;
- proof that the applicant fulfils the financial guarantee conditions; and
- information regarding the supply electricity agreement which is ongoing and the duration of which exceeds the duration of the licence.

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<sup>6</sup> In accordance with Order 118/2016.

## **4.2 Natural Gas**

### **4.2.1 The applications for the gas Wholesale Licence**

An application for a gas Wholesale Licence may be submitted to ANRE in a physical form or in an electronic format and must be in accordance with the applicable requirements.

According to Order 34/2013, the following documents need to be attached to the application for any type of licence:

- Company extract issued by the registry of commerce with complete information reflecting the up to date status of the applicant;
- Copies of the identity documents and curriculum vitae of the legal representative/director/manager who must have a minimum of 2 (two) year experience in managerial activities and of the technical responsible person;
- copies of the Internal regulations attesting, among others, to the duties and responsibilities of the departments engaged in the activity of gas supply, the implementation of a communication system with consumers and of a system for collecting and resolving customer complaints;
- Documents evidencing the financial situation of the applicant namely: (i) own capital; (ii) credit lines or banking loan agreements; (iii) loan agreements from shareholders; or (iv) any other funds which may include a guarantee issued by a group company. The financial situation must cover at least three (3) months of estimated average deliveries for the year in which the licence is granted if the company did not hold a supply licence before or at least 2 (two) months of average deliveries supplied in the last year of activity, if the company held or holds a natural gas supply licence;
- Written statement issued by the legal representative of the applicant regarding the estimation of the gas quantity which will be supplied in the year in which the licence is issued; and
- Documents attesting to the implementation of a quality management system issued by a special body accredited by the Romanian Accreditation Association or another similar body recognised at the international level; applicants requesting a Wholesale Licence for the first time must submit the agreement concluded with the specialised body attesting the initiation of the certification process for the implementation of a quality management system; in such a case the implementation must be finalised within 2 (two) years of its initiation.

### **4.2.2 Procedural rules**

If the documentation is complete, ANRE issues the Wholesale Licence within 30 (thirty) days as of the moment the fulfilment of the conditions mentioned herein are confirmed. Such term may be reduced by ten (10) days if the information required is filed electronically.

### **4.2.3 Operational conditions required for the issuance and maintenance of the gas Wholesale Licence**

#### **4.2.3.1 Personnel**

Applicants must ensure that the personnel engaged in the management of the company and the personnel that will actually supervise and operate the Wholesale Licence activity are qualified to carry out those activities for which the licence is requested.

There is only a minimum requirement to be met by the person in charge (legal representative/director/general manager) of at least minimum 2 (two) year experience in managerial activities.

#### **4.2.3.2 Premises**

As mentioned above, applicants for a Wholesale Licence need to have a permanent office in Romania. Furthermore, details of the offices that will be engaged in the licensed activity must be communicated to ANRE in the process of obtaining the Wholesale Licence.

#### **4.2.3.3 IT system/assets**

The applicant must ensure that it has the capability to carry out the Wholesale Activity. The specific legislation provides for a general obligation for the applicant to implement IT systems which will ensure the transmission of information to Gas TSO in case of reservation of capacity in the transport system.

#### **4.2.4 Financial guarantees**

Applicants are required to submit financial guarantees for obtaining a Wholesale Licence, as detailed above under Point 4.2.1.

Licence holders are also required to provide a financial guarantee to: (i) OPCOM for the participation in the centralised market administrated by OPCOM; and (ii) the Romanian Commodities Exchange for the participation in the centralised market administrated by the Romanian Commodities Exchange.

The financial guarantees will be established based on the trading procedures approved by each relevant operator<sup>7</sup>.

#### **4.2.5 Procedural costs**

The procedural fee for obtaining a Wholesale Licence for gas supply activities depends on the quantity of natural gas estimated to be supplied in the year of licensing; and amounts to RON 0,45 per measurement unit (thousand cubic meters), payable upon the submission of the application<sup>8</sup>. In addition to this, ANRE charges a separate fee for the purpose of analysing the application amounting to RON 2,500 (approximately EUR 530). The same fee is due annually by the license holder. The annual fee charged by ANRE to the license holders cannot be lower than RON 2,500.

Alternatively to paying RON 0,45 per measurement unit (thousand cubic meters), the applicant for the Wholesale License for gas supply may also choose to pay a contribution amounting to 0.08% (zero point zero eight percent) of the estimated turnover generated by the licensed operation of the activities.

#### **4.2.6 Duration of the Wholesale Licence**

The validity of the licence is for a maximum of 25 (twenty five) years for gas supply activities.

A Wholesale Licence for gas supply may be extended if prior to its expiration date the holder of the licence makes such request.

The request for the extension should be accompanied by (i) a company extract not older than 30 (thirty) days; and (ii) evidence attesting the payment of the fee for such extension.

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<sup>7</sup> In accordance with Order 51/2013 and Order 54/2017.

<sup>8</sup> In accordance with Order 118/2016.

## **5. DIFFERENT RULES APPLICABLE FOR SUPPLYING INDUSTRIAL END-CUSTOMERS**

### **5.1 Electricity Licensing – Regulatory and Corporate Conditions**

In order to perform electricity trading activities and/or electricity supply activities, the obtaining of a Wholesale Licence (Supply or Trading Licence) for electricity supply is sufficient.

The manner in which the holder of the Wholesale Licence for electricity supply will conclude contracts with its clients depends on the electricity market where the holder of the Wholesale Licence operates. For details regarding the trading of electricity, please refer to Point 3.1.

### **5.2 Natural Gas Licensing – Regulatory and Corporate Conditions**

As previously mentioned, Romanian legislation does not differentiate between traders of natural gas and natural gas suppliers or between licences to be obtained by traders and by natural gas suppliers. Under these circumstances, in order to perform natural gas trading activities and/or natural gas supply activities, a Wholesale Licence for natural gas supply is sufficient.

The manner in which the holder of the Wholesale Licence for natural gas supply will conclude contracts with its clients depends on the natural gas market where the holder of the Wholesale Licence operates. For details regarding the trading of gas, please refer to Point 3.2.

## **6. OBTAINING THE ADDITIONAL LICENCE(S)**

### **6.1 Electricity**

An Additional Licence for electricity supply activities is not required in Romania in order to supply electricity to final clients. The requirements for an electricity Wholesale Licence, which is sufficient in order to supply electricity to end-customers, are detailed under Point 3.1 above.

### **6.2 Natural Gas**

An Additional Licence for natural gas supply activities is not required in Romania in order to supply natural gas to final clients. The requirements for a natural gas Wholesale Licence, which is sufficient in order to supply natural gas to end-customers, are detailed under Point 3.2 above.

## 7. SETTING UP A LOCAL ENTITY

In accordance with Romanian legislation, Wholesale Licences may be granted to foreign entities (including non-EU companies) subject to the incorporation of a Local Branch Office or of a Local Corporation.

### 7.1 Most Important Legal Rules and Operational Requirements

	LOCAL CORPORATION/SRL	LOCAL BRANCH OFFICE
<b>GENERAL DESCRIPTION</b>	A company with legal personality, considered to focus more on the identity of the shareholders. Generally, in this type of company, the number of shareholders is fairly small and such shareholders are usually actively involved in the management of the company. The regulations of the Company Law allow for greater flexibility in adapting the provisions of the articles of association to the business needs of the shareholders and of the company.	An organisational unit of a foreign company, without legal personality. Before performing any activity, the Local Branch Office needs to be registered with the Trade Registry where it will be located and to obtain a registration number.  Under the Company Law, the Local Branch Office represents less than a subsidiary ( <i>filiala</i> ), which has legal personality and appears as a distinct entity, but more than a representative office ( <i>reprezentanta</i> ) or a working unit or agency ( <i>punct de lucru sau agentie</i> ), which do not have legal personality but act as representatives of the parent company.
<b>MINIMUM CAPITAL</b>	RON 200 (approximately EUR 45). The share capital must be divided into equal shares, having a minimum value of RON 10 (approximately EUR 3). The subscribed share capital of a SRL must be fully paid in upon its incorporation.	No minimal requirement. The Local Branch Office does not have a separate patrimony.
<b>LIABILITY</b>	The shareholders liability is limited to the quota of the share capital submitted.	Due to its lack of legal personality, the Local Branch Office may not typically participate in litigation. The liability for the activity carried out by the Local Branch Office is entirely borne by the foreign parent company which will be party to any lawsuit.  As an exception, the Local Branch Office may stand in a lawsuit only as respondent, and not as plaintiff, in the event that it has its own management bodies, distinct from the parent company's management.
<b>MANAGEMENT/ REPRESENTATION</b>	The SRL may be managed by one or more directors (who may be shareholders of the company or other persons). The directors may be either individuals or legal entities. A legal entity appointed as director must designate an individual to represent such legal entity in the SRL and to effectively perform the director's duties.  The representative does not have to be Romanian or have permanent residency in Romania.	The Local Branch Office is managed by a representative specifically appointed by the parent company. Such representative must be granted power to enter into deeds in the name and on behalf of the parent company and submit his/her signature sample to the Trade Registry.  The representative does not have to be Romanian or have permanent residency in Romania.
<b>EMPLOYEES</b>	The Company Law does not require the SRL or the Local Branch Office to have any employees.	

	LOCAL CORPORATION/SRL	LOCAL BRANCH OFFICE
<b>PREMISES</b>	The SRL and the Local Branch Office are required to provide evidence regarding the existence of the title over the premises (such a title is usually represented by a lease agreement).	
<b>BANK ACCOUNT OPENING REQUIREMENT</b>	The SRL is required to open a bank account in Romania. The first bank account will be opened, prior to the actual incorporation of the SRL, in order for the shareholders to wire the share capital amount. Pursuant to the incorporation of the SRL, this account may be converted into a current account, for day-to-day operations of the SRL.	The Local Branch Office is required to open a bank account for its day-to-day business operations.
<b>TAX NUMBER REQUIREMENT</b>	The Local Corporation and the Local Branch Office receive a tax number upon registration with the competent Romanian Trade Registry and subsequent registration with the tax authority.	

## 7.2 Procedural Rules

The process of incorporation of a Local Corporation and a Local Branch Office is performed within the Trade Registry, the Romanian authority that ensures the registration procedures related to companies.

	LOCAL CORPORATION/SRL	LOCAL BRANCH OFFICE
<b>SET UP TIME</b>	The certificate attesting to the registration of the company should be issued by the Trade Registry within three (3) business days after the filing of the complete documentation with the Trade Registry. The respective period may be extended in case the Trade Registry clerk requires additional documentation be filed.	
<b>DOCUMENTS TO BE FILED</b>	Standard application (original).	Standard application (original).
	Resolution of the statutory body of each shareholder (e.g. general meeting of shareholders/ sole shareholder, board of directors/sole director) approving the incorporation of the SRL.	Resolution of the parent company's statutory body (e.g. general meeting of shareholders/ sole shareholder, board of directors/sole director) approving the establishment of a Local Branch Office.
	Proof regarding the availability of the company's name (original).	Parent company's registration certificate (notarised translation).
	<p>Documents related to the registered office:</p> <ul style="list-style-type: none"> <li>(a) ownership title over the registered office premises (copy);</li> <li>(b) notarised statement certifying that the conditions provided by the Company Law for registered offices are fulfilled; this document must be provided by the owner of the premises only if, according to the competent Tax Authority, there are more lease agreements concluded with respect to the building where the registered office premises is located;</li> <li>(c) Land Book excerpt regarding the registered office premises (original and not older than 30 (thirty) days);</li> <li>(d) consent of neighbouring apartments and the approval of the Executive Committee of the Association of Owners and Tenants (original); this document is required only if the registered office is located in a block of flats; and</li> <li>(e) standard statement concerning the activities performed by the SRL/Local Branch Office at the registered office (original).</li> </ul>	
	Articles of association (original).	Articles of association and all subsequent amendments hereto of the parent company (original).

	LOCAL CORPORATION/SRL	LOCAL BRANCH OFFICE
<b>DOCUMENTS TO BE FILED</b>	Proof regarding payment of the share capital (copies).	Affidavit of the person authorised to represent the parent company in front of third parties and courts confirming the fact that he/she fulfils all the conditions stipulated by law for its capacity (original notarised).
	For the documents to be filed in relation to the representatives of the SRL, please see below at Documents for directors of SRL.	
	Power of attorney for the person authorised to perform the filings with the Trade Register (original notarised).	Power of attorney for the persons authorised to perform the filings with the Trade Registry (original notarised).  Parent company's deed appointing the authorised person for the Local Branch Office if not provided for by the aforementioned resolution (translation notarised).  Specimen of the Local Branch Office's authorised persons' signatures.  Local Branch Office's authorised persons' identity documents.
	Proof regarding payment of incorporation fees (original).	Proof regarding payment of incorporation fees (original).
		Good standing certificate, issued by a bank from the parent company's country of origin (translation notarised).
		Documents attesting the following information about the non-EEA <sup>9</sup> parent company: (i) registered office; (ii) object of activity; and (iii) subscribed share capital if not provided for by the aforementioned Articles of Association and the deed indicating the parent-company's last financial statement approved, verified or published according to the Romanian legislation except those cases when the legislation regulating the parent-company's activity are equivalent to those of the EU <sup>10</sup> (translation notarised).
<b>COSTS</b>	The incorporation fees to be paid to the Trade Register for the purpose of the incorporation amount to approximately EUR 100. Please note that there are other expenses incurred by the SRL's incorporation such as taxes for the translation and the notarisation of certain documents as required by the Trade Registry.	The incorporation fees to be paid to the Trade Register for the purpose of the registration amount to approximately EUR 100. Please note that there are other expenses incurred by the Local Branch Office's incorporation such as taxes for the translation and the notarisation of certain documents as required by the Trade Registry.

9 These documents are required only for those parent companies which are not incorporated within the Member States of the European Economic Area ("EEA") or within the Member States of the European Union ("EU").

10 Whereas the parent company is incorporated within a Member State of the EU the deed indicating its last financial statement is drafted, approved, verified and published according to the legislation regulating the parent company's activity.

	LOCAL CORPORATION/SRL	LOCAL BRANCH OFFICE
DOCUMENTS FOR THE SHAREHOLDERS OF A SRL		
SHAREHOLDERS – LEGAL ENTITIES		
	Affidavit that the shareholders fulfil the legal requirements provided by the Company Law and, if the shareholders are foreign entities, that they do not have any fiscal debts in Romania (original).	
	Incorporation certificate (copy) – to be obtained from shareholders (only applicable to Romanian entities).	
	Excerpt issued by the competent body (local Trade Registry/Chamber of Commerce) from the country of origin of each shareholder (original) – the excerpt shall confirm that the shareholder is legally incorporated, and specify its registration number(s), the headquarters and its representatives.	
	Power of attorney for the person authorised to sign the articles of association on behalf of the shareholder.	
	Bank letter of good standing, issued by the bank of the shareholder.	
SHAREHOLDERS – INDIVIDUALS		
	Affidavit stating that the legal requirements provided by the Company Law are fulfilled by the shareholders and, if the shareholders are foreign individuals, that they do not have any fiscal debts in Romania (original notarised).	
	Identity documents (copies).	
DOCUMENTS FOR DIRECTORS OF SRL		
DIRECTORS – LEGAL ENTITIES		
	Affidavit stating that the legal requirements provided by the Company Law for directors are fulfilled by the legal entity and, if such legal entity is foreign, that it does not have any fiscal debts in Romania. The affidavit also includes a signature specimen (original notarised).	
	Management agreement (copy).	
	Affidavit of the individual designated as representative of the director regarding the fulfilment of the legal requirements. The affidavit also includes a signature specimen (original notarised).	
	Identity documents of the individual designated as representative of the director (copies).	
DIRECTORS – INDIVIDUALS		
	Affidavit stating that the legal requirements provided by the Company Law are fulfilled by the director and, if he/she is a foreign individual, that he/she does not have any fiscal debts in Romania. The affidavit also includes a signature specimen (original notarised).	
	Identity documents (copies).	

## 8. TAXES

From the tax perspective, the establishment of a Local Branch Office may seem to be preferable to the establishment of a Local Corporation. The main advantage of a branch structure would be that no withholding taxes are levied on intra-group payments.

Apart from the above, there is no major difference in the tax regime (e.g. profit tax, VAT, individual taxation) applicable to a subsidiary or to a branch office and also the transfer pricing principles apply in the same manner to both types of entities. The accounting regulations that should be observed are the same in both cases.

Furthermore, the fact that the Romanian Tax Authorities are less familiar with branch structures and their operating regime, may seem to be a disadvantage. To this effect, difficulties may occur with regard to the allocation of revenues and expenses and, generally, the deductibility of expenses is more difficult to support.

In the natural gas sector, economic operators, including their subsidiaries and/or economic operators who belong to the same group of economic interest, which perform both extraction and selling activities of natural gas extracted from Romania, domestically, in the territorial sea, contiguous zone and/or the exclusive economic zone of Romania from the Black Sea, must pay the Romanian state, on a monthly basis, 60% (sixty percent) of their supplementary income<sup>11</sup>.

## 9. CONTRACTUAL RELATIONS

### 9.1 Electricity

#### 9.1.1 Balance group (membership) contract

Participation in the balancing market may be carried out by the Wholesale Licence holder either by registering as a Person Responsible for Balancing ("PRE")<sup>12</sup> or, by the assignment of PRE responsibility to another Wholesale Licence holder which is already registered as a PRE. Depending on the type of activities to be performed by the Wholesale Licence holder, the possibility to opt between registering as a PRE or assigning PRE responsibility should be analysed from a commercial point of view.

For the establishment of a balance group, the procedure is relatively easy and involves registration with the Operator of the Balancing Market (Electricity TSO) as a PRE. Each registered PRE must also conclude a measuring convention with the measuring operator on the wholesale electricity market in Romania.

The registration of the Wholesale Licence holder as a PRE is subject to the establishment of a financial guarantee ("FG"), in favour of the Electricity TSO, in the form of a bank guarantee which must (i) be irrevocable and immediate; (ii) expressly mention that it is issued in favour of the Electricity TSO; (iii) have a validity period of minimum 12 (twelve) months; and (iv) be issued for the amount (expressed in RON) as established by the Electricity TSO (i.e. RON 50,000 – approximately EUR 11,100). The FG must be renewed each year.

When the first information note for settlement is available (*note de informare pentru decontarea dezechilibrelor*), if the monthly payment obligation ("MPO") for the PRE exceeds RON 50,000, the Electricity TSO will readjust the FG to a level that is equal to three times the value of the MPO. The Wholesale Licence holder registered as a PRE will have to re-adjust the FG to the new level within 10 (ten) business days as of the date it has been notified thereof by the Electricity TSO. The newly re-adjusted FG shall be valid for the remaining validity period of the initial FG.

However, if the Wholesale Licence holder assigns PRE responsibility to another PRE registered on the balancing market, the establishment of a FG is not required in favour of the Electricity TSO.

#### 9.1.2 Registration for capacity auctions

In order to ensure equal, transparent and non-discriminatory treatment for all electricity suppliers who wish to engage in import/export activities, the allocation of capacities on the interconnection lines of the public grid is done by organising tenders, each taking place over a period of time of at least 1 (one) week.

The registration for the tender applies to the electricity suppliers for each line or group of interconnection lines from a cross-border section of the public grid.

11 Such supplementary incomes are determined according to the Annex of GO 7/2013.

12 In accordance with the Commercial Code for the Wholesale Electricity Market.

The participants in the tender must be allocated an EIC<sup>13</sup> code. In the event of foreign companies which do not have an allocated EIC, these must hold a Wholesale Licence issued by ANRE or by the competent authority from their state of origin, which has a reciprocity agreement with ANRE. Furthermore, in order to be registered, the applicant may not have outstanding payments for the previous utilisation of the interconnection capacities.

### **9.1.3 Admission to exchange**

In order to trade electricity on the wholesale electricity market, the Wholesale Licence holders for electricity supply activities must register and trade electricity in a competitive manner which is transparent, public, non-discriminatory and centralised.

Thus, trading of electricity on the wholesale electricity market can only be carried out on the wholesale electricity markets administrated in a centralised way by OPCOM. By exception, producers of RES-Electricity operating power plants with a capacity not exceeding 1 MW or 2 MW in case of high efficiency cogeneration power plants can sell their electricity directly to end-customers (outside the OPCOM markets).

As previously mentioned in Section 2.1, OPCOM includes the following trading platforms: Day Ahead Market, Intra-Day Market, the Centralised Market for Bilateral Electricity Contracts, the balancing market, the electricity market for large consumers, and the recently set up market of centralised market for RES-Electricity and green certificates ("GC") which started operating from September 2017.

Wholesale Licence holders for electricity supply may choose to register with all wholesale electricity markets or to participate only in those wholesale electricity markets which are of interest. Consequently, depending on which wholesale electricity markets the Wholesale Licence holder for electricity supply will choose, a separate procedure for registration must be followed.

## **9.2 Natural Gas**

### **9.2.1 Transport agreement concluded with Gas TSO**

In order to have access to the transport system, the holder of a Wholesale Licence must conclude an agreement with Gas TSO in order to ensure the booking of capacity within the transport system. The transport agreement is a framework agreement, as detailed by the National Transport Code. Certain conditions precedent must be fulfilled by the holder of a Wholesale Licence in order to conclude the agreement, e.g. the holder of a Wholesale Licence must provide a financial guarantee (cash, bank guarantee etc.).

### **9.2.2 Framework and negotiated agreements for gas trading**

Gas trading may be performed on the regulated natural gas market (based on framework agreements<sup>14</sup> approved by ANRE) and on the competitive wholesale natural gas market (based on negotiated agreements). For details regarding the agreements concluded on these markets, please refer to Point 2.2.

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<sup>13</sup> EIC code (ETSO Identification Code) is a unique code which is attributed to all producers and suppliers of electricity. This code is allocated by the national office for allocation and registration of EIC codes, through ETSO (European Transport System Operators).

<sup>14</sup> The content of the framework agreements is provided by Order 77/2009.

### 9.2.3 Storage agreements

The titleholders of a Wholesale Licence must ensure storage of a minimum stock of natural gas in the underground storage warehouses in order to secure the supply of natural gas to the end-customers. The quantity of the natural gas which will be subject to storage is established in accordance with specific regulations issued by ANRE<sup>15</sup> and takes into consideration, amongst others, the quantity of natural gas effectively supplied to end-customers in the previous year.

Such obligation is considered to be fulfilled by:

- storage of such natural gas stock in their own name by concluding underground storage agreements with one of the licensed providers;
- conclusion (by 31 October of each year at the latest) of sale purchase agreements having as their object quantities of natural gas from the underground storage warehouses, stored by another titleholder of a Wholesale Licence; and/or
- conclusion of mandate agreements with other titleholders of Wholesale Licences in order to store the natural gas.

The titleholders of the Wholesale Licences must submit to ANRE the minimum stock agreements concluded by 20 November of each year at the latest.

### 9.2.4 Admission to exchange

In order to trade gas on the centralised wholesale gas market, Wholesale Licence holders for gas supply activities must register and trade gas on the trading platforms administrated in a centralised manner by OPCOM and by the Romanian Commodities Exchange.

Consequently, trading of gas on the centralised wholesale gas market may be performed on the wholesale centralised gas markets administrated by OPCOM or by the Romanian Commodities Exchange.

Wholesale Licence holders for gas supply may choose to register with both centralised wholesale gas markets or to participate only in those centralised wholesale gas markets which are of interest. Consequently, depending on which centralised wholesale gas markets the Wholesale Licence holder for gas supply will choose, a separate procedure for registration must be followed.

## 10. REPORTING OBLIGATIONS

### 10.1 Electricity

Wholesale Licence holders must fulfil certain reporting obligation as part of the terms and conditions to obtain their Wholesale Licences as described in more detail in Section 4.1.5.3 for the Supply Licence and Section 4.1.6.2 for the Trading Licence.

In accordance with Law 220/2008, Wholesale Licence holders which supply electricity to final consumers must fulfil the green certificates ("GC") mandatory quota every quarter. Pursuant to this obligation, ANRE must verify the compliance with the GC quota, imposed on each electricity supplier for the previous calendar year, based on the number of GCs purchased and the RES-Electricity supplied to final clients.

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<sup>15</sup> Order 35/2016.

Failure to fulfil the annual GC quota by the electricity suppliers triggers a penalty of EUR 110 for each un-purchased GC calculated at the average value of the exchange rate established by the National Bank of Romania for the month of December of the preceding year. Moreover, the electricity suppliers which:

- do not fulfil their mandatory quarterly quota must pay within a maximum of 45 (forty five) days after the ending of the respective trimester, the maximum price for GCs approved and published by ANRE for the respective year for each un-purchased GC into a guarantee fund set up and managed by OPCOM. Such guarantee fund will be used to buy unsold GCs from producers as a result of the suppliers failure to fulfil the mandatory quota; or
- fulfil their annual mandatory quota for the previous quarter at a level of below 90% (ninety percent) compared to the mandatory annual quota are sanctioned with a fine equal to the difference between the maximum value of the GS established annually in accordance with the legal provisions and the un-purchased number of GC corresponding to the difference between the 90% (ninety percent) of the mandatory annual quota and the actual quota achieved in the respective quarter. Such fine will be applied in addition to the obligation to achieve the annual quota.

## **10.2 Natural Gas**

Wholesale Licence holders for natural gas supply must send to ANRE, on a monthly basis, reports regarding the quantities and the prices of the traded natural gas.

The reports may be lodged on-line and/or sent in Excel format to ANRE, by the 20<sup>th</sup> (twentieth) of the month for the previous month and comprise (i) Report regarding the purchase of natural gas; (ii) Report regarding the sale of natural gas to final clients and the consumption of eligible clients; (iii) Report regarding the sale of natural gas to other natural gas suppliers, distributors or transporters of natural gas; (iv) Report on own consumption and stocks; and (v) Report regarding storage.



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**SERBIA**

**WOLF THEISS**

## 1. RELEVANT LAWS AND REGULATIONS

- Energy Law (*Zakon o energetici*, Official Gazette of the Republic of Serbia No. 145/2014);
- Rulebook on Licence for Performing Energy Activity and Certification (*Pravilnik o licenci za obavljanje energetske delatnosti i sertifikaciji*, Official Gazette of the Republic of Serbia No. 87/2015);
- Decision on the Amounts of Costs for Issuance of Licence to Perform Energy Activity (*Odluka o visini troškova za izdavanje licence za obavljanje energetskih delatnosti*, Official Gazette of the Republic of Serbia, No. 13/2016);
- Company Law (*Zakon o privrednim društvima*, Official Gazette of the Republic of Serbia, Nos. 36/2011, 99/2011, 83/2014 and 5/2015);
- Electricity Market Code (*Pravila o radu tržišta električne energije*, Official Gazette of the Republic of Serbia, Nos. 120/2012 and 120/2014);
- JP “SRBIJAGAS” Code of Natural Gas Transport System (*Pravila o radu transportnog sistema prirodnog gasa JP “Srbijagas”*, Official Gazette of the Republic of Serbia, Nos. 74/2013 and 14/2014);
- Decision on Determining the Reserve Supplier of Electricity (*Rešenje o određivanju snabdevača koji će obavljati rezervno snabdevanje električnom energijom*, Official Gazette of the Republic of Serbia, No. 95/2016);
- Decision on Determining the Supplier Who Shall Supply Public Suppliers of Natural Gas (*Rešenje o određivanju snabdevača koji će snabdevati javne snabdevače prirodnim gasom*, Official Gazette of the Republic of Serbia, Nos. 64/2013, 136/2014, 113/2015, 56/2016, 96/2016 and 119/2017); and
- Decision on Determining the Supplier Who Shall Provide Reserve Supply of Natural Gas to End-customers Who are Not Entitled to Public Supply (*Rešenje o određivanju snabdevača koji će obavljati rezervno snabdevanje prirodnim gasom krajnjih kupaca koji nemaju pravo na javno snabdevanje*, Official Gazette of the Republic of Serbia, Nos. 69/2013, 113/2015, 96/2016 and 119/2017).

## 2. ORGANISATION OF ELECTRICITY MARKET AND GAS MARKET

The allocation of regulatory powers in the Serbian electricity and natural gas market is vested into:

- The Government of the Republic of Serbia, which, together with the Serbian Parliament, is the main regulator in the energy sector in the Republic of Serbia;
- The Ministry of Mining and Energy of the Republic of Serbia (“**Ministry**”), which is the government entity in charge of various regulatory functions such as preparing and proposing draft documents and regulations to be adopted by the Government of the Republic of Serbia and subsequently by the Serbian Parliament, adopting certain legislative acts pursuant to the Energy Law and implementing laws within its competences as well as supervisory functions; and
- The Energy Agency (“**AERS**”), which is an independent regulatory body, *inter alia*, in charge of issuing and revoking energy licences, passing methodologies for determining prices in the electricity and natural gas sector, approving regulated prices, granting consent to the operating rules of various systems in the energy sector, supervising the energy market, etc.

In addition, the power exchange (SEEPEx), i.e. an organised electricity market, was founded in 2015 and started its operations in 2016. SEEPEx operates an organised electricity market with standardised electricity products and delivery within a day-ahead time frame.

## 2.1 Electricity Market

### 2.1.1 Generation

Almost the entire electricity production in Serbia is carried out by Javno preduzeće Elektropivreda Srbije ("JP EPS") and its subsidiaries. JP EPS is a vertically integrated company, acting as a public electricity supplier for households and small buyers, as a supplier of commercial users and also as a wholesaler of electricity.

Participants in the electricity market in Serbia are producers, suppliers, wholesale suppliers, end-customers, the operator of the electricity transmission system, the operator of the electricity distribution system, operators of closed electricity distribution systems and the operator of the electricity market.

### 2.1.2 Distribution

The operator of the electricity distribution system is EPS Distribucija d.o.o. Beograd, a wholly-owned subsidiary of JP EPS, while the actual activity of electric energy distribution is carried out by its branches.

The electricity distribution system is comprised of:

- the electric power distribution grid<sup>1</sup>;
- control centres and control systems with the function of performing activities of electricity distribution and distribution system management;
- telecommunications infrastructure in electric power distribution facilities of 110 kV, 35 kV, 20 kV, 10 kV, and 0.4 kV, as well as telecommunications infrastructure in electric power facilities of the transmission system operator, producers and customers, which is necessary for performing the distribution system management activities; and
- the information and control system and other infrastructure necessary for the functioning of the distribution system.

The electricity distribution system operator cannot purchase or sell electricity, except in case of electricity purchase meant for loss recovery in the distribution system.

EPS Distribucija d.o.o. Beograd as an electricity distribution system operator is, *inter alia*, in charge of the following activities: maintaining and developing the electricity distribution system, adopting the Distribution Grid Code, making a development plan for the distribution system, reporting to the Ministry and to AERS in accordance with the Energy Law, deciding on the prices for distribution system access and use, announcing the prices for connection pursuant to the methodology passed by AERS, making a plan for the reduction of system losses, acquiring energy to cover losses in the distribution system and verifying and submitting data to the transmission system operator.

1 The distribution electric power grid is a functionally connected set of electric power facilities comprising distribution transformer stations with the voltage of 110/x kV with transmission line and merger fields of 110 kV, buses of 110 kV and transformers of 110/x kV, with the associated transformer fields; transformer stations of 35/h kV and x/0.4 kV, distribution switchgear facilities with the voltage of 35 kV, 20 kV and 10 kV, and lines of 35 kV, 20 kV, 10 kV and below 1 kV; metering devices with metering cabinets or distribution cubicles, i.e. distribution switchgear facilities at the points of takeover, to and from the electric power distribution network.

### 2.1.3 Transmission

The transmission system is comprised of:

- the electric power transmission grid<sup>2</sup>;
- control centres and control systems with the function of performing activities of electricity transmission and transmission system management;
- telecommunications infrastructure in transmission system facilities, including optical fibres in the protective rope of overhead power lines with the voltage of 400 kV, 220 kV and 110 kV, as well as telecommunications infrastructure in the facilities of the distribution system operator, producers and customers, which is necessary for performing transmission system management activities; and
- the information system and other infrastructure necessary for the transmission system and market operation.

The operator of the electricity transmission system is the state-owned company Akcionarsko društvo Elektromreža Srbije Beograd ("**EMS**") which performs activities of electricity transmission and management of the transmission system.

In addition, EMS, *inter alia*, is in charge of the following activities: maintaining and developing the electricity transmission system, adopting the Transmission Grid Code, adopting the Electricity Market Code, adopting rules governing the allocation of rights to use cross-border transmission capacities, making a development plan for the transmission system, acquiring energy to cover losses in the transmission system, monitoring the security of supply, reporting to the Ministry and to AERS in accordance with the Energy Law, passing a decision on the price of transmission system access, determining electricity prices for the purpose of system balancing pursuant to the Electricity Market Code.

The electricity transmission system operator cannot purchase or sell electricity, except for the purpose of provision of system services, system balancing, ensuring safe system operation and compensation of losses in the transmission system.

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2 The electric power transmission grid is a functionally connected set of electric power facilities comprising electric power lines with the voltage of 400 kV and 220 kV, overhead electric power lines with the voltage of 110 kV, ending with the tensioning chain on the portal of the distribution transformer station with the voltage of 110/x kV, and underground electric power lines with the voltage of 110 kV, ending with the cable end in the distribution transformer station with the voltage of 110/x kV, transformer stations of 400/x kV and 220/h kV, and distribution switchgear facilities with the voltage of 400 kV and 220 kV, as well as terminal switchgear facilities of 400 kV and 220 kV in transformer stations with the voltage of 400/x kV and 220/x kV, to which the facilities of customers and producers are connected, distribution switchgear facilities of 110 kV, terminal switchgear facilities of 110 kV in transformer stations with the voltage of 110/x kV where the facilities of customers and producers are connected to the electric power transmission network, and electricity metering devices at all points of takeover, to and from the transmission system.

### 2.1.4 Supply

The electricity supply sector comprises:

- guaranteed supply (supply to households and small buyers<sup>3</sup> at regulated prices);
- supply (i.e. selling electricity under market prices to customers for their own needs or for the purpose of resale); and
- wholesale supply (i.e. selling electricity under market prices to customers, including resale, except selling to end-customers).

The process of liberalisation of the electricity market in Serbia was completed on 1 January 2015 as of which date all electricity buyers (not only high-voltage and medium-voltage ones) including households are entitled to choose freely their supplier of electricity, i.e. they can choose between the state-owned monopoly JP EPS, acting as producer and supplier, or other suppliers in the open market. Despite the market liberalisation, households and small buyers retained the right to guaranteed supply from JP EPS at regulated prices (i.e. prices determined by guaranteed supplier on the basis of the methodology adopted by AERS and to which AERS granted its consent). Although a guaranteed supplier is not yet formally appointed in a tender procedure, pursuant to the final provisions of the Energy Law, the electricity supplier holding a licence for the public supply of electricity as of the date of enactment of the Energy Law (i.e. EPS Snabdevanje d.o.o. at the time, which was then merged with JP EPS on 1 June 2016) shall act as guaranteed supplier and continue to supply households and small buyers at regulated prices until a guaranteed supplier is selected in a tender procedure.

According to a decision by the Government of the Republic of Serbia, JP EPS will act as an electricity supplier of last resort (*rezervni snabdevač*) for all those who are no longer entitled to the guaranteed supply. According to the Registry of licence-holders available on the Web site of AERS as of October 2017, 63 companies are holders of a licence for electricity supply (defined as selling electricity to customers for their own needs or for the purpose of resale) and 42 companies are holders of a licence for wholesale electricity supply (defined as selling electricity to customers, including resale, except selling to end-customers) out of which 27 companies are foreign companies. However, it should be noted that not all of those licence-holders are active in the market.

## 2.2 Natural Gas Market

Participants in the natural gas market in Serbia are:

- producers;
- suppliers;
- public suppliers;
- end-customers;
- operators of transport systems;
- operators of distribution systems; and
- storage operator.

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3 Small electricity buyers are end-customers (legal entities and entrepreneurs) with fewer than 50 employees and a total annual revenue of up to EUR 10 million in Serbian dinar counter value, whose all facilities are connected to the electricity distribution system with a voltage level lower than 1 kV, and whose electricity consumption in the previous year was not higher than 30,000 kWh.

### **2.2.1 Transport system**

The natural gas transport system is comprised of the pipeline network with projected gas pipeline pressure exceeding 16 bar, except for upstream pipelines, as well as compressing stations, block stations, metering-regulation stations and metering stations at all delivery points of the transport system, other energy facilities, telecommunication and IT system and other infrastructure necessary for the natural gas transport including the linepack.

According to the Registry of licence-holders available on the Web site of AERS, as of October 2017 there are two operators of natural gas transport systems: (i) the state-owned public company Javno preduzeće Srbijagas Novi Sad ("**JP Srbijagas**") and (ii) Yugorosgaz-Transport d.o.o. (a company owned by Yugorosgaz a.d. Beograd which is owned by the Russian company PAO Gazprom, the Austrian company CENTREX EUROPE ENERGY & GAS AG, and by JP Srbijagas).

The natural gas transport system operator is obligated to, *inter alia*, prepare and adopt a Code of Natural Gas Transport System. According to public information, both operators of natural gas transport systems, JP Srbijagas and Yugorosgaz-Transport d.o.o., have adopted their Code of Natural Gas Transport System.

### **2.2.2 Distribution system**

The natural gas distribution system is comprised of the pipeline network, regulation, metering-regulation and metering stations at all delivery points of the distribution system, other energy facilities, telecommunication, IT and other infrastructure necessary for the natural gas distribution with a maximal operating pressure below or equal to 16 bar, including the linepack.

According to the Registry of licence-holders available on the Web site of AERS, as of October 2017 there are 31 companies that are holders of a licence for natural gas distribution and the management of a natural gas distribution system, whereby although some licence holders are privately owned, most are public companies.

Pursuant to the Energy Law, each of the operators of a natural gas distribution system is obligated, *inter alia*, to prepare a Natural Gas Distribution System Code and to adopt it following the consent by AERS to said code as well as to publish its Natural Gas Distribution System Code on its Web site and on the Web site of AERS.

The operator of a natural gas distribution system cannot purchase or sell natural gas, except for the purpose of ensuring its own natural gas consumption and for losses in the distribution system.

### **2.2.3 Natural Gas storage**

According to the Registry of licence-holders available on the Web site of AERS, as of October 2017 the company PSG Banatski Dvor doo Novi Sad, owned by JP Srbijagas and the limited liability company GAZPROM Eksport from Russia, is the only licence-holder for natural gas storage and for the management and operation of natural gas storage. Pursuant to the Energy Law, a natural gas storage operator is obligated, *inter alia*, to adopt a Code on Storage Operation and to adopt it following the consent by AERS to said code as well as to publish its Code on Storage Operation on its Web site and on the Web site of AERS. However, no such Code has been adopted to date.

### **2.2.4 Natural Gas supply**

According to the Registry of licence-holders available on the Web site of AERS, as of October 2017 there are 66 holders of licences for natural gas supply (defined as the sale of natural gas to customers for their own needs or for the purpose of resale) and 33 holders of licences for the public supply of natural gas (defined as the supply

of households and small buyers<sup>4</sup> at regulated prices), whereby some licence holders are privately owned and some are public companies.

The process of liberalisation of the natural gas market in Serbia was completed on 1 January 2015 as of which date all end-customers including households and small buyers are entitled to choose freely their supplier of natural gas, whereby households and small buyers retained the right to public supply, i.e. supply of natural gas at regulated prices.

Pursuant to the Energy Law, until a competitive natural gas market is established in the Republic of Serbia, the Government will, in a public tender procedure, designate the supplier that will supply public suppliers of natural gas, at their request and the same price being applicable to all public suppliers.

According to decisions of the Government of the Republic of Serbia, JP Srbijagas has been appointed to act as: (i) a supplier which shall supply public suppliers of natural gas; and (ii) a natural gas supplier of last resort (*rezervni snabdevač*) for all those end-customers which are not entitled to the public supply.

### 3. CONDITIONS FOR APPLYING FOR ELECTRICITY AND NATURAL GAS WHOLESALE LICENCE(S)

#### 3.1 Electricity Licensing – Regulatory and Corporate Conditions

Under the Energy Law, Wholesale Activity falls within the category of energy activity of “wholesale electricity supply” (*snabdevanje na veliko električnom energijom*), which is defined as the activity of selling electricity to customers, including resale, except selling to end-customers, and it is subject to a licence for performing energy activity, which is issued by AERS. In practice, and according to the information obtained from AERS, even though not explicitly stipulated under the law, holders of licence for the wholesale supply of electricity have the right to access transmission networks and are entitled to engage in the import and export of electricity.

Thus, in order to engage in electricity Wholesale Activity, one must obtain from AERS a licence for performing energy activity of wholesale electricity supply (“**Wholesale Licence**”).

A Wholesale Licence can be obtained by a foreign, i.e. non-Serbian legal entity, and may be issued to a legal entity (partnership, limited partnership, limited liability company, joint-stock company) incorporated in Serbia or to an entrepreneur (a natural person<sup>5</sup> who conducts business activities for the purpose of making a profit and is registered as such) registered in Serbia. For the purposes of this chapter, such legal entity incorporated in Serbia is referred to as a “**Local Corporation**”.

A Local Corporation can be established in Serbia by a foreign company. Under the Serbian Company Law, a Local Corporation can be established by one or more domestic or foreign legal entities or natural persons, or a combination thereof.

From the perspective of the establishment requirements, registration duration and costs, as well as from an organisational and management point of view, the most practical form for a Local Corporation is a limited liability company with a one-tier or two-tier corporate governance structure (i.e. corporate governance through a General Assembly and one or more Managing Directors or through a General Assembly, a Supervisory Board and one or more Managing Directors).

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4 Pursuant to the Energy Law, small natural gas buyers are defined as end-customers whose annual natural gas consumption does not exceed 100,000 m<sup>3</sup> and whose facilities are connected to the natural gas distribution system.

5 In order for a foreign natural person to be allowed to register as an entrepreneur in Serbia, s/he has to have a residence (*prebivalište*) in Serbia.

## **3.2 Natural Gas Licensing – Regulatory and Corporate Conditions**

Under the Energy Law, natural gas Wholesale Activity is included within the scope of “supply of natural gas” (*snabdevanje prirodnim gasom*). The supply of natural gas is defined as the activity of selling natural gas to customers for their own needs or for the purpose of resale and is subject to holding a licence for performing the energy activity of supplying natural gas, which is issued by AERS. In practice, and according to the information obtained from AERS, even though not explicitly stipulated under the law, holders of a licence for the supply of natural gas are entitled to access to storage/transport networks and are entitled to engage in the import and export of natural gas.

Thus, in order to engage in natural gas Wholesale Activity, one must obtain from AERS a licence for performing the energy activity of natural gas supply (“**Wholesale Licence**”). In any case, the Wholesale Licence cannot be obtained by a foreign, i.e. non-Serbian entity, it may only be issued to a legal entity (partnership, limited partnership, limited liability company, joint-stock company) incorporated in Serbia or to an entrepreneur (a natural person<sup>6</sup> who conducts business activities for the purpose of making a profit and is registered as such) registered in Serbia. For the purposes of this chapter, such legal entity incorporated in Serbia is referred to as a “**Local Corporation**”.

A Local Corporation can be established in Serbia by a foreign company. Under the Serbian Company Law, a Local Corporation can be established by one or more domestic or foreign legal entities or natural persons, or a combination thereof.

From the perspective of the establishment requirements, registration duration and costs, as well as from an organisational and management point of view, the most practical form for a Local Corporation is a limited liability company with a one-tier or a two-tier corporate governance structure (i.e. corporate governance through a General Assembly and one or more Managing Directors or through a General Assembly, a Supervisory Board and one or more Managing Directors).

## **4. OBTAINING THE WHOLESALE LICENCE(S)**

### **4.1 Electricity**

#### **4.1.1 Annexes to the application for the electricity Wholesale Licence**

The terms and conditions for obtaining an electricity Wholesale Licence are generally prescribed under Serbian Energy Law and more specifically under the Licensing Rulebook (“**Rulebook**”, *Pravilnik o licenci za obavljanje energetske delatnosti i sertifikaciji*, Official Gazette of the Republic of Serbia No. 87/2015).

According to the Rulebook and information obtained from AERS, the documents that must be submitted to AERS together with the application for the issuance of a Wholesale Licence are as follows:

- When the applicant is a Local Corporation:
  - Excerpt from the Commercial Register of the Agency for Commercial Registers for the Local Corporation;
  - Certified copy of the Local Corporation's foundation act (i.e. articles of association);
  - Decision of relevant authority on settlement of tax duties by the Local Corporation;
  - business plan for the year in which the Local Corporation applies for the licence;

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<sup>6</sup> Ibid.

- Certificate by a bank regarding all transactions and daily balances on all active bank accounts of the Local Corporation applying for the Wholesale Licence, for the previous 2 (two) years; the Local Corporation's balance sheet and income statement for the previous 2 (two) years (this document should be prepared by a Serbian accounting firm in accordance with the Accounting Law of the Republic of Serbia) and the standardised BON-1 and BON-2 solvency reports, or if the Local Corporation was not operational for 2 (two) years previously, a certificate by a bank regarding all transactions and daily balances on all active bank accounts as of the date of opening the account until the date of filing the request with the bank; the balance sheet and income statement of the Local Corporation for the previous year, i.e. the initial balance sheet, and a certificate from the bank or mother company that it can provide the necessary financial funds or other security instruments for the planned volume of activities of the applicant, i.e. the Local Corporation;
  - Proof by the competent authority (i.e. Ministry of Interior Affairs of the Republic of Serbia for Serbian citizens) that the members of the management bodies of the Local Corporation (which in the case of a one-tier limited liability company is the Managing Director(s), and in the case of a two-tier limited liability company are the Managing Director(s) and the Supervisory Board) have not been sentenced for any criminal acts related to the performance of the business activity. In cases when no such criminal records are kept in a specific country, the applicant should provide a statement or confirmation of the respective authority of such country confirming that the respective person has not been sentenced for criminal acts;
  - Proof by the competent authority that the Local Corporation has not been banned from performing its activities or that the legal effects of any such ban have elapsed, namely certificates issued by relevant courts confirming that the Local Corporation has not been banned from performing its activities, that the Local Corporation was not banned under the Law on liability of legal entities for criminal acts to perform activities, and that the Local Corporation was not banned under the Law on Misdemeanours to perform activities;
  - Proof by the competent court that no bankruptcy proceedings have been initiated over the Local Corporation;
  - Certificate by the Agency for Commercial Registers that no liquidation proceedings have been initiated over the Local Corporation; and
  - Proof of payment of the administrative fee and fee for issuance of licence.
- When the applicant is a foreign legal entity:
- Excerpt from the relevant commercial register for the foreign legal entity;
  - Decision of the relevant authority on the settlement of tax duties by the foreign legal entity;
  - Business plan for the year in which the foreign legal entity applies for the licence;
  - Certificate by a bank regarding all transactions and daily balances on all active bank accounts of the foreign legal entity applying for the Wholesale Licence, for the previous 2 (two) years; the foreign legal entity's balance sheet and income statement for the previous 2 (two) years, or if the foreign legal entity was not operational for 2 (two) years previously, a certificate by a bank regarding all transactions and daily balances on all active bank accounts as of the date of opening the account until the date of filing the request with the bank; the balance sheet and income statement of the foreign legal entity for the previous year, i.e. the initial balance sheet, and a certificate from the bank or mother company that it can provide the necessary financial funds or other security instruments for the planned volume of activities of the foreign legal entity applying for the Wholesale Licence;

- Proof by the competent authority (i.e. Ministry of Interior Affairs of the Republic of Serbia for Serbian citizens) that the members of the management bodies of the foreign legal entity applying for the Wholesale Licence have not been sentenced for any criminal acts related to the performance of the business activity. In cases when no such criminal records are kept in a specific country, the applicant should provide a statement or confirmation of the respective authority of such country confirming that the respective person has not been sentenced for criminal acts;
- Proof by the competent authority that the foreign legal entity has not been banned from performing its activities or that the legal effects of any such ban have elapsed;
- Proof by the competent authority that no liquidation or bankruptcy proceedings have been initiated over the foreign legal entity;
- Licence for performing activity of electricity supply issued in another country, or a document of the competent authority stating that the foreign legal entity is a participant on an electricity market or power exchange in the European Union or in the countries signatories of the Treaty establishing the Energy Community<sup>7</sup>; and
- Proof of payment of the administrative fee and fee for issuance of licence.

All documents should be submitted in the original or as a certified copy and may not be older than 6 (six) months as of the date of their issuance (the requirement with respect to the date of issuance does not apply to the certified copy of the Local Corporation's foundation act. Also, all documents issued outside Serbia must be properly legalised (i.e. notarised and apostilled, if applicable). In addition, all documents in a foreign language must be accompanied with an official Serbian translation by a court-sworn interpreter.

#### **4.1.2 Procedural rules**

The application procedure is a paper-based procedure, whereby personal hearings may be required in exceptional cases only, when applicants may be represented by local attorneys.

AERS is obligated to issue a ruling, granting or refusing the issuance of the Wholesale Licence, within 30 (thirty) days from the day of application.

#### **4.1.3 Operational conditions required for the issuance and maintenance of the electricity Wholesale Licence**

There are no special requirements under the Energy Law for the issuance and maintenance of an electricity Wholesale Licence in terms of personnel, premises and IT systems/assets. For the requirements under general corporate regulations, please see Point 7 below.

#### **4.1.4 Financial guarantee**

One of the conditions that needs to be fulfilled by an applicant who was operational less than 2 (two) years before applying for an electricity Wholesale Licence under Serbian Energy Law is that the applicant has the necessary financial sources for performing the energy activity, as proven through the submission of the documents listed under Point 4.1.1 above. There is no requirement for providing a bank guarantee or certain cash deposits when applying for a Wholesale Licence. Licence holders who concluded balance responsibility agreements with the TSO (i.e. EMS), are required to provide a financial guarantee to the TSO.

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<sup>7</sup> Treaty establishing the Energy Community concluded between the European Community and Republic of Albania, Republic of Bulgaria, Bosnia and Hercegovina, Republic of Croatia, Former Yugoslav Republic of Macedonia, Republic of Montenegro, Romania, Republic of Serbia and the United Nations Interim Administration Mission in Kosovo established pursuant to Security Council Resolution 1244.

#### 4.1.5 Procedural costs

The procedural costs (official administrative fees) of an application for an electricity Wholesale Licence are approximately EUR 7 whereby the fee for the issuance of the electricity Wholesale Licence according to the Decision on the Amounts of Costs for Issuance of Licence to Perform Energy Activity (*Odluka o visini troškova za izdavanje licence za obavljanje energetske delatnosti*, Official Gazette of the Republic of Serbia, No. 13/2016) is approximately EUR 1,075 and must be paid in advance.

#### 4.1.6 Term of the Wholesale Licence

An electricity Wholesale Licence is issued for a period of 10 (ten) years and may be renewed upon request by the licensee. The renewal request must be filed with AERS 30 (thirty) days prior to the Wholesale Licence expiration date at the latest. An electricity Wholesale Licence cannot be transferred.

### 4.2 Natural Gas

#### 4.2.1 Annexes to the application for the gas Wholesale Licence

The terms and conditions for obtaining a natural gas Wholesale Licence are generally prescribed under Serbian Energy Law and more specifically under the Rulebook.

According to the Rulebook and information obtained from AERS, the documents that must be submitted to AERS together with the application for the issuance of a natural gas Wholesale Licence are as follows:

- Excerpt from the Commercial Register of the Agency for Commercial Registers for the Local Corporation;
- Certified Copy of the Local Corporation's foundation act (i.e. its articles of association);
- Decision of the relevant authority on the settlement of tax duties by the Local Corporation;
- Business plan for the year in which the Local Corporation applies for the licence;
- Certificate by a bank regarding all transactions and daily balances on all active bank accounts of the Local Corporation applying for the Wholesale Licence, for the previous 2 (two) years; the Local Corporation's balance sheet and income statement for the previous 2 (two) years (this document should be prepared by a Serbian accounting firm in accordance with the Accounting Law of the Republic of Serbia) and the standardised BON-1 and BON-2 solvency reports, or if the Local Corporation was not operational for 2 (two) years previously, a certificate by a bank regarding all transactions and daily balances on all active bank accounts as of the date of opening the account until the date of filing the request with the bank; the balance sheet and income statement of the Local Corporation for the previous year, i.e. the initial balance sheet, and a certificate of the bank or mother company that it can provide the necessary financial funds or other security instruments for the planned volume of activities of the applicant, i.e. the Local Corporation;
- Proof by the competent authority that the members of the management bodies of the Local Corporation (which in the case of a one-tier limited liability company is the Managing Director(s), and in the case of a two-tier limited liability company are the Managing Director(s) and the Supervisory Board) have not been sentenced for any criminal acts;
- Proof by the competent authority that the Local Corporation has not been banned from performing its activities or that the legal effects of any such ban have elapsed, namely certificates issued by relevant courts confirming that the Local Corporation has not been banned from performing its activities, that that the Local Corporation was not banned under the Law on liability of legal entities for criminal acts

to perform activities, and that the Local Corporation was not banned under the Law on Misdemeanours to perform activities;

- Proof by the competent court that no bankruptcy proceedings have been initiated over the Local Corporation;
- Certificate by the Agency for Commercial Registers that no liquidation proceedings have been initiated over the Local Corporation; and
- Proof of payment of the administrative fee and fee for issuance of licence.

All documents should be submitted in the original or as a certified copy and may not be older than 6 (six) months as of the date of their issuance (the requirement with respect to the date of issuance does not apply to the certified copy of the Local Corporation's foundation act. Also, all documents issued outside Serbia must be properly legalised (i.e. notarised and apostilled, if applicable). In addition, all documents in a foreign language must be accompanied with an official Serbian translation by a court-sworn interpreter.

#### **4.2.2 Procedural rules**

The application procedure is a paper-based procedure, whereby personal hearings may be required in exceptional cases only, when applicants may be represented by local attorneys.

AERS is obligated to issue a ruling, granting or refusing the issuance of the Wholesale Licence, within 30 (thirty) days from the day of application.

#### **4.2.3 Operational conditions required for the issuance and maintenance of the gas Wholesale Licence**

There are no special requirements under the Energy Law for the issuance and maintenance of a natural gas Wholesale Licence in terms of personnel, premises and IT systems/assets. For the requirements under general corporate regulations, please see Point 7 below.

#### **4.2.4 Financial guarantee**

One of the conditions that needs to be fulfilled by an applicant who was operational less than 2 (two) years before applying for a natural gas Wholesale Licence under Serbian Energy Law is that the applicant has the necessary financial sources for performing the energy activity, as proven through the submission of the documents listed under Point 4.2.1 above. There is no requirement for providing a bank guarantee or certain cash deposits when applying for a natural gas Wholesale Licence.

#### **4.2.5 Procedural costs**

The procedural costs (official administrative fees) of an application for a natural gas Wholesale Licence are approximately EUR 7 whereby the fee for the issuance of the natural gas Wholesale Licence according to the Decision on the Amounts of Costs for Issuance of Licence to Perform Energy Activity (*Odluka o visini troškova za izdavanje licence za obavljanje energetskih delatnosti*, Official Gazette of the Republic of Serbia, No. 13/2016) is approximately EUR 1,075 and must be paid in advance.

#### **4.2.6 Term of the Wholesale Licence**

A natural gas Wholesale Licence is issued for a period of 10 (ten) years and may be extended upon request by the licensee. The extension request must be filed with AERS 30 (thirty) days prior to the Wholesale Licence expiration date at the latest. A natural gas Wholesale Licence cannot be transferred.

## 5. DIFFERENT RULES APPLICABLE FOR SUPPLYING INDUSTRIAL END-CUSTOMERS

### 5.1 Electricity Licensing – Regulatory and Corporate Conditions

Providing electricity supply to industrial and/or any other end-customers requires an Additional Licence, i.e. a licence for performing the energy activity of “electricity supply” (*snabdevanje električnom energijom*), which is defined as the activity of selling electricity to customers, for their own needs or for the purpose of resale.

### 5.2 Natural Gas Licensing – Regulatory and Corporate Conditions

No Additional Licence is needed for natural gas supply to industrial end-customers, as the natural gas Wholesale Licence entitles its holder to supply customers for their own needs or for the purpose of resale.

## 6. OBTAINING THE ADDITIONAL LICENCE(S)

### 6.1 Electricity

In order to supply industrial and/or any other end-customers, a licence for performing the energy activity of “electricity supply” (*snabdevanje električnom energijom*) (“**Additional Licence**”) must be obtained from AERS.

An Additional Licence cannot be obtained by a foreign, i.e. non-Serbian entity, and in any case, the Additional Licence may only be issued to a legal entity (partnership, limited partnership, limited liability company, joint stock company) incorporated in Serbia or to an entrepreneur (a natural person<sup>8</sup> who conducts business activities for the purpose of making a profit and is registered as such) registered in Serbia. For the purposes of this chapter, such legal entity incorporated in Serbia is referred to as a “**Local Corporation**”.

Under the Serbian Company Law, a Local Corporation can be established by one or more domestic or foreign legal entities or natural persons, or a combination thereof.

From the perspective of the establishment requirements, registration duration and costs, as well as from an organisational and management point of view, the most practical form for a Local Corporation is a limited liability company with a one-tier or two-tier corporate governance structure (i.e. corporate governance through a General Assembly and one or more Managing Directors or through a General Assembly, a Supervisory Board and one or more Managing Directors).

The terms and conditions for obtaining an Additional Licence are generally prescribed under Serbian Energy Law and more specifically under the Licensing Rulebook (“**Rulebook**”, *Pravilnik o licenci za obavljanje energetske delatnosti i sertifikaciji*, Official Gazette of the Republic of Serbia No. 87/2015).

According to the Rulebook and information obtained from AERS, the documents that must be submitted to AERS together with the application for the issuance of the Additional Licence are as follows:

- Excerpt from the Commercial Register of the Agency for Commercial Registers for the Local Corporation;
- Certified copy of the Local Corporation's foundation act (i.e. articles of association);
- Decision of the relevant authority on the settlement of tax duties by the Local Corporation;
- Business plan for the year in which the Local Corporation applies for the licence;

<sup>8</sup> In order for a foreign natural person to be allowed to register as an entrepreneur in Serbia, s/he has to have a residence (*prebivalište*) in Serbia.

- Certificate by a bank regarding all transactions and daily balances on all active bank accounts of the Local Corporation applying for the Additional Licence, for the previous 2 (two) years; the Local Corporation's balance sheet and income statement for the previous 2 (two) years (this document should be prepared by a Serbian accounting firm in accordance with the Accounting Law of the Republic of Serbia) and the standardised BON-1 and BON-2 solvency reports, or if the Local Corporation was not operational for 2 (two) years previously, a certificate by a bank regarding all transactions and daily balances on all active bank accounts as of the date of opening the account until the date of filing the request with the bank; the balance sheet and income statement of the Local Corporation for the previous year, i.e. the initial balance sheet, and a certificate of the bank or mother company that it can provide the necessary financial funds or other security instruments for the planned volume of activities of the Local Corporation;
- Proof by the competent authority (i.e. Ministry of Interior Affairs of the Republic of Serbia for Serbian citizens) that the members of the management bodies of the Local Corporation (which in the case of a one-tier limited liability company is the Managing Director(s), and in the case of a two-tier limited liability company are the Managing Director(s) and the Supervisory Board) have not been sentenced for any criminal acts related to the performance of the business activity. In cases when no such criminal records are kept in a specific country, the applicant should provide a statement or confirmation of the respective authority of such country confirming that the respective person has not been sentenced for criminal acts;
- Proof by the competent authority that the Local Corporation has not been banned from performing its activities or that the legal effects of any such ban have elapsed, namely certificates issued by relevant courts confirming that the Local Corporation has not been banned from performing its activities, that that the Local Corporation was not banned under the Law on liability of legal entities for criminal acts to perform activities, and that the Local Corporation was not banned under the Law on Misdemeanours to perform activities;
- Proof by the competent court that no bankruptcy proceedings have been initiated over the Local Corporation;
- Certificate by the Agency for Commercial Registers that no liquidation proceedings have been initiated over the Local Corporation; and
- Proof of payment of the administrative fee and fee for issuance of licence.

All documents should be submitted in the original or as a certified copy and may not be older than 6 (six) months as of the date of their issuance (the requirement with respect to the date of issuance does not apply to the certified copy of the Local Corporation's foundation act. Also, all documents issued outside Serbia must be properly legalised (i.e., notarised and apostilled, if applicable). In addition, all documents in foreign language must be accompanied with an official Serbian translation by a court-sworn interpreter.

AERS is obligated to issue a ruling, granting or refusing the issuance of the Additional Licence, within 30 (thirty) days from the day of application.

The procedural costs (official administrative fees) of an application for the Additional Licence are approximately EUR 7 whereby the fee for issuance of the Additional Licence according to the Decision on the Amounts of Costs for Issuance of Licence to Perform Energy Activity (*Odluka o visini troškova za izdavanje licence za obavljanje energetskih delatnosti*, Official Gazette of the Republic of Serbia, No. 13/2016) is approximately EUR 1,075 and must be paid in advance.

Additional Licence is issued for a period of 10 (ten) years and may be renewed upon request by the licensee. The renewal request must be filed with AERS 30 (thirty) days prior to the licence expiration date at the latest. Additional Licence cannot be transferred.

## 6.2 Natural Gas

No Additional Licence is needed for natural gas supply to industrial end-customers.

## 7. SETTING UP A LOCAL ENTITY

### 7.1 Most Important Legal Rules and Operational Requirements

The minimum share capital in a limited liability company is RSD 100 (approximately EUR 1). Pursuant to the Serbian Company Law, the initial share capital does not need to be paid-in prior to the company's establishment, but only within a time frame of up to 5 (five) years from the establishment date, in line with the company's foundation deed. In case the company's share capital comprises contributions in kind, the agreement on the value of the latter also needs to be filed with the Agency for Commercial Registers for the purpose of the company's registration, unless such value is determined in the company's foundation deed.

Payment of the capital prior to the company's establishment requires opening a temporary bank account to which the initial share capital of the company is wire-transferred by the founder. This account is substituted by a permanent bank account after the company's registration. Please note that opening a bank account requires a detailed examination of the ownership structure of the founder, due to the requirements of the applicable anti-money-laundering rules.

A tax ID number (*Poreski identifikacioni broj* or "PIB") for the Local Corporation is issued automatically along with the confirmation on the registration of the Local Corporation by the Agency for Commercial Registers. A VAT number can also be obtained simultaneously with the registration of the Local Corporation or a separate application has to be filed with the tax authorities after the Local Corporation has been registered.

#### 7.1.1 Management/Representation

Pursuant to the Company Law, a Local Corporation established in the form of a limited liability company may opt between a one-tier corporate governance system (i.e. corporate governance through a General Assembly and one or more Managing Directors), and a two-tier corporate governance system (i.e. corporate governance through a General Assembly, a Supervisory Board and one or more Managing Directors).

Managing Directors act as statutory representatives of the Local Corporation and are registered with the Agency for Commercial Registers. The number of Managing Directors is determined in the foundation deed or in a decision by the General Assembly. Representation authorities of directors may be limited or unlimited.

Managing Directors may be natural persons or legal persons registered in the Republic of Serbia, provided that at least one Managing Director is a natural person.

A Local Corporation established in the form of a limited liability company may also be represented by other registered representatives and/or procura holders, in line with the Company Law.

Managing Directors are responsible for proper book-keeping, as well as for maintaining records of decisions passed by the General Assembly. In addition, Managing Directors are liable for the accuracy of the company's financial statements.

Managing Directors must file the following reports with the General Assembly or the Supervisory Board, depending on the corporate governance system applicable within a company: (i) on the accounting practices or financial reporting practices within the company and its related entities, if any; (ii) on the compliance of the company's operations with the law; (iii) on the qualifications and independence of auditors who perform audits of the financial statements; and (iv) on contracts between the company and the Managing Directors and/or persons related to them. A Managing Director is obligated to inform each of the company's shareholders, with an ownership

interest equal to at least 10% (ten percent) of the share capital, or the Supervisory Board (in a two-tier corporate governance system) of all extraordinary events which may affect the business operations of the company.

Managing Directors and members of the Supervisory Board are obligated to inform the General Assembly of any significant (and non-temporary) deterioration in the financial state of the company due to losses or decrease in value of the company's share capital, which occurred between the end of the previous business year and the date of a decision on the adoption of financial statements.

### **7.1.2 Liability of Management/Representatives**

Managing Directors, shareholders, as well as members of the Supervisory Board in a two-tier corporate governance system are jointly and severally liable for unlawful payments by a company (e.g. unlawful profit distributions) if they deliberately or due to gross negligence made such payments possible.

In a limited liability company with a two-tier corporate governance system, members of the Supervisory Board are liable for the damages caused to the company by acting contrary to the Company Law or contrary to a resolution by the General Assembly. Exceptionally, a Supervisory Board member shall not be liable for damage if s/he acted in accordance with a resolution of the General Assembly.

In addition, a company's representatives are liable for damages they incur to the company by exceeding the limits of their powers. Exceptionally they shall not be liable if they acted in accordance with a resolution of the company's competent body or if their actions have subsequently been approved by such company body.

### **7.1.3 Liability for debts**

A Local Corporation is liable for its debts, whereby its founders are liable only if they are responsible for piercing the corporate veil of the Local Corporation.

Controlling shareholders of a Local Corporation or those with a shareholding over 25% (twenty five percent), Managing Directors, members of the Supervisory Board, registered representatives and procura holders qualify as persons with special duties towards the Local Corporation and are liable for a breach of any of the following: (i) duty of due care; (ii) duty to report transactions involving a personal interest; (iii) conflicts of interest; (iv) confidentiality obligation; and (v) non-compete obligation.

## **7.2 Procedural Rules**

### **7.2.1 Most relevant operational requirements**

The Managing Director of a Local Corporation can be a foreign citizen. A Managing Director who is a foreign citizen is not obligated to have a residence in Serbia if s/he is not employed by the Local Corporation in which case s/he must conclude a so-called "management agreement" (*Ugovor o pravima i obavezama direktora*) with the Local Corporation, save if s/he spends more than 90 (ninety) days within a period of 6 (six) months as of his/her first entry into Serbia.

If however a Managing Director, who is a foreign citizen, enters into an employment relationship with the Local Corporation, s/he will have to: (i) obtain a work permit from the National Employment Office; and (ii) have either a permanent or a temporary residence permit in Serbia issued by the Ministry of Interior Affairs.

The Local Corporation must have a registered physical address in Serbia.

### **7.2.2 Documents required in order to proceed with the setting up of the Local Corporation**

The following documents/information must be submitted to the Agency for Commercial Registers for the purpose of registering a Local Corporation:

- Power of attorney for lawyers issued by the founder(s) of the Local Corporation notarised and apostilled, if required (if there is no bilateral treaty between the Republic of Serbia and a foreign country, which cancels the apostille obligation, the latter is required on all documents issued by the authorities of such foreign country), if lawyers are hired for the process of establishing the Local Corporation;
- Registration application;
- Excerpt from the competent register, notarised and/or apostilled, and/or a copy of the passport of the founder(s), depending on whether these are legal or natural persons;

The Local Corporation's foundation deed, signed, notarised and apostilled if required depending on the country in which this is executed;

- A bank certificate of the foundation capital (if the capital is paid-in prior to the establishment of the Local Corporation);
- If the capital of the Local Corporation consists of in-kind contributions – notarised and apostilled (if required) agreement of the founders on the value of the contributions in kind, unless such agreement is included in the foundation deed;
- Resolution of the founders regarding the nomination of the legal representatives of the Local Corporation (i.e. decision on the appointment of Managing Director(s) in case of a one-tier liability company or a decision on the appointment of Supervisory Board members in case of a two tier liability company);
- proof on payment of administrative fees.

### **7.2.3 Time frame**

The registration process lasts up to 5 (five) days following the submission of the complete application for the establishment of a Local Corporation.

### **7.2.4 Administrative/court fees**

The total amount of fees for the registration of a Local Corporation varies depending on whether the necessary foundation-related documents are executed and notarised in Serbia or abroad.

If the entire process is performed in Serbia, one should count on costs for notarising the foundation deed of approximately EUR 70, fees charged by official court interpreters for the translation of documents issued in a foreign language and the administrative fees charged by the Agency for Commercial Registers for the Local Corporation's registration amounting to approximately EUR 50.

## **8. TAXES**

### **8.1 Corporate Income Tax**

The suggested form of operation for pursuing Wholesale activities is a limited liability company. Profit earned by a limited liability company established in Serbia is subject to Serbia corporate income tax at a rate of 15% (fifteen percent). When the Wholesale activities are executed by a non-resident entity (i.e. directly by a foreign entity –

wholesaler) such non-resident entity shall be obliged to appoint a tax representative in Serbia who will account for all taxes in Serbia on behalf of the non-resident entity.

## **8.2 VAT**

Wholesale activities are subject to Serbian VAT as follows: (i) electricity is subject to VAT at a rate of 20% (twenty percent), and (ii) natural gas is subject to VAT at a rate of 10% (ten percent). If the electricity and/or gas is imported into Serbia then such import of electricity is exempt from VAT in Serbia.

## **8.3 Excise Duty**

The supplier of the electricity (distributed to the end-customers) is obliged to account for the excise on electricity in Serbia at a rate of 7.5% (seven point five percent).

# **9. CONTRACTUAL RELATIONS**

## **9.1 Electricity**

### **9.1.1 Contract for access to the relevant grid**

Access to the system, i.e. the relevant grid (transmission or distribution system), is obtained on the basis of an access contract concluded between the system operator (i.e. EMS for the electricity transmission system or EPS Distribucija d.o.o. Beograd for the electricity distribution system) and the grid user, in accordance with the Energy Law and the relevant grid code.

In addition to the elements specified by the law governing contractual relations (i.e. the Law on Obligations), the grid access contract must contain the following: (i) information on the delivery point of electricity; (ii) information on the power and capacity at the delivery point; and (iii) information on the billing period and the method for calculating the consumption of electricity, as well as other elements depending on the particularities of the delivery point.

### **9.1.2 Balance responsibility contract**

Each market participant in the electricity market, including market participants engaged in electricity Wholesale Activities, must conclude a balancing responsibility agreement with the TSO, i.e. EMS, through which the former will obtain the status of a balancing responsible party. Market participants may enter into balancing responsibility transfer agreements with another entity, which will then act as the balancing responsible party regarding the electricity activities of such market participant.

### **9.1.3 Admission to power exchange SEEPEX**

Market participants, including, *inter alia*, electricity suppliers and wholesale electricity suppliers, can become a member of SEEPEX and perform their trade via the SEEPEX trading platform by signing a Trading Agreement with SEEPEX (available on the SEEPEX Web site), provided they have a valid licence for carrying out the relevant energy activity and have regulated their balancing responsibility.

### 9.1.4 Cross-border trading

Cross-border trading is performed through the cross-border transmission system. Access to the cross-border transmission system is based on the right of use of the system, which is exercised by means of an agreement concluded between the TSO and the market participants.

Cross-border capacities are assigned to users in a non-discriminatory and transparent manner.

In order to participate in the process of allocation of cross-border capacities and use the cross-border capacities, an eligible market participant engaged in electricity trade activities must (i) have a valid licence for carrying out the relevant energy activity in accordance with the applicable law; (ii) have an EIC identification code (which is issued by EMS in Serbia); and (iii) meet other requirements as prescribed under the Rules for allocation of relevant cross-border transfer capacities on the relevant border to the territory of Serbia and depending on the type of auction (i.e. yearly, monthly, daily or an intra-day auction) (e.g., for cross-border capacities between the territory of Romania and the territory of Serbia, an eligible participant must have no financial obligations towards EMS or towards C.N.T.E.E. Transelectrica S.A. (the TSO in Romania) in terms of business relations on the electricity market).

A market participant intending to participate in the allocation procedure has to submit to the relevant TSO the relevant application containing all necessary details and documents, in accordance with the Rules for allocation of relevant cross-border transfer capacities on the relevant border to the territory of Serbia and depending on the type of auction (i.e. yearly, monthly, daily or an intra-day auction). Afterwards, an eligible participant has to conclude the necessary contract with the relevant TSO in order to become a registered participant in allocation and procedure and to participate in the respective allocation procedure.

## 9.2 Natural Gas

The purchase and sale of natural gas is carried out on the basis of natural gas trading contracts concluded between market participants, whereby the contracts specify in particular the quantity of natural gas, price and supply period.

The operator of the transport system is obligated to keep records of all transactions in the natural gas market, in a manner and according to the procedure stipulated by the Code on the natural gas transport system.

### 9.2.1 Balance responsibility contract

Natural gas market participants must regulate their balancing responsibility by concluding a transport contract, which will regulate the financial responsibility for the difference between the natural gas quantity delivered at the entry points to the transport system and the quantity taken at the exit points from the transport system, and/or from the distribution system, for the respective accounting period.

### 9.2.2 Contract for access to the natural gas transport system/storage

The relevant system user (e.g. natural gas supplier) needs to conclude an agreement on access with the operator of the natural gas transport system, natural gas distribution system or natural storage respectively in accordance with the code of the relevant system in order to get access to the relevant system.

Access to the natural gas transport system is obtained on the basis of a right to use transport capacities at the entry and exit points of the transport system. The right to use the transport capacity is exercised on the basis of a contract on natural gas transport concluded by the transport system operator with the respective market participant, in accordance with the Code of the natural gas transport system. This contract may allocate the transport capacity on a long-term basis, i.e. for a period of 1 (one) or more years, or on a short-term basis, for a period shorter than 1 (one) year, and the capacity may be allocated as firm or interruptible.

The right to use the natural gas storage capacities must be allocated by the operator of natural gas storage in a transparent and non-discriminatory manner in accordance with the Code on natural gas storage, whereby the storage capacity may be allocated on a long-term basis, i.e. for a period of 1 (one) or more years, or on a short-term basis, for a period shorter than 1 (one) year, and the capacity may be allocated as firm or interruptible.

## **10. REPORTING OBLIGATIONS**

The Energy Law does not explicitly prescribe details on reporting obligations with respect to the maintenance of a licence issued by AERS for the performance of specific energy activities. However, in practice, certain reporting obligations are included in a licence issued by AERS, which relate usually to the obligation to inform AERS of any change that concerns the fulfilment of the conditions for holding the respective licence (e.g. change of representative/Managing Director, change of legal form of the company, statutory changes, change of company address) as well as any other changes that can be relevant for the fulfilment of the conditions for holding the respective licence.

In addition, with regard to electricity Wholesale Activities, pursuant to the Energy Law the electricity wholesale supplier and electricity supplier must provide to AERS as well as to the authority in charge of competition affairs and the competent authority in accordance with obligations arising from confirmed international agreements, all relevant data referring to transactions stipulated by contracts on electricity supply of all market participants, except for end-customers, whereby an electricity supplier is also obligated to keep records of all relevant data for at least 5 (five) years.



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# SLOVAK REPUBLIC

## **1. RELEVANT LAWS AND REGULATIONS**

The most relevant laws and regulations governing the electricity and gas market in the Slovak Republic are the following:

- Act No. 251/2012 Coll. on Energy ("**Energy Act**");
- Act No. 250/2012 Coll. on Regulation in network industries ("**Act on Regulation in Network Industries**");
- Act No. 513/1991 Coll. the Commercial Code ("**Commercial Code**");
- Ordinance No. 24/2013 of the Regulatory Office for Network Industries establishing Rules for Functioning of the internal market with electricity and gas ("**Rules**");
- Regulation (EU) No. 1227/2011 of the European Parliament and of the Council on Wholesale energy market integrity and transparency; and
- Act No. 609/2007 Coll. on excise tax from electricity, charcoal and natural gas.

## **2. ORGANISATION OF ELECTRICITY MARKET AND GAS MARKET**

The Slovak energy markets have been liberalised in accordance with the requirement of the relevant EU laws. In May 2012, the Slovak government adopted two main legislative acts governing energy law in the Slovak Republic, which replaced the previous regulation: (i) Act on Energy (Act No. 251/2012 Coll.) ("**Energy Act**"); and (ii) Act on regulation in network industries (Act No. 250/2012 Coll.) ("**Act on Regulation in Network Industries**"). The new acts adopted by the National Council of the Slovak Republic came into force on 1 September 2012 and their main aim was the implementation of the latest EU Directives and Regulations, above all the Third Energy Package. In particular, both Directive 2009/72 of the European Parliament and of the Council concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC and Directive 2009/73/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC which aim at achieving an internal energy market in Europe were implemented by these two Acts.

The markets are supervised and controlled by the Regulatory Office for Network Industries ("**RONI**"), a public administration body with independent functions and authority with nationwide competence. From the time of its establishment, the main functions of RONI were licensing and supervising power and natural gas companies in the energy infrastructure sector and the preparation of regulated prices for natural gas and electricity. Even though consumer protection does not specifically fall within its scope as defined under the Act on Regulation in Network Industries, RONI also focuses on and protects users of energy belonging to the group of vulnerable consumers (i.e. households and small enterprises).

Together with RONI, the Government of the Slovak Republic plays a vital role in the energy market by setting out energy policies. The Ministry of Economy and Development adopts strategies and implements energy policies set out by the Government.

### **2.1 Electricity Market**

Currently there are around 40 licensed electricity suppliers.

The transmission system operator in the electricity market is Slovenská elektrizačná prenosová sústava, a.s. ("**SEPS**") which is wholly owned by the State represented by the Slovak Ministry of Finance. SEPS transmits

electricity in the whole territory of the Slovak Republic and ensures the electricity transmission from power plants to the distribution network and major customers connected to the 220 kV and 400 kV grids. Imports, exports, and transit of electricity as well as exact measurements are made through transmission system lines and substations.

The distribution systems are operated by 3 regional distribution system operators.

The Slovak Republic has two nuclear power plants at Jaslovské Bohunice and Mochovce. The nuclear power plant Jaslovské Bohunice has two active reactor units, each with an initial capacity of 505 MW which started to operate between 1984 and 1985. The nominal power of the power plant can reach 1010 MW. The Jaslovské Bohunice and Mochovce power plants have a leading role in Slovakia's electricity supply. More than 50% (fifty percent) of the national energy production comes from these facilities.

In addition to Jaslovské Bohunice and Mochovce, two thermal power plants in Nováky and Vojany play a significant role in the Slovak energy market.

The organisation and evaluation of the short-term cross-border electricity market is carried out by OKTE, a.s. – a subsidiary of the Transmission System Operator ("TSO") – which is authorised for activities as short-term electricity market operator in the Slovak Republic.

There is no electricity exchange in Slovakia but Slovakian power products are traded on the POWER EXCHANGE CENTRAL EUROPE, a.s. in the Czech Republic.

## 2.2 Natural Gas Market

Currently there are around 23 licensed gas suppliers; most of which are also electricity suppliers.

Transmission and distribution activities in the Slovak Republic were unbundled on 1 July 2006. Slovenský plynárenský priemysel, a.s. ("SPP"), the dominant importer of natural gas into the Slovak Republic, remains the indirect owner of eustream, a.s. and also of the main distribution system operator, SPP – distribúcia, a.s.

eustream, a.s. (a fully owned subsidiary of SPP Infrastructure, a.s.) is one of the biggest transmission operators in Europe, focusing mainly on the transit of Russian gas to western and southern Europe. SPP - distribúcia, a.s. (also a fully owned subsidiary of SPP Infrastructure, a.s.) is the biggest distribution network operator in the Slovak Republic, while a number of small independent local distribution companies are also active in the country's gas distribution.

There are two storage system operators ("SSO") in the Slovak Republic: NAFTA a.s. and POZAGAS a.s. NAFTA a.s. also operates the country's domestic gas production and is partially owned by SPP (56% (fifty six percent)) and Czech Gas Holding Investment B.V. (40% (forty percent)). POZAGAS a.s. is partly owned by SPP Infrastructure, a.s. (35% (thirty five percent)), NAFTA a.s. (35% (thirty five percent)) and GDF International S.A. (30% (thirty percent)).

SPP is the leading supplier of natural gas on the Slovak gas market with a majority share. The company is fully owned by the state. Other companies active on the Slovak gas supply market are local branches of international companies, including Innogy, VNG and Shell.

## 3. CONDITIONS FOR APPLYING FOR ELECTRICITY AND NATURAL GAS WHOLESALE LICENCE(S)

### 3.1 Electricity Licensing – Regulatory and Corporate Conditions

Conducting business in the energy sector is defined by the Energy Act as, *inter alia*, business which includes the generation, transmission, distribution and supply of electricity. Conducting business in the energy sector is only

allowed on the basis of and in accordance with a licence or – if it is for own use – a confirmation of the fulfilment of the notification duty, as the case may be.

According to Article 6, Section 7 of the Energy Act, a licence to supply electricity (whereas supply of electricity under the Energy Act is defined as sale of electricity) in the Slovak Republic, which entitles its holder to engage in electricity Wholesale Activities, may be granted to a person duly incorporated in any Member State of the European Union or in a State that is a party to the Agreement on the European Economic Area, which is interested in supplying electricity (“entitled foreign entity”), and which

- is entitled to supply electricity in the state in which it was incorporated or in which it has its seat;
- has requested a licence / permit from RONI; and
- meets other statutory requirements (in particular when applying for the licence such person is obliged to submit an official translation of the licence / permit from the home state proving the company's right to supply electricity).

The above means that foreign persons, incorporated and lawfully supplying electricity in a Member State of the EU/EEA, are entitled to directly apply for and hold a licence in the Slovak Republic without the need for any Local Corporation or Local Branch Office.

However, foreign economic operators incorporated in a non-EU/EEA Member State (e.g. in Switzerland) cannot benefit from the above licence regime. Such non-EU/EEA companies can only apply for and hold a licence in the Slovak Republic through a Local Branch Office or a Local Corporation.

A Local Corporation may be established in the form of either a limited liability company (*spoločnosť s ručením obmedzeným* or *s.r.o.*) or a joint-stock company (*akciová spoločnosť* or *a.s.*). Less common forms are partnerships (*verejná obchodná spoločnosť* or *v.o.s.*) and limited liability partnerships (*komanditná spoločnosť* or *k.s.*). The Energy Act also allows natural persons to obtain licences, provided that they fulfil the required criteria. However, the most common legal form in which entities are performing business activities in the energy sector are limited liability companies and joint stock companies.

Also according to Article 4, Section 5 of the Energy Act, the person who carries out activities pursuant to Article 6, Section 2 of the Energy Act, must be registered in the register of public sector partners.

### **3.2 Natural Gas Licensing – Regulatory and Corporate Conditions**

Production, transmission, distribution, storage and supply of gas falls under the definition of conducting business in the energy sector for which a licence or – if it is for own use only – notification is required.

As regards the supply of gas (whereas supply of gas is defined by the Energy Act as the sale and resale of gas) by foreign companies incorporated or having their seat in the EU/EEA or in the territory of the Slovak Republic, the same applies as stated under Point 3.1 above. Such persons are entitled to apply for a licence with RONI; together with the application they shall submit an official translation of the licence to supply gas issued by the respective office in the jurisdiction of their incorporation or in which they are supplying gas. There is no need for such companies to establish a Local Branch Office or a Local Corporation.

On the other hand, foreign entities from outside the EU/EEA shall establish a Local Branch Office or Local Corporation in a form as described under Point 3.1 above.

The obligation to be registered with the register of public sector partners pursuant to Article 6, Section 2 of the Energy Act applies also to the persons supplying gas, since such activity falls within the scope of activities provided for under Article 6, Section 2 of the Energy Act.

Please note that a person who holds a licence to conduct business in the energy sector may conduct business with electricity and with gas. However, once the company obtains a licence, such licence cannot be transferred to another entity or person.

## **4. OBTAINING THE WHOLESALE LICENCE(S)**

### **4.1 Electricity**

#### **4.1.1 Annexes to the application for the electricity Wholesale Licence**

The criteria which have to be fulfilled and proved by the applicant for a licence are set out in the Energy Act and in the Ordinances of RONI. The application for a licence to conduct business must be submitted to RONI. The applicant shall fulfil the following conditions in order to obtain a licence:

- be at least 21 (twenty one) years old, if the applicant is a natural person;
- have full legal capacity, if the applicant is a natural person;
- have a permanent residence (if the applicant is a natural person) or the seat of the entity in the Slovak Republic; this does not apply if the applicant is from another Member State of the EU/EEA and holds a licence to supply electricity in this jurisdiction;
- have a clean criminal record and in case of a legal entity also the members of the management / board of the legal entity must have a clean criminal record;
- have professional capability to conduct the activities for which the application is filed;
- show the fulfilment of the technical prerequisites to perform the activities for which the licence is being requested; and
- appoint the responsible representative in case of a legal entity and in case of a natural person if the natural person has no professional capability to conduct the activities for which the application is filed.

Moreover, the following documents shall be attached to the application:

- a notarised copy of the applicant's deed of foundation (articles of association) or an extract from the Commercial Register, not older than 30 (thirty) days;
- extracts from Criminal Registers for the members of the executive body and of the responsible representative;
- official copy of the qualification of the responsible representative;
- two copies of a map of the area in which such business shall take place; and
- proof of ownership rights for each of the commercial premises.

#### **4.1.2 Procedural rules**

The application procedure is paper-based. If the licence applicant does not fulfil the conditions for the issuance of a licence laid down in the Energy Act, RONI shall reject the application. The reasons for rejection must be objective, non-discriminatory and duly substantiated.

RONI shall decide about the application within 30 (thirty) days from the filing of the application. In more complex cases RONI has 60 (sixty) days to decide.

## **4.1.3 Operational conditions required for the issuance and maintenance of the electricity Wholesale Licence**

### **4.1.3.1 Personnel**

Applicants are generally required to have the facilities and qualified staff necessary for the continuous and long-term pursuit of the licensed activity. Nevertheless, the relevant laws do not contain any specific requirements as to how many officers licence holders need, and what roles they should have. It is the licence holders' sole discretion and responsibility to ensure that they are able to pursue electricity trading.

### **4.1.3.2 Premises**

Foreign companies registered in a Member State of the EU/EEA who are entitled to directly apply for and hold a licence do not need any kind of local presence in the Slovak Republic. In other cases when a Local Entity needs to be established, the applicants need to have a permanent office or address in the Slovak Republic.

### **4.1.3.3 IT systems/assets**

As mentioned above, applicants are required to have all facilities, including IT systems/assets necessary for the performance of the licensed activities. However, neither the provisions of the Energy Act and its implementation decrees nor the ordinances of RONI specify minimum requirements for the purpose of obtaining the licence.

## **4.1.4 Financial guarantee**

Applicants are not required to provide a financial guarantee to RONI.

## **4.1.5 Procedural costs**

The procedural fee for obtaining a licence to supply electricity starts at EUR 2,000 and depends on the scale of activities.

## **4.1.6 Term of the licence**

The licence may be issued for an indefinite period or for a specific period. However, the issuance of licences for an indefinite period is more common and granting of licences for a limited time is usually only upon the request of the applicant.

There is no formal requirement for a regular maintenance of the licence; however, the licence holder is required to continuously satisfy the requirements for obtaining the licence. Upon failure by the licence holder to do so or to comply with its statutory obligations, RONI may withdraw the licence as an ultimate measure.

A licence issued for an indefinite term may also be withdrawn upon the licence holder's request.

## **4.2 Natural Gas**

### **4.2.1 Annexes to the application for the gas Wholesale Licence**

Since the person who wishes to supply (i.e. sell) gas shall do so on the basis of a licence to conduct business in the energy sector, the same requirements as stipulated under Point 4.1 above shall be observed. The application shall be submitted to RONI and the applicant shall fulfil the following conditions in order to obtain a licence:

- be at least 21 (twenty one) years old, if the applicant is a natural person;
- have full legal capacity, if the applicant is a natural person;

- have a permanent residence (if the applicant is a natural person) or the seat of the entity in the Slovak Republic; this does not apply if the applicant is from another Member State of the EU/EEA and already holds a licence to supply gas in this state;
- have a clean criminal record and in case of a legal entity also those persons acting as statutory bodies of the legal entities must have a clean criminal record;
- professional capability to conduct the activities for which the application is filed;
- show the fulfilment of the technical prerequisites to perform the activities for which the licence is being requested; and
- appoint the responsible representative in case of a legal entity and in case of a natural person if the natural person has no professional capability to conduct the activities for which the application is filed.

The same attachments shall be submitted to RONI as stated under Point 4.1.1 above.

#### **4.2.2 Procedural rules**

As it is the same licence pursuant to which subjects may conduct business with electricity, the same procedural rules apply as stated in Point 4.1.2 above. I.e. the application procedure is paper-based, the respective authority is RONI and it shall decide about the application within 30 (thirty) days from the filing of the application. In more complex cases RONI has 60 (sixty) days to decide.

#### **4.2.3 Operational conditions required for the issuance and maintenance of the gas Wholesale Licence**

##### **4.2.3.1 Personnel**

Applicants are generally required to have the facilities and qualified staff necessary for the continuous and long-term pursuit of the licensed activity. Nevertheless, the relevant laws do not contain any specific requirements as to how many officers licence holders need, and what roles they should have. It is the licence holders' sole discretion and responsibility to ensure that they are able to pursue gas trading.

##### **4.2.3.2 Premises**

Foreign companies registered in a Member State of the EU/EEA who are entitled to directly apply for and hold a licence do not need any kind of local presence in the Slovak Republic. In other cases when a Local Entity needs to be established, the applicants need to have a permanent office or address in the Slovak Republic.

##### **4.2.3.3 IT systems/assets**

As mentioned above, applicants are required to have all facilities, including IT systems/assets necessary for the performance of the licensed activities. However, neither the provisions of the Energy Act and its implementation decrees nor the ordinances of RONI specify minimum requirements for the purpose of obtaining a licence.

#### **4.2.4 Financial guarantees**

Applicants for and holders of a licence are not required to provide a financial guarantee to RONI.

#### **4.2.5 Procedural cost**

The procedural fee for obtaining a licence to supply gas starts from EUR 2,000 and depends on the scale of activities.

#### **4.2.6 Term of the licence**

The licence may be issued for an indefinite period or for a specific period. However, the issuance of licences for an indefinite period is more common and the granting of licences for a limited time is usually only upon the request of the applicant.

There is no formal requirement for a regular maintenance of the licence; however, the licence holder is required to continuously satisfy the requirements for obtaining the licence. Upon failure by the licence holder to do so or to comply with its statutory obligations RONI may withdraw the licence, as an ultimate measure.

A licence issued for an indefinite term may also be withdrawn upon the licence holder's request.

## **5. DIFFERENT RULES APPLICABLE FOR SUPPLYING INDUSTRIAL END-CUSTOMERS**

### **5.1 Electricity Licensing – Regulatory and Corporate Conditions**

In order to supply industrial end-customers (as well as any other end-customers), it is sufficient if a company obtains a licence to conduct business in the energy sector as described under Point 4.1 above. There is no need to obtain an Additional Licence.

However, the Energy Act stipulates more precise rights and obligations of the end-customers to whom greater protection is granted.

### **5.2 Natural Gas Licensing – Regulatory and Corporate Conditions**

In order to supply industrial end-customers (as well as any other end-customers), it is sufficient if a company obtains a licence to conduct business in the energy sector as described under Point 4.2 above. There is no need to obtain an Additional Licence.

## **6. SETTING UP A LOCAL ENTITY**

As described above under Point 3.1 and 3.2, foreign companies registered in the EU/EEA which hold licences to supply electricity/gas in their home jurisdictions, are entitled to directly apply for and hold a licence without the need for an Entity registered in the Slovak Republic.

If a foreign company registered in the EU/EEA does not possess a licence to supply electricity/gas in its home jurisdiction, or if the foreign company is incorporated in a country outside of the EU/EEA, then they have to first establish a Local Branch Office or a Local Corporation (for the purpose of this guide we describe setting up a limited liability company as this is the most common and simplest form).

## 6.1 Most Important Legal Rules and Operational Requirements

	LOCAL CORPORATION/S.R.O.	LOCAL BRANCH OFFICE
<b>GENERAL DESCRIPTION</b>	A business association established with a registered capital consisting of capital contributions (ownership interests) of a pre-determined amount (however a minimum of EUR 750), in the case of which the obligation of the members (shareholders) to the company extends only to the provision of their capital contributions and to other possible contributions as set forth in the articles of association. With the exceptions prescribed by law, shareholders are not liable for the obligations of the company. An s.r.o. may have one shareholder (provided that the sole shareholder of the company has more than one shareholder) or several shareholders.	An organisational unit of a foreign company, without legal capacity, vested with financial autonomy and registered as an independent form of company in the Slovak Commercial Register as a branch office of a foreign company.
<b>MINIMUM CAPITAL</b>	EUR 5,000	No minimum requirement.
<b>LIABILITY FOR DEBTS</b>	As a general rule, the shareholder's liability is limited to those contributions registered with the Commercial Register which have not yet been fully paid up.	The founder has to assume all costs and expenses of the Local Branch Office's operations and bears unlimited liability for any outstanding amounts owed by the Local Branch Office.
<b>MANAGEMENT/ REPRESENTATION</b>	The Local Corporation is represented by the managing director(s) appointed by the general meeting. Managing directors may perform their duties under an employment contract or a commercial law mandate agreement or on the basis of an agreement on the performance of the function.  The managing director does not have to be Slovak.	The Local Branch Office is represented by the branch office representative appointed by the founder. The representative may be a person with an employment contract or delegated by the founder.  The representative does not have to be Slovak or have permanent residence in the Slovak Republic.
<b>EMPLOYEES</b>	There is no need to have employees in the Slovak Republic. Although it is necessary to have a representative (managing director), the duties do not necessarily have to be performed under an employment agreement (please see above).	
<b>PREMISES</b>	Both the Local Corporation and the Local Branch Office need to have a seat registered in the Commercial Register. The registered seat functions as the Entity's mailing address, where all business and official documents are received, filed, safeguarded and archived, and which is marked by a company sign. This in fact means the physical availability of the Entity to the extent that its official correspondence must be available there (for instance, in the event of a tax authority inspection) but does not mean that the company must directly lease premises; it can also obtain consent from the owner of the building/real estate to use the premises as the seat of the Entity. The Entity can also enter into a seat usage agreement with a service provider.	
<b>BANK ACCOUNT OPENING REQUIREMENT</b>	Both the Local Corporation and Local Branch Office are required to open a bank account in the Slovak Republic.	
<b>TAX NUMBER REQUIREMENT</b>	Both the Local Corporation and the Local Branch Office receive a tax number upon registration with the Commercial Register and subsequent registration with the tax authority.	

## 6.2 Procedural Rules

Procedural rules and the documentation for establishing a Local Branch Office or a Local Corporation are very similar.

	LOCAL CORPORATION/S.R.O.	LOCAL BRANCH OFFICE
<b>SET UP TIME</b>	The Commercial Register shall decide on the application within 2 (two) working days.	
<b>DOCUMENTS TO BE FILED</b>	<ul style="list-style-type: none"> <li>▪ Filled-in application form with notarised signatures</li> <li>▪ Deed of foundation (articles of association or founder's deed)</li> <li>▪ Specimen signatures of the representatives</li> <li>▪ PoA from the Local Cooperation for the representative</li> <li>▪ Document evidencing the entitlement to use the properties designated as the registered seat</li> <li>▪ Written declaration of the founder that he/she is not the sole shareholder in more than two limited liability companies (if the company is established by one natural person)</li> <li>▪ Written declaration of the founder that the limited liability company which is the sole founder has more than one shareholder</li> <li>▪ Document proving the business activity which shall be recorded in the Commercial Register as its scope of business</li> <li>▪ Declaration of the trustee of the contributions</li> <li>▪ Expert opinion with respect to contributions in kind (if applicable)</li> <li>▪ Consent of the tax administrator or sworn affidavit that the founder does not have obligations to submit such consent</li> </ul>	<ul style="list-style-type: none"> <li>▪ Filled-in application form</li> <li>▪ Founder's resolution on the establishment of the Local Branch Office</li> <li>▪ Specimen signatures of the representatives</li> <li>▪ PoA from the Local Branch Office for the representative</li> <li>▪ Document evidencing the entitlement to use the properties designated as the registered seat</li> <li>▪ Deed of foundation of the founder (not applicable if the founder is a natural person)</li> <li>▪ Document proving the business activity which shall be recorded in the Commercial Register as its scope of business</li> <li>▪ Proof of the registration of the foreign founder in the Commercial Register or other register provided that the founder is registered in such register pursuant to the laws where it is incorporated</li> <li>▪ Other documents which prove the statements stipulated in the application</li> </ul>
<b>COSTS</b>	The administrative fee for registration of both entities amounts to EUR 300.	

## 7. TAXES

Holding a licence and pursuing the licensed activities without any form of permanent establishment and fixed assets (equipment and personnel) in the Slovak Republic will most likely not create a taxable presence in the Slovak Republic and thus the holders of the licence will not be liable for corporate income tax. However, this is relevant only for EU/EEA licensed gas traders as other foreign persons have to establish a Local Branch Office or a Local Corporation which would most probably trigger tax liability under the laws of the Slovak Republic.

A holder of a licence supplying electricity/natural gas to non-household customers might be also liable to pay excise and harmonised taxes at the EU level in the energy segment.

## **8. CONTRACTUAL RELATIONS**

### **8.1 Electricity**

#### **8.1.1 Agreement on settlement of deviation or agreement on assumption of liability for deviation**

Once the licence has been obtained from RONI, in order to start pursuing the licensed activities for power, the electricity market participant has to conclude an agreement on settlement of deviation or agreement on assumption of liability for deviation. According to the relevant provisions of the Energy Act, the Rules for internal market with electricity and gas ("**Rules**"), and the Commercial Code, the conclusion of the agreement on settlement of deviation or agreement on assumption of liability for deviation is mandatory and the parties must be able to evidence the fact (existence) of the contract. Also, RONI has the right to request data supply from the traders and to inspect documents related to the licensed activity. Nevertheless the terms and conditions are rather subject to the parties' agreement whereas the Rules set out certain mandatory terms which the agreement shall contain.

The agreement of settlement on deviation is concluded with OKTE a.s. (organiser of the short-term market with electricity) which is a 100% (one hundred percent) subsidiary of SEPS.

#### **8.1.2 Registration for capacity auctions**

In order to participate in capacity auctions and export/import electricity from/to the Slovak Republic, market participants have to register with SEPS and request access to the IT platform through which capacity auctions are organised by SEPS/Central Allocation Office.

#### **8.1.3 Admission to regulated market**

In the Slovak Republic it is not mandatory to participate in the regulated market, so traders are free to decide if, in addition to entering into electricity sale and purchase agreements on a bilateral basis, they also wish to trade on the regulated electricity market operated by OKTE. Also, PXE (Power Exchange Central Europe, a subsidiary of the Prague Stock Exchange) offers futures for Slovak energy contracts.

#### **8.1.4 Other contracts**

Depending on the nature of the licence, the electricity market participant may have the right, or even be obliged to enter into various types of agreements, such as transmission agreements, distribution agreements, supply agreements, etc.

### **8.2 Natural Gas**

#### **8.2.1 Agreement with the TSO on access to the transmission system**

Holders of a licence to conduct business in the energy sector who wish to transmit their gas have to enter into an agreement on access to the transmission system with eustream, a.s. The standard form of contract is part of the terms of business of eustream, a.s., the Slovak TSO in the natural gas market, as approved by RONI.

#### **8.2.2 Agreement on assumption of liability for deviation**

A gas market participant with a right of regulated access to the market shall be responsible for its own system deviations of the gas market participant and shall be the subject of the settlement of the system deviation provided that it did not transfer such responsibility to another subject. Liability for any deviation of the gas market participant may be transferred to another subject by an agreement. If the liability for deviation is assumed by the other subject on the basis of an agreement, then this subject becomes the subject of the settlement of the

system deviation. The Rules provide for a list of minimal information/provisions which should be contained in an agreement on assumption of liability.

## **9. REPORTING OBLIGATIONS**

According to the Energy Act and Act on Regulation in Network Industries, licence holders are required to supply data to RONI on a regular basis and at RONI's request occasionally.

Licence holders are required to submit information with respect to transactions between affiliated undertakings by 15 July of each year for the preceding year. Furthermore, by each February the licence holder shall confirm to RONI that it did not conduct activities for which it does not hold a licence. They shall also submit to RONI in a manner and within the deadline set out by RONI, information about prices for supply of electricity and gas to final consumers, the way in which the price was calculated and the amount of electricity and gas used.

Additionally, licence holders are obliged to supply data to RONI monthly, quarterly and annually through RONI's electronic platform. These data supply requests concern traded quantities, financial figures (preliminary accounts, audited annual accounts for the whole company and annual accounts relating to the licensed activity (management accounts), cost monitoring), ownership structure, headcounts and contact details of the licence holder. The annual accounts also have to be submitted in paper form.



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**SLOVENIA**

## 1. RELEVANT LAWS AND REGULATIONS

The most relevant laws and regulations governing the electricity and gas market in Slovenia are the following:

- Energy act, Official Gazette of the Republic of Slovenia, No. 17/14, as amended ("**Slovenian Energy Act**");
- Resolution on the national energy programme, Official Gazette of the Republic of Slovenia, No. 57/04;
- Decision on the establishment of the Energy agency of the Republic of Slovenia, Official Gazette of the Republic of Slovenia, No. 63/04, as subsequently amended;
- Companies act, Official Gazette of the Republic of Slovenia, No. 42/2006, as subsequently amended ("**Slovenian Companies Act**");
- General administrative procedure act, Official Gazette of the Republic of Slovenia, No. 80/1999, as subsequently amended;
- Decree on the operation of the natural gas market, Official Gazette of the Republic of Slovenia, No. 61/16 ("**Natural Gas Market Decree**");
- Legal Act on the methodology for determining the regulatory framework of the gas distribution system operator, Official Gazette of the Republic of Slovenia, No. 28/15, as subsequently amended;
- Legal Act on the methodology for determining the regulatory framework of the natural gas transmission system operator, the Official Gazette of the Republic of Slovenia, No. 77/15;
- Network Code for natural gas transmission system, the Official Gazette of the Republic of Slovenia, No. 55/15, as subsequently amended;
- Legal Act on the mandatory content of the network code for the natural gas distribution system, the Official Gazette of the Republic of Slovenia, No. 61/15;
- Legal Act on the mandatory content of the network code for the natural gas transmission system, the Official Gazette of the Republic of Slovenia, No. 17/15, as subsequently amended;
- Legal Act on the identification of entities in the data exchange among participants in the electricity and natural gas markets, the Official Gazette of the Republic of Slovenia, No. 39/15;
- Legal Act on the method for the submission of data and documents by providers of energy sector activities, the Official Gazette of the Republic of Slovenia, No. 98/14;
- Decree on the standard classification of activities, Official Gazette of the Republic of Slovenia, No. 69/2007;
- Rules on the operation of the electricity market, the Official Gazette of the Republic of Slovenia, No. 105/15 as subsequently amended;
- Decree on the method of implementation of public service of the electricity market organisation, the Official Gazette of the Republic of Slovenia, No. 39/15; and
- Rules on the operation of the electricity balancing market, the Official Gazette of the Republic of Slovenia, No. 97/14.

## 2. ORGANISATION OF ELECTRICITY MARKET AND GAS MARKET

Through the adoption of a new Slovenian Energy Act in 2014, Slovenia has opted for the complete liberalisation of the electricity market. Consequently the licensing system has been abandoned, with a few exceptions, and the electricity and natural gas activities of electricity production and supply are carried out freely in the market.

The central supervisory and controlling authority on the Slovenian energy market is the Energy Agency of the Republic of Slovenia ("**EARS**"). The purpose of EARS is to undertake regulatory measures in order to ensure a transparent and impartial energy market to the benefit of all market participants. The main functions of EARS are, *inter alia*, issuance of general acts relating to the network tariffs; adoption of general rules and setting out the general conditions; solving disputes arising from the access to the network, network charges and other matters; supervision of the market players and functioning of markets; gathering information reported to the Energy Agency by the energy market participants; and establishing and maintaining a register of electricity market participants.

The Directorate for Energy, operating within the competent ministry (currently the Ministry of Infrastructure and Spatial Planning), supervises the operations of the public utilities services in the field of electricity and natural gas. In addition, it operates the licensing regime applicable to the construction and operation of energy facilities.

### 2.1 Electricity Market

The Energy Act systematically regulates the electricity sector by determining which electricity-related activities fall within the scope of regulation, i.e. production and supply of electricity, activities of the transmission system operator, activities of the distribution system operator and activities of the market organiser.

The electricity market players are generally free to negotiate prices and quantities of supplied electricity, the end-customers freely choose and change their electricity suppliers, and producers may freely choose and change the supplier which supplies their generated electricity to the end-customers. The electricity market is hierarchically regulated as a balance scheme. Balance scheme members can act on the market as traders who buy or sell electricity according to volumes known in advance (closed contracts), or as suppliers of electricity who, besides electricity trading, also deal with electricity supply to consumers or with electricity purchase from producers (open contracts).

The organisation of the market, the activities of the transmission system operator and of the distribution system operator are carried out as mandatory national public services and are financed from the network charges and other sources. The network charge for the use of electricity networks is set by EARS. The transmission system operator in the electricity market is the public company Elektro-Slovenija, d.o.o. ("**ELES**"). ELES carries out maintenance, development or construction of the transmission network. The transmission network, with its high-voltage-level facilities, is connected to the networks of neighbouring countries, i.e. Austria, Italy and Croatia.

The distribution system is operated by the public company SODO, sistemski operater distribucijskega omrežja z električno energijo, d.o.o. ("**SODO**"). The public service of the distribution system operation is the only activity of SODO, and it is wholly owned by the state. SODO has signed agreements on the leasing of the electricity distribution infrastructure with 5 distribution companies (most of them are directly or indirectly state-controlled): Elektro Celje, d.d.; Elektro Gorenjska, d.d.; Elektro Ljubljana, d.d.; Elektro Maribor, d.d., and Elektro Primorska, d.d.

For the production of electricity in Slovenia all forms of primary energy sources are used. The predominant share of electricity production is carried out in conventional power plants (thermoelectric power plants, hydroelectric power plants and the nuclear power plant).

Borzen, d.o.o. is the Slovenian Power Market Operator ("**Borzen**") and supervises the agreed contractual obligations in which electricity is bought or sold in Slovenia, or is transferred across the regulated area. Trading in the wholesale market is carried out in two ways, i.e. in the organised market (the exchange) and bilaterally.

The electricity exchange in Slovenia is operated by BSP SouthPool Regionalna energetska borza, d.o.o. ("**BSP**"). The company was founded in 2008 by Borzen d.o.o., and Eurex Frankfurt, European Derivatives Exchange, AG and entered the market under the trademark name BSP SouthPool. BSP operates (i) day-ahead market; (ii) if so requested by the parties, central clearing and settlement for bilateral agreements concluded outside the exchange; and (iii) intraday market (from 16 October 2012), including trading on the balancing market, jointly operated by BSP, ELES and Borzen d.o.o.

## **2.2 Natural Gas Market**

The supply of natural gas in Slovenia depends almost entirely on supply from abroad as Slovenia has only a negligible production of natural gas. Most of the natural gas is supplied from Russia, Algeria, Austria and Italy. The Slovenian transmission system is connected to foreign transmission systems via three cross-border interconnections with Austria, Croatia and Italy.

The key players on the market are Geoplin d.o.o., which is the major supplier of natural gas, and its 100% (one hundred percent) owned subsidiary Plinovodi d.o.o. ("**Plinovodi**"), which acts as a transmission system operator.

Pursuant to the Slovenian Energy Act the activity of operating the natural gas transmission network falls within a national mandatory public service. The transmission system operator provides for transmission of natural gas through the high-pressure and medium-pressure gas networks. According to the Register of issued and revoked licences that is run by EARS, the current licence holders for these services are the companies Plinovodi and Istrabenz plini, d.o.o. However, the activities of transmission system operator are currently carried out only by Plinovodi. Plinovodi operates the transmission system as an independent system operator. Large industrial users and distributors, which provide natural gas to 76 municipalities with a total population of more than 1.3 million inhabitants, are connected to Plinovodi's network.

Rules regarding the charge for balancing are set by the transmission system operator with the prior consent of EARS. Contracts regarding the balancing of amounts are concluded between holders of the balancing groups and Plinovodi.

## **3. CONDITIONS FOR APPLYING FOR ELECTRICITY AND NATURAL GAS WHOLESALE LICENCE(S)**

### **3.1 Electricity Licensing – Regulatory and Corporate Conditions**

With the adoption of the new Slovenian Energy Act in 2014 the licensing system has been abandoned and it is no longer necessary to obtain a licence for the performance of activities in relation to the supply, trading and transport of electricity.

Foreign electricity traders do not have to establish a Local Corporation or Local Branch Office in Slovenia in order to be able to commence electricity trading. However, before starting to trade with electricity in Slovenia, a domestic or foreign entity must first become a member of a balance group. They may act as traders who buy or sell electricity according to volumes determined in advance (closed contracts), or as suppliers of electricity who, besides electricity trading, also deal with electricity supply to consumers or with electricity purchase from producers (open contracts). The transmission system operator, distribution system operator and energy exchange are also balance scheme members.

All legal or natural persons who wish to establish a balance group and become an active member of the electricity market must submit an application for obtaining the balance scheme responsible status, along with all necessary evidence of complying with the conditions, to the power market operator.

### **3.2 Natural Gas Licensing – Regulatory and Corporate Conditions**

With the adoption of the new Slovenian Energy Act in 2014 the licensing system has been abandoned and it is no longer necessary to obtain a licence for the performance of activities in relation to the supply, trading and transport of gas.

The gas market is organised as a balance scheme, defined as a list of market participants that have entered into a balance agreement with the transmission system operator or into a settlement agreement with the leader of a balance group. Foreign natural gas traders do not have to establish a Local Corporation or Local Branch Office in Slovenia in order to be able to commence natural trading but must first become a member of a balance group.

A balance group leader maintains a register of balance group members and a hierarchical record of all contracts. Balance group members gain access to a balance group by entering into an open supply agreement with a balance group leader. A trader may also join an existing balance group by entering into a settlement agreement between a balance group leader and a sub-balance group leader.

## **4. OBTAINING THE WHOLESALE LICENCE(S)**

### **4.1 Electricity**

As explained above under Point 3.1, there are no licence requirements for electricity trading in Slovenia. However, electricity traders must establish a new or access an existing balance group.

#### **4.1.1 Joining an existing balance group**

An electricity trader can obtain a status as leader of a sub-balance group by entering into a compensation agreement with the leader of an existing balance group and informing the power market operator thereof.

The compensation agreement must include the following provisions:

- date of entry into force of the compensation agreement (but in no case shall the date of entry into force be earlier than the date of the registration of the membership agreement);
- date of expiry of the agreement (can be concluded also for indefinite period of time);
- grounds for termination of the agreement;
- a clause stipulating the inclusion of a sub balance group in the balance group; and
- a clause stipulating the method of settling the balance through the main balance group. An excerpt from the court or similar register needs to be enclosed from which the person authorised to sign the settlement agreement is evident.

#### **4.1.2 Establishing a new balance group**

If the trader wishes to establish a new balance group and become an active member of the electricity market the trader must obtaining a status as leader of a balance group by submitting an application to the power market operator.

Together with the application the trader must submit the following documentation:

- a tax registration certificate or VAT identification number;
- an extract from the court or similar register including the latest amendments;
- the company balance sheet and profit and loss account and/or annual report for the last 3 (three) years of operations which indicate short-term solvency, permanent liquidity and long-term solvency, as well as capital adequacy; and
- a document confirming that the person signing the application request, and at a later stage the balancing agreement, is authorised to do so (in case this is not evident from the extract from the court or similar register).

After all conditions are met and all required documents are submitted, the power market operator prepares a balancing agreement, which is entered into by the entity that obtained the status as leader of the balance group. A balance group may only start to trade on the electricity market after submitting financial guarantees and meeting all required conditions.

## **4.2 Natural Gas**

As explained above under Point 3.2, there are no licence requirements for natural gas trading in Slovenia. However, natural gas traders must establish a new or access an existing balance group. A balance group is a scheme of market players that concluded an agreement either with the transmission network operator (new balance group) or with the leader of a balance group (existing balance group).

### **4.2.1 Joining an existing balance group**

By joining an existing balance group, the trader enters into an agreement with the leader of the balance group or a sub-balance group, either as a member or as a leader. In case the trader joins as a member, the trader needs to enter into an agreement with the leader of the balance or sub-balance group; the agreement needs to include clauses regulating all rights and obligations in respect to open contracts for the supply of natural gas.

If the trader wishes to become the leader of a sub-balance group, it must enter into a settlement agreement with the leader of a balance group. The settlement agreement must include the following provisions:

- information on the contracting parties;
- provisions regulating reporting;
- method of projecting the required quantities;
- termination clauses and rights and obligations of the parties in connection with a termination;
- dispute resolution method;
- method of securing financial obligations;
- term of validity and termination grounds; and
- a provision regulating the acquisition of consent from the balance group leader to enter into an agreement on settlement and on the obligation to notify the settlement agreement to the transmission network operator.

#### **4.2.2 Establishing a new balance group**

If a trader decides to set up its own balance group, it has to enter into a balancing agreement with the transmission system operator.

Balancing agreement must include the following provisions: (i) information on contracting parties; (ii) provisions regulating reporting; (iii) method of projecting the required quantities; (iv) termination clauses and rights and obligations of parties in connection with a termination; (v) dispute resolution method; (vi) method of securing financial obligations; (vii) term of validity and termination reasons.

### **5. DIFFERENT RULES APPLICABLE FOR SUPPLYING INDUSTRIAL END-CUSTOMERS**

The supply of electricity and natural gas to industrial end-customers may be carried out under the same conditions as Wholesale Activities.

## **6. OBTAINING THE ADDITIONAL LICENCE(S)**

### **6.1 Electricity**

The supply to industrial end-customers may be carried out under the same conditions as Wholesale Activities, so as detailed under Point 3.1 no licence is required for this activity.

However, in case of closed electricity distribution systems, EARS issues a specific permit. A closed distribution system is separate from the public distribution system and is intended for the supply of a geographically closed industrial or trade area, and as a rule does not include supply to end-customers, which are not industrial customers. A closed distribution system is granted such status if the production processes of industrial customers are integrated due to specific technical and security reasons or if the system supplies the electricity in particular to its owner or connected entity.

EARS issues a licence to closed electricity distribution systems after receiving an application from the owner of the closed distribution system or from another person managing the closed distribution system. A licence is issued for a period of 10 (ten) years and may be prolonged each time for another 10 (ten) years, if the closed distribution system continues to fulfil the requirements.

### **6.2 Natural Gas**

The supply to industrial end-customers may be carried out under the same conditions as Wholesale Activities, so as detailed under Point 3.2 no licence is required for this activity.

However, in case of closed natural gas distribution systems, EARS issues a specific permit. A closed distribution system is separate from the public distribution system and is intended for the supply of a geographically closed industrial or trade area, and as a rule does not include supply to end-customers, which are not industrial customers.

EARS issues a licence to closed natural gas distribution systems after receiving an application from the owner of the closed distribution system or from another person managing the closed distribution system. A licence is issued for a period of 10 (ten) years and may be prolonged each time for another 10 (ten) years, if the closed distribution system continues to fulfil the requirements.

## 7. SETTING UP A LOCAL ENTITY

As described under Point 3 above, it is not necessary to have a Local Corporation or Local Branch Office in order to perform electricity or natural gas Wholesale Activities in Slovenia.

However, although the applicable legislation does not provide for such a requirement, below is a short overview of how to set up a Local Corporation or Local Branch Office, should the trader nevertheless decide to trade in Slovenia through a local presence.

### 7.1 Most Important Legal Rules and Operational Requirements

	LOCAL CORPORATION/D.O.O.	LOCAL BRANCH OFFICE/PODRUŽNICA
<b>GENERAL DESCRIPTION</b>	A business association established with a registered capital consisting of capital contributions of a pre-determined amount. Subject to statutory provisions, shareholders are not liable for the obligations of the company. A d.o.o. may have one shareholder or several shareholders.	The Local Branch Office is an organisational unit of a foreign company and has no legal personality separate from the principal. It is registered in the Slovenian court's registry as a branch office of a foreign company.
<b>MINIMUM CAPITAL</b>	EUR 7,500.	There is no minimal requirement.
<b>LIABILITY FOR DEBTS</b>	As a general rule the shareholder's liability is limited to the shares contributed by it.	A foreign company, which establishes a Local Branch Office, is liable with all its assets for all obligations that arise from the operation of the Local Branch Office.
<b>MANAGEMENT/ REPRESENTATION</b>	<p>The Local Corporation is represented by the managing director(s) appointed by the shareholder(s). Managing directors may perform their duties under an employment contract or a civil law mandate. As a principle rule, also a shareholder, if it is a private individual, may exercise management duties without an employment contract.</p> <p>The managing director does not have to be Slovenian or to have permanent residency in Slovenia.</p>	<p>The Local Branch Office is represented by the branch office representative appointed by the founder. The representative may be a person with an employment contract or a civil law mandate.</p> <p>The representative does not have to be Slovenian or have permanent residency in Slovenia.</p>
<b>EMPLOYEES</b>	In general, when establishing a limited liability company or a branch there is no need to have any employees. However, in case of application for a licence under the Slovenian Licence Decree, the Entity has to furnish proof that a responsible person with higher education in social or technical sciences works for the Entity in the area of the activities that are subject to licensing. The applicant has to prove that it has concluded an employment or civil law contract (e.g. cooperation agreement) with such person.	
<b>PREMISES</b>	Both the Local Corporation and the Local Branch Office need to have a seat registered in the court's registry. The seat has to correspond to the place where the Entity performs its activities / predominantly runs its business or where the management of the Entity performs its tasks. The seat may vary from the business address, which also has to be entered into the court's registry. The business address functions as the Entity's mailing address, where all business and official documents are received and filed. The Local Corporation may be deleted from the court's registry if it does not accept official letters at the business address entered into the court's registry or if it is otherwise unknown at the respective address. There are no requirements as to whether the offices or premises at the seat or business address have to be owned or leased by the Local Corporation or the Local Branch Office.	

	LOCAL CORPORATION/D.O.O.	LOCAL BRANCH OFFICE/PODRUŽNICA
<b>BANK ACCOUNT OPENING REQUIREMENT</b>	When establishing a Local Corporation or Local Branch Office it is required to open a bank account in Slovenia.	
<b>TAX NUMBER REQUIREMENT</b>	Both the Local Corporation and the Local Branch Office will receive a tax number upon registration with the court's registry and subsequent registration with the tax authority.	

## 7.2 Procedural Rules

The procedural rules and the requested documentation for establishing a Local Branch Office or a Local Corporation are very similar.

Requests to enter the Local Branch Office or a Local Corporation are usually filed electronically with the court's registry by the notary public. It is also possible to use the template deed of foundation provided by the Ministry of Justice and Public Administration, which makes the procedure faster and cheaper. However, the content of such template form is limited.

Please note that the list below is only a summary and that more detailed requirements as to the form and content may apply.

	LOCAL CORPORATION/D.O.O.	LOCAL BRANCH OFFICE/PODRUŽNICA
<b>SET UP TIME</b>	The court of registry usually decides on the application within 10–14 (ten to fourteen) working days, if the application is complete. Should it be incomplete, the applicant is given 15 (fifteen) days to file a complete application.	
<b>DOCUMENTS TO BE FILED</b>	<ul style="list-style-type: none"> <li>▪ Application for registration of the Local Corporation with the court's registry (via notary public);</li> <li>▪ Founder's resolution on the establishment of a Local Corporation and nomination of the representatives;</li> <li>▪ Notarised extract from the Commercial Register for the founder;</li> <li>▪ Articles of association to be concluded in front of a notary in the form of a notarial deed;</li> <li>▪ Bank certification of payment of share capital into the Local Corporation's bank account;</li> <li>▪ Resolution of the managing director on appointing the company's business address;</li> <li>▪ Declaration of founders that they do not hold shares in the amount of at least 25% (twenty five percent) of the share capital in any other company in Slovenia or that the company in which they hold more than 25% (twenty five percent) of the share capital does not have any unpaid due liabilities;</li> </ul>	<ul style="list-style-type: none"> <li>▪ Application for registration of the Local Branch Office with the court's registry (via notary public);</li> <li>▪ Founder's resolution on the establishment of a Local Branch Office and nomination of the representatives;</li> <li>▪ Notarised extract from the Commercial Register for the founder;</li> <li>▪ Notarised articles of association of the founder of the Local Branch Office;</li> <li>▪ Notarised last annual financial report of the founder;</li> <li>▪ Declaration of future representatives of the Local Branch Office in accordance with Article 255 of the Companies Act that (i) he/she agrees with the appointment; and (ii) that no circumstances pursuant to Article 255 of the Slovenian Companies act exist that would prevent his/her appointment; and</li> <li>▪ PoAs from founder and future representatives (if they will not sign any documents in Slovenia) to an attorney for representation before the tax authorities and for the obtainment of a tax number.</li> </ul>

	LOCAL CORPORATION / D.O.O.	LOCAL BRANCH OFFICE / PODRUŽNICA
<b>DOCUMENTS TO BE FILED</b>	<ul style="list-style-type: none"> <li>▪ Declaration of future managing director(s) in accordance with Article 255 of the Companies Act that (i) he/she agrees with the appointment; and (ii) that no circumstances pursuant to Article 255 of the Slovenian Companies act exist that would prevent his/her appointment; and</li> <li>▪ PoAs from founder and future representatives (if they will not sign any documents in Slovenia) to an attorney for representation before the tax authorities and for the obtainment of a tax number.</li> </ul>	
<b>COSTS</b>	Notarial fees and court taxes for establishing a d.o.o. depend on the amount of the share capital, number of founders, etc. The notarial fees for establishing a d.o.o. typically range between EUR 300–350. Other potential legal fees may also apply (e.g. for the preparation of a resolution, declarations, etc.) and costs (including notarisation of signatures and translations) may vary according to the number of public documents needed.	Fees of the notary for the submission to the Commercial Register amount to EUR 46. However, other potential legal fees may also apply (e.g. for the preparation of a resolution, declarations, etc.) and other costs (including notarisation of signatures and translations) may vary according to the number of public documents needed.

## 8. TAXES

Excise duties are paid on excisable goods (energy products and electricity, used as engine fuel or for heating) produced in Slovenia, imported from third countries or acquired from another EU Member State, if they are intended for consumption in Slovenia. Normally, a producer, importer or trader pays excise duties. However, if the goods are not intended for final consumption, they can be placed under a suspension regime. Therefore, Wholesale Activities do not require the payment of excise duties. Excise duties would apply in case of supply to end-customers.

Wholesale activities are subject to VAT. According to the Slovenian Act on Value Added Tax the supply of electricity and gas qualifies as the supply of goods and is therefore subject to 22% (twenty two percent) VAT. VAT is charged when goods are delivered or when services are performed. Taxable persons are all persons performing independent economic activities. Taxable persons established abroad who perform taxable activity in Slovenia must also register with the tax authority and appoint a tax representative.

A local presence subjects the trader to corporate income tax. This applies also to non-residents (i.e. entities, which do not have a seat in Slovenia and where the activities of the management do not take place in Slovenia), which operate in Slovenia through a Local Branch Office. Non-residents are subject to corporate income tax with respect to revenues originating in Slovenia. The general corporate income tax rate currently amounts to 19% (nineteen percent).

A Slovenian tax number is required for any foreign entity/citizen which is the founder of or a member of a corporate body in a Slovenian legal entity. Also, when a Local Branch Office is being established, the founder is obliged to obtain a tax number in Slovenia.

## **9. CONTRACTUAL RELATIONS**

### **9.1 Electricity**

#### **9.1.1 Balance group (membership) contract**

As explained above under Point 4.1 electricity traders must establish a new or access an existing balance group and enter into a balance or settlement agreement. For more details see above under Points 4.1.1 and 4.1.2.

#### **9.1.2 Admission to exchange**

In Slovenia it is not mandatory to participate in exchange trade and traders are free to decide if in addition to entering into electricity sale and purchase agreements on a bilateral basis they also wish to trade on the local organised electricity exchange – BSP. Any entity, which pursues electricity Wholesale Activities can become a member of the power exchange, either on its own (as an exchange member) or by joining a company group (as an affiliate member). In order to start trading, an entity must conclude an admission agreement with BSP, provided it has settled the balance obligation on the organised electricity market.

An entity wishing to join the energy exchange must complete an appropriate membership application and enclose the required documents. After receiving all the necessary documents, the exchange draws up a Decision on acceptance to membership, an Agreement on access to the exchange, an agreement on operations within the clearing and settlement system and an agreement on the method of issuing invoices. After paying the accession fee and signing the accession documents, the trader becomes a member of the exchange. The registration and admission process takes on average 1 (one) month.

#### **9.1.3 Other contracts**

If the trader supplies end-customers, the customers may require the trader to handle their network usage agreements with the competent system operators (transmission or distribution system operator, depending on the type of connection) together with their supply contracts with the trader. The essential elements of such agreements are stipulated in the General Conditions for the supply and consumption of electricity from the Slovenian transmission grid and the General Conditions for connection to the distribution electricity system.

For electricity traders who do not supply end-customers in Slovenia, access to the transmission system is significant only in the context of cross-border supplies. In this case, grid access has to be provided on a non-discriminatory basis.

### **9.2 Natural Gas**

#### **9.2.1 Balance group contract with the transmission system operator**

As explained above under Point 4.2 natural gas traders must establish a new or access an existing balance group and enter into a balance or settlement agreement. For more details see above under Points 4.2.1 and 4.2.2.

#### **9.2.2 Transmission agreements**

Pursuant to the Slovenian Energy Act the transmission system operator is required to grant access to the transmission grid to all entities performing energy-related activities on the gas market. Access to the transmission system may be denied only under limited reasons, precisely prescribed by the Energy Act (insufficient capabilities, if the connection prevented the performance of public utility service obligations or due to serious economic and financial troubles of the companies with respect to “take or pay” contracts).

The transmission system operator ensures access to the transmission system by entering into agreements on transmission on the entry and exit points of the transmission system. The “entry-exit” system exists in Slovenia

since 2013, in which the user of the transmission system separately and independently leases the transmission capacities on entry and exit points of the transmission system and thus (in case of the lease of an entry point) obtains the right for the transmission of natural gas from the entry point to the virtual point and (in case of the lease of an exit point) for the transmission of natural gas from the virtual point to the exit point. The transmission agreement has to be concluded at least 30 (thirty) days before commencement of access use by the transmission system user. Irrespective of this provision, the transmission of natural gas may commence 7 (seven) working days as of the date of entry into the transmission agreement, if the transmission system operator can grant access on the basis of existing capacities without any further reconstructions.

Transmission agreements are generally concluded for a calendar year (from 1<sup>st</sup> January to 31<sup>st</sup> December) and are valid for one or several years.

The transmission network operator offers standardised capacity products on auctions, whereby the transmission agreements may be concluded for typical time periods (annual, quarterly, monthly or daily standardised capacity products). The capacities are offered for each inter-connection point on separate and independent electronic auctions, whereby annual and quarterly capacities are offered once per year (annual capacities are offered by auction on the first Monday in March every gas year for the next gas year(s) and quarterly capacities are offered by auction on the first Monday in June every gas year for every quarter in the next gas year). Monthly and daily capacities are offered by monthly or daily auctions (monthly auctions are carried out every third Monday of each month for the next calendar month and daily auctions are carried out every day at 16:30 for the next day).

To take part in the auction, the system user needs to establish the appropriate electronic connection compatible with the information system of the web reservation platform. The user of the system may take part in the auction if it sends the appropriate completed and signed form to the transmission network operator at least 10 (ten) days before the auction, in which the user of the system states that the user of the system is aware of and accepts the general terms and conditions forming an integral part of the transmission agreement. The transmission agreement is concluded between the TSO and the user of the system immediately when the results of the auction become known, from which derives the allocated capacities and purchase price. The user receives a confirmation through the electronic system, which indicates the border entry or exit point, the period for which the capacities has been granted, the purchase price and the balance scheme affiliation. The user of the system must also provide an appropriate financial security in the form of a bank guarantee, a guarantee of the insurance company or monetary funds deposited in a bank account, to take part in the auction.

### **9.2.3 Contracts on gas storage**

Similarly to the above, pursuant to the Slovenian Energy Act the system operator is required to grant access to gas storage and to liquefied-gas terminal facilities. At the moment there are no gas storage facilities in Slovenia.

## **10. REPORTING OBLIGATIONS**

The general reporting obligation for operators of energy-related activities follows from Article 407 of the Slovenian Energy Act, pursuant to which they should provide EARS, on its request, with all information, documents and other evidence, necessary for the performance of (the supervisory) tasks by EARS. If the market players do not comply with the request, EARS has the possibility to impose a fine in the amount of EUR 50,000 on the market player.

In addition, market players have several reporting obligations with respect to agreements concluded over access to balance groups, transmission of electricity or natural gas, conclusion of different agreements and similar.

Moreover, wholesale traders should also report to the Ministry of Infrastructure and Spatial Planning pursuant to the Rules on data submitted by the energy activity operators. The required information relates to trading with natural gas and electricity, business operations, investments to energy infrastructure, etc. and should be submitted via the Web site of the Ministry.

The market players must also enable the exchange of information obtained during their performance of activities connected to natural gas and electricity. The data must be exchanged in aggregate form without disclosing any sensitive information.

Certain reporting obligations follow also from the Slovenian Companies Act. Local Corporations have to submit annual financial reports to the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES). Also, the Local Branch Offices of foreign companies must submit annual financial reports. A branch of an EU company or a company outside of the EU may submit the annual report of its parent company provided that it has been prepared in compliance with the legislation of an EU country. Proceedings for the deletion of the Local Corporation or Local Branch Office from the Commercial Register may be initiated ex officio if the Local Corporation or Local Branch Office fails to submit the annual financial report to the relevant authority for 2 (two) consecutive years.



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**UKRAINE**

## **1. RELEVANT LAWS AND REGULATIONS**

The most relevant laws and regulations governing the electricity and gas market in Ukraine are the following:

- The Treaty establishing the Energy Community;
- The Law of Ukraine “On Electricity Market”;
- The Law of Ukraine “On the Natural Gas Market”;
- The Law of Ukraine “On Oil and Gas”;
- The Law of Ukraine “On the Pipelines Transport”.

## **2. ORGANISATION OF ELECTRICITY MARKET AND GAS MARKET**

The harmonisation of Ukraine's electricity and gas legislation with a number of EU regulations has been stated as a precondition for Ukraine's accession to the Energy Community back in 2010. To perform part of the harmonisation obligations and to meet the EU Third Energy Package requirements, the Law of Ukraine “On Electricity Market” (**“Electricity Market Law”**) was adopted on 13 April 2017. The Electricity Market Law implements, in particular, Directive 2009/72/EC Concerning Common Rules for the Internal Market in Electricity, Directive 2005/89/EC Concerning Measures to Safeguard the Security of Electricity Supply and Infrastructure Investment and Regulation (EC) No. 714/2009 on the Conditions for Access to the Network for Cross-border Exchanges in Electricity.

However, the new electricity market shall become operational from July 2019 only. Its main goal is to introduce a free electricity market in Ukraine compared to the existing “single wholesale buyer” model. The whole existing system must be changed based on the framework set out in the Electricity Market Law. To enact the provisions of this law, a significant numbers of bylaws and regulations must be elaborated and adopted as well as many organisational and technical steps taken. It is expected that the implementation of the new electricity market models will allow the de-monopolisation of part of the local energy market and will enable foreign companies to work in the Ukrainian energy market.

The gas and electricity markets are supervised and controlled by the same regulator – the National Commission for State Energy and Public Utilities Regulation of Ukraine (**“NEURC”**). NEURC is a key regulatory authority in the Ukrainian energy sector. It is responsible for the issuance of licences, establishing procedures for calculation of tariffs and prices, ensuring consumer protection, participating in the wholesale energy market regulation, controlling compliance with the anti-monopoly law, etc. Moreover, NEURC is responsible for the harmonisation of Ukrainian laws and regulations in the energy sector with the relevant EU regulations.

Various other state authorities, such as the Parliament of Ukraine and the Cabinet of Ministers of Ukraine, as well as the Ministry of Energy and Coal Industry of Ukraine also play important roles in setting out the legislative framework and influencing policy making.

### **2.1 Electricity Market**

#### **2.1.1 Current Electricity Market**

Currently, Ukraine's wholesale electricity market largely operates under a “sole wholesale purchaser” model, meaning that almost all electricity produced in Ukraine (unless consumed by the generating facility) is sold on the Wholesale Electricity Market (**“WEM”**) operated by the State Enterprise “Energorynok” (**“Energorynok”**). Energorynok asserts a lot of influence over the electricity market in general, and its players in particular. However,

it is now possible for the producers of energy from renewable energy sources to bypass Energorynok and to sell electricity directly to customers or to supply companies.

According to 2016 statistics, there were 167 legal entities producing power in Ukraine. Electricity produced in Ukraine was generated mainly from coal, nuclear and hydro sources as well as from gas and non-conventional sources. In 2016, heat and power plants generated 47.6% (forty seven point six percent), nuclear power plants – 26.8% (twenty six point eight percent), cogeneration plants – 11.5% (eleven point five percent) and hydropower plants – 9.1% (nine point one percent) of the total Ukrainian electricity production. The total share of the Ukrainian power production from renewable sources is only around 2% (two percent).

The transmission of electricity through transmission networks is provided by the state-owned company National Energy Company “Ukrenergo” (“**Ukrenergo**”). Ukrenergo is the sole holder of the licence for electricity transmission via transmission networks. In addition, Ukrenergo is responsible for ensuring the smooth parallel operation of the Ukrainian power network with the networks of neighbouring countries, including EU Members. Moreover, Ukrenergo is responsible for facilitating the export and import of electricity.

Unlike the transmission networks, which are operated solely by Ukrenergo, the local power distribution networks are operated by 40 separate companies that, as unbundled service providers, also supply electricity to customers at regulated tariffs. However, based on the Electricity Market Law requirements, from the beginning of 2019 most of these companies will be obliged to unbundle their supply and distribution activities.

The wholesaling of power is performed by Energorynok, which is the only company licensed for this purpose.

In 2016 the retail suppliers operating on the electricity supply market were divided into two groups: the suppliers selling power at a regulated tariff and the suppliers selling power at a non-regulated tariff. The first group consisted of companies (37 licensees) which own or rent local power distribution networks. The regulated tariff is determined by NEURC on a monthly basis. The second group (87 licensees) includes companies which do not own or rent local power networks in the territory where they supply electricity. These suppliers may secure their electricity demand from the Wholesale Energy Market or from generators. In order to supply customers in Ukraine, they must conclude a contract with the companies from the first group to be able to deliver electricity to their consumers. The non-regulated tariff is subject to the parties' agreement. However, since recently the power suppliers are no longer divided into two groups, they are all considered power suppliers. The licencing rules changed accordingly.

## **2.1.2 New Electricity Market**

Under the Electricity Market Law, the new electricity market of Ukraine will start operating from 1 July 2019. The new electricity market will include the following main players: transmission system operator, distribution system operators, market operator, power producers, power suppliers, traders and consumers. The new electricity market will function based on competitive principles, except for those players with monopoly activities (i.e. transmission system operator, market operator and distribution system operators).

The market operator will be a state-owned joint-stock company, which ensures the functioning of the day-ahead and intraday markets, including sale and purchase of power on these markets.

The distribution system operators will be entitled to perform power distribution on the local power distribution networks they own. Only small distribution system operators, i.e. those having less than 100,000 customers and with an average monthly volume of distributed power below 20 million kWh may be exempt from the unbundling requirement, provided that such exemption was approved by NEURC.

The traders will be entitled to engage in the resale of electricity (i.e. trading activity) in the electricity market, except for the power supply to consumers. They will be able to sell and purchase electricity in all new electricity submarkets, except for the retail market (as described below).

Thus, the distribution of the power will be unbundled from the supply and a new category of market players, i.e. traders, is introduced. Ukrenergopro will act as the sole transmission system operator, it will also be corporatised, while Energorynok will be reorganised so that an entity performing functions of the market operator is created. Consumers will be able to become electricity market players and to freely choose their power supplier.

After the implementation of the Electricity Market Law, the following submarkets will operate: (i) bilateral agreement market; (ii) day-ahead market; (iii) intraday market; (iv) balancing market; (v) retail market; and (vi) market for ancillary services. Power trading in each of the markets is subject to specific regulatory requirements.

In the bilateral agreement market power shall be purchased and sold based on bilateral agreements on the terms freely negotiated by the parties, subject to certain statutory limitations. In particular, the transmission system operator and distribution system operators are not allowed to sell power in this market. Traders, on the other hand, are allowed to act in this market. The parties to bilateral agreements must inform market participants of the scope of the contracted power according to the market rules. NEURC may regulate the maximum duration of the bilateral agreements concluded in this submarket, which shall not be shorter than 6 (six) months.

At the unified day-ahead and intraday market power shall be purchased based on a competitive pricing mechanism and will be basically organised as a bidding auction, which will be held 1 (one) day before the actual delivery of power. After the closing of the day-ahead transactions, the power shall be sold at the intraday market (including on the day of power supply). The power imported from the countries, which are not parties of the Energy Community, shall be sold exclusively in this market.

The day-ahead and intraday markets are managed by the market operator, thus the players will have to conclude agreements with a market operator to access this market. The market shall operate based on market rules for the day-ahead market and intraday market. The market operator shall, *inter alia*, (i) define the price on the day-ahead market and intraday market according to the principles stipulated by the Electricity Market Law; and (ii) inform the market participants of the scope of the contracted power.

In the balancing market power is to be traded by the transmission system operator (i) for balancing power supply and demand within the present day; and (ii) for handling imbalances of the entities responsible for power balancing (e.g. power producers). The players must conclude agreements with a transmission system operator to access this market.

In the retail market consumers purchase power from electricity market players, excluding the traders, according to the retail market rules.

In the ancillary services market the transmission system operator shall purchase ancillary services to ensure the stable operation of the country's energy system and quality of power according to the market rules.

However, none of the above-mentioned market rules have been adopted at the moment.

During the transitional period (i.e. until 1 July 2019) the following markets will operate in Ukraine: wholesale electricity market, retail market for RES facilities and market for ancillary services (operated by Ukrenergopro).

## **2.2 Natural Gas Market**

Ukraine continues to be one of the Europe's biggest markets for natural gas and has now become one of the most active and attractive European destination for natural gas related trading and infrastructure investments. One of the biggest reasons behind the latter is the fact that Ukraine joined and started actively implementing the Energy Community Treaty and dramatically reforming the country's natural gas sector.

In the course of implementation of the Energy Community Treaty, the Law of Ukraine "On the Natural Gas Market" was passed on 9 April 2015 ("**Natural Gas Market Law**"). The Natural Gas Market Law has not only introduced some (for Ukrainian law and for the natural gas transit business practice) completely new regulations, but has

also implemented unprecedented principles for the application and interpretation of the law. When it comes to the application of the EU regulations which the Natural Gas Market Law aims to implement in Ukraine, the statute obliges Ukrainian state authorities and courts to take into account the law application practice of the Energy Community and of the EU, in particular the decisions of the EU Court.

The Natural Gas Market Law has also completely changed the regulatory landscape for licensing of activities in the natural gas sector replacing the previously tariffs-linked activities with activities related to transportation, distribution, storage, supply as well as operation of an LNG facility.

Further, the Natural Gas Market Law has introduced legal principles for reforming Ukraine's gas transportation and cross-border transit sector, which was also the country's commitment under the Energy Community Treaty. Under the law, operators of gas transportation systems ("**GTS Operator**") will need to be established and receive access to the country's highly valued gas transportation facilities. The Natural Gas Market Law has introduced and implemented into Ukrainian law those requirements concerning GTS Operators which were earlier introduced into EU law. In particular, a GTS Operator must be independent of and not involved in activities related to the production, distribution, supply and sale of natural gas. Additionally, even stricter criteria and requirements are established for companies controlled by entities or persons from countries which are not members of the Energy Community.

Although the National Joint Stock Company "Naftogaz of Ukraine" ("**Naftogaz**") remains the natural gas sector's behemoth, it is presently subject to competition from major European and international gas traders as well as some domestic independent traders. Further on, Naftogaz will also need to cease its monopoly over Ukraine's gas transportation system, as the Government is seeking qualified European or US GTS Operators to enter the market and continue to operate and develop the system.

The reform of the Ukrainian legal framework in the natural gas sector, including that related to licensing of various business activities, is a work in progress. Considering the steps that have already been implemented, investors and players in the sector should expect the ultimate outcome of the reforms to largely correspond to the regulations that are already applicable in the EU.

### **3. CONDITIONS FOR APPLYING FOR ELECTRICITY AND NATURAL GAS LICENCE(S)**

#### **3.1 Electricity Licensing – Regulatory and Corporate Conditions**

The electricity related licence types are provided for by the Electricity Market Law. Until the time a new licence is granted to the transmission system operator, Ukrenergo will continue performing this function under the licence that was previously issued to it. Furthermore, power generating licences will remain valid until the new electricity market starts operating.

Previously, legal entities were entitled to supply power to consumers based on two types of retail licences: a licence for the supply of electricity at a regulated tariff ("**Regulated Tariff Electricity Supply Licence**") and a licence for the supply of electricity at a non-regulated tariff ("**Non-regulated Tariff Electricity Supply Licence**"). However, starting from January 2019 the existing Regulated Tariff Electricity Supply Licences shall be cancelled. Further, no new Regulated Tariff Electricity Supply Licences have been issued since 11 June 2017 (the date of entry into force of the Electricity Market Law).

Starting from January 2019, power distribution activity shall be performed based on the new power distribution licences. Considering that the Electricity Market Law does not provide for activities such as the supply of electricity at a non-regulated tariff, no new Non-regulated Tariff Electricity Supply Licences have been issued either.

According to the Electricity Market Law, licences are to be issued for the following types of activities: power production, transmission, distribution and supply, as well as for market operator activities and trader activities.

However, the trader activity is subject to licensing only if the trader has no other licences previewed by the Electricity Market Law. Currently, the licences for market operator activities or trader activities have not yet been issued.

Only Ukrainian legal entities qualify to receive a power supply licence. There is no policy or legislative based prohibitions against non-state-owned companies or foreign-owned companies obtaining a power supply licence. A Ukrainian legal entity that qualifies for a power supply licence may be established in the form of a Ukrainian registered company, for example as a limited liability company or a joint stock company. The same concerns foreign companies, they are free to establish local companies in the form of a limited liability company or a joint stock company in order to apply for power supply licences.

The law establishes limitation for companies from the Russian Federation: neither Russian residents (companies or individuals), nor Ukrainian or foreign companies controlled by these, can apply for power supply licences.

### **3.2 Natural Gas Licensing – Regulatory and Corporate Conditions**

The legal fundamentals for the operation of the natural gas market are defined in the Law of Ukraine “Gas Market Law”. According to the Gas Market Law, the natural gas market consists of legal relations related to natural gas purchase and sale, supply, and the provision of the services of transportation, distribution, storage of natural gas and rendering LNG facility services. Transportation, distribution, storage, supply of natural gas and rendering LNG installation services are subject to licensing.

Distribution of natural gas via state gas distribution systems can be performed only by undertakings belonging to the state sector of the economy, whereas transportation and storage of natural gas may be performed by state-owned companies or by joint ventures where 51% (fifty one percent) of the shares are held by the state and the remaining shares – by the partner of the gas transportation system (“GTS”). The partner of the GTS should be defined based on a tender, the conditions of which should be developed by the Cabinet of Ministers of Ukraine (“CMU”) and the results approved by the Parliament of Ukraine. At this stage, the partner of the GTS is not yet defined.

As to rendering LNG facility services, the licensing conditions for such activity have not been approved yet.

Prior to the introduction of the Gas Market Law, Ukrainian law provided for two types of licences for gas suppliers. The first type was for the supply of natural gas at a regulated tariff; the second type was for the supply of natural gas at a non-regulated tariff. At this stage, such notions as regulated and non-regulated tariffs are excluded; the relevant licences are cancelled. Companies that would like to supply natural gas should obtain a Gas Supply Licence (“**Gas Supply Licence**”). The Gas Supply Licence entitles its holder to supply natural gas directly to a consumer at the price agreed with that consumer, except for cases when special duties are imposed by CMU on gas suppliers (generally, state and municipal enterprises) to ensure public interests.

Importantly, the import of natural gas into Ukraine and its export are not subject to additional licensing.

Only Ukrainian legal entities qualify to apply for and receive a Gas Supply Licence. These companies cannot be controlled by residents of the Russian Federation. Apart from this, there is no policy or legislative based prohibition against non-state-owned companies or foreign owned companies obtaining a Gas Supply Licence. A Ukrainian legal entity that qualifies for a Gas Supply Licence may be established in the form of a Ukrainian registered company, for example, as a limited liability company or a joint stock company.

A Ukrainian company applying for or holding a Gas Supply Licence may be established by a foreign company in order to obtain the licence, subject to the exception specified above. In this regard, a limited liability company is one of the most convenient corporate forms for local corporations. A public joint stock company or a private joint stock company may also be considered; however, these forms are subject to many regulatory requirements, thus, these are less flexible entities to operate.

Private individuals registered as individual entrepreneurs in Ukraine may also apply for a Gas Supply Licence, given that they are neither residents of the Russian Federation nor controlled by such residents.

## **4. OBTAINING THE SUPPLY LICENCE**

### **4.1 Electricity**

#### **4.1.1 Annexes to the application for the power supply licence**

An application for a power supply licence must be submitted to NEURC in paper or electronic form. The following documents need to be enclosed with the application:

- if applicable, a copy of the passport of the licence applicant's CEO (or his/her representative) containing a mark regarding the refusal to have a tax ID;
- data about means of carrying out power supply activities: owned or leased buildings or premises for customers' reception and service, corporate Web site, means of communication of the applicant with customers (telephone and email address);
- if the applicant also distributes power: data about geographic areas of the power distribution activity and calculation of the power supply tariff; and
- a description of submitted documents in 2 (two) counterparts.

#### **4.1.2 Procedural rules**

The application procedure is based on a paper or electronic application. Once the licence application is submitted, NEURC is required to pass its decision within 10 (ten) business days after receiving the licence application and the supplementing documents.

NEURC may reject a licence application, without investigating its merits, if:

- the application file does not contain all required documents;
- the application/at least one of its supplements is signed by a person without due authority;
- the submitted documents do not comply with statutory requirements;
- the application was not timely submitted;
- there is no information about the applicant in the Unified State Register of Legal Entities, Individual Entrepreneurs and Civic Associations ("**State Register**"); or
- the State Register contains information about pending liquidation of the applicant.

An applicant for a licence that NEURC has refused to consider for any of these grounds may cure the deficiencies and reapply for a licence.

NEURC may refuse to grant a licence on the following grounds on the merits:

- if there is inaccurate information in the documents submitted by the applicant; or
- the applicant does not meet the licensing terms.

If a licence issuance is refused because of inaccurate information in the application, the applicant must wait for 3 (three) months before reapplying. Otherwise, the applicant may cure the deficiency and reapply immediately.

#### **4.1.3 Operational conditions required for the issuance and maintenance of the Non-Regulated Tariff Electricity Supply Licence**

##### **4.1.3.1 Personnel**

Applicants are generally required to have the facilities and qualified staff necessary for the continuous and long-term pursuit of the licensed activity.

In particular, applicants should (i) have employees whose education and working experience is sufficient for successful performance of power supply activities; and (ii) establish labour relations with the personnel by employing them based on employment agreements.

##### **4.1.3.2 Premises**

There are no specific requirements for the applicant's premises. However, it is recommended that the premises where the applicant's management is located be used as a registered address of the applicant.

##### **4.1.3.3 IT systems application/electricity measuring**

A company must purchase or sell electricity by using data from automatic systems of electric power commercial metering, as required by (i) the "Rules for Use of Electricity", approved by NEURC Resolution No. 28 dated 31 July 1996; and (ii) the Regulations on Electric Power Commercial Metering (Annex 10 to the Agreement between the members of the Wholesale Energy Market).

The company is obliged to create and maintain its Web site, which contains information about statutory regulation of power supply activities, notifications of threats to energy security, the contact details, possibilities for consumers to submit their applications and claims. In addition, the company must ensure the operation of call-centres according to the requirements of NEURC. Additionally, the power supplier must also ensure information security and cybersecurity of its equipment and telecommunication networks and of the information it processes.

#### **4.1.4 Financial guarantee**

A financial guarantee is not required.

#### **4.1.5 Procedural costs**

The procedural cost (administrative fee) for the receipt of a power supply licence is currently approximately EUR 52.

#### **4.1.6 Term of the power supply licence**

A power supply licence is issued by NEURC for an indefinite term.

#### **4.1.7 Licence requirements for holders of the power supply licence**

Upon receipt of a power supply licence, the licence holder must comply with a number of requirements, including the following:

- to perform its activities in the territory and using the facilities specified in the application file;
- to purchase electricity from the State Company "Energorynok" or it may purchase electricity directly from power generators located in the licensed territory too;

- to purchase electricity, generated by private households using solar or wind energy at the green tariff (a feed-in tariff for energy generated from renewable sources), provided that the installed capacity is not more than 30 kW;
- to ensure the statutory quality of the power supply services;
- to export/import power under the Electricity Market Law provisions;
- to make quarterly regulation payments to NEURC in the amount defined by NEURC; and
- to notify NEURC of any changes to the data contained in the supplements to the application for the licence submitted to NEURC in writing within 1 (one) month after the introduction of the relevant amendments.

## **4.2 Natural Gas**

### **4.2.1 Annexes to the application for the Gas Supply Licence**

The application for a Gas Supply Licence must be submitted to NEURC in paper or electronic form. The following documents need to be enclosed to the application:

- copy of the passport of the licence applicant's CEO (or the representative) containing a mark regarding the refusal to have a tax ID (must be filed only by individuals-entrepreneurs who due to their religious views refused to have a tax ID and notified the state tax authority accordingly);
- data about means of carrying out gas supply activities: buildings and premises for customers' reception and service, ways of communication of the applicant with customers (telephone, Web site, email address); and
- description of submitted documents in 2 (two) counterparts.

### **4.2.2 Procedural rules**

The application procedure is based on a paper or electronic application. Once the licence application is submitted, NEURC is required to pass its decision within 10 (ten) business days after receiving the licence application and the supplementing documents.

NEURC may reject a licence application, without investigating its merits, if:

- the application/at least one of its supplements is signed by a person without due authority;
- the submitted documents do not comply with legal requirements;
- there is no information about the applicant in the State Register; or
- the State Register contains information about liquidation of the applicant.

An applicant for a licence that NEURC has refused to consider for any of these reasons may cure the deficiencies and reapply for a licence.

NEURC may refuse to grant a licence on the following grounds:

- if there is inaccurate information in the documents submitted by the applicant; or
- the applicant does not meet the licensing conditions.

If a licence is refused because of inaccurate information in the application, the applicant must wait 3 (three) months before reapplying. In all other cases the applicant may cure the deficiency and reapply immediately.

#### **4.2.3 Operational conditions required for the issuance and maintenance of the Non-Regulated Tariff Gas Supply Licence**

##### **4.2.3.1 Personnel**

Applicants are generally required to have the facilities and qualified staff necessary for the continuous and long-term pursuit of the licensed activity. In particular, applicants of Gas Supply Licences should (i) have managerial executives with higher education sufficient for successful performance of professional duties; and (ii) establish labour relations with the personnel by employing them based on employment agreements. However, applicants are not required to provide information about the employees available for gas supply economic activities.

##### **4.2.3.2 Premises**

Applicants are required to organise points of contact for the provision of required information, reception, service of customers and registration of incoming correspondence in buildings and/or premises, which may be located at the applicant's registered address. There are no specific requirements with respect to such buildings/premises. However, documents confirming that the applicant owns/has a right to use them (e.g. lease agreement) should be in place. The points of contact should be opened at the addresses and within the working regime specified by the applicant in the supplementary documentation to the application to NEURC, in the supply agreements with the customers and on the applicant's Web site.

##### **4.2.3.3 IT system/assets**

There are no specific requirements as to an applicant's IT systems.

##### **4.2.4 Financial guarantees**

A financial guarantee is not required.

##### **4.2.5 Procedural costs and fees**

The procedural cost (administrative fee) for the receipt of a Gas Supply Licence is currently approximately EUR 52.

##### **4.2.6 Term of the Gas Supply Licence**

A Gas Supply Licence is issued by NEURC for an indefinite term.

##### **4.2.7 Licence requirements for holders of the Gas Supply Licence**

Upon receipt of a Gas Supply Licence, the licence holder must comply with a number of requirements, including the following:

- to obtain an EIC code;
- to maintain the gas reserve stock in the amount defined by CMU (currently 0% (zero percent));

- to notify NEURC of any changes to the data contained in the supplements to the application for the licence submitted to NEURC in writing within 1 (one) month after introduction of the relevant amendments;
- to conduct the licensed activity only via the means of carrying out gas supply activities specified to NEURC;
- to maintain its personal Web site and household customers' accounts with information related to the performance of their supply agreements on it;
- to make quarterly payments for regulation to NEURC in the amount defined by NEURC.

## **5. OBTAINING THE ADDITIONAL LICENCE(S))**

### **5.1 Electricity**

No additional licence is required for supplying power to consumers.

### **5.2 Natural Gas**

No additional licence is required for supplying gas to industrial end-customers.

## **6. SETTING UP A LOCAL ENTITY**

There are no requirements regarding a specific legal form for an entity operating in the energy sector. As mentioned above, a foreign investor may choose from among the legal forms of companies available under Ukrainian corporate law, including: (i) general partnership; (ii) limited partnership; (iii) added liability company; (iv) limited liability company ("LLC"); and (v) joint-stock company (public or private).

The most often used and preferred corporate form for conducting business activities in Ukraine is an LLC. Joint-stock companies are rarely used as investment vehicles. However, the decision on the legal form must take into consideration the overall corporate policies and strategy of the founder and is completely up to the founder's discretion.

At the moment, there is no statutory requirement regarding the minimum amount of the charter capital of an LLC. The participants of an LLC are liable for the obligations of the LLC up to the amount of their participation shares.

The management bodies of an LLC are the general meeting of participants (participating shareholders) and a director or management board. In some cases, supervisory boards are established in order to control and supervise the activity of a director or management board of an LLC.

A director or members of the management board must be either Ukrainian nationals or foreigners having permanent residency status in Ukraine. All other foreigners need special work permits to be employed as a director or a member of the management board of an LLC.

Ukrainian law does not contain requirements as to the number of employees of an LLC.

An LLC must have a registered address in Ukraine, which is indicated in the State Register. An LLC's registered address may (at the founder's discretion) be indicated in the LLC's foundation documents, i.e. its Charter. The seat of the company's executive body should be at the registered address.

The following documents must be filed with the state registrar/notary to effect the LLC's incorporation and registration at the State Register:

- an application in accordance with the established form;
- the founders' resolution (minutes of the founders' general meeting) on the establishment of an LLC certified by the notary (or a notarised copy thereof);
- charter certified by the notary (unless the company has adopted a model charter);
- a document confirming payment of the registration fee (in case of incorporation of the company through a notary, the notary fee should be paid);
- extract from the competent commercial or similar register in respect of the foreign legal entity acting as founder; and
- a power of attorney, if registration actions are performed by representatives (which is usually the case).

The incorporation of an LLC takes about 3 (three) working days provided the application is complete and there are no grounds for its refusal. An additional several business days are required in order to open a bank account with a Ukrainian bank; therefore the overall registration procedure generally takes about 1 (one) week.

The registration and notary fees as well as the related disbursements for all of the registration procedures of an LLC amount in total to approximately EUR 200.

## **7. TAXES**

A company which is registered for operating in the energy sector creates a taxable presence in Ukraine. Generally, suppliers of natural gas and electricity (both residents and subsidiaries of non-residents) are subject to general tax rules.

In addition to general corporate taxes, if a company is also involved in the production of natural gas, then rent payments (royalties) for the use of subsoil resources for the production of minerals, such as natural gas, are payable by all subsoil users producing mineral resources in Ukraine (including during the exploration stage). Royalties are calculated as a percentage of the value of the produced mineral resources. The value of the produced natural gas is generally determined based on the average customs value of imported natural gas in the reporting period calculated by the State Fiscal Service.

The royalties applicable to natural gas vary from 1.25% (one point twenty five percent) to 70% (seventy percent) and depend on the depth of the extraction field, whether or not gas is produced under a product sharing agreement, a joint venture agreement, etc. Also, subject to certain conditions, additional amounts of natural gas extracted under investment projects approved by the CMU that envisage an increase in the extraction of mineral resources in depleted fields are taxed at 2% (two percent) of the value of such additional amounts.

Subject to certain conditions, the above royalties may be subject to adjusting coefficients ranging from 0.61 to 0.97. For instance, the coefficient of 0.96 applies to the extraction of off-balance-sheet gas, while the coefficient of 0.61 applies to the extraction of off-balance-sheet gas from fields within the continental shelf/exclusive (maritime) economic zone and then sold to the special entity authorised by the CMU to accumulate natural gas for the needs of consumers.

The recirculation of natural gas is exempt (subject to certain conditions) from royalties.

Taxpayers using subsoil to store gas, pay royalties for non-production subsoil use at the rate of UAH 0.49 per annum per each 1,000 cubic meters of active volume of gas stored in the reservoir bed.

In the electricity sector, currently, the generating companies (except for qualifying cogeneration plants or those producing electricity from renewable energy), which sell electricity beyond the Wholesale Electricity Market are subject to excise tax at the rate of 3.2% (three point two percent) of the value (excluding VAT) of the electrical energy generated (and so sold) by a taxpayer. The sale of electricity by suppliers, except for the wholesale supplier, is not subject to excise taxation.

There are also certain tax incentives for electricity produced from renewable energy. In particular, the import of: (i) certain equipment powered with renewable energy; (ii) materials, raw materials, equipment and components for the production of energy from renewable energy sources; (iii) materials, equipment, components for manufacturing equipment powered with renewable energy; and (iv) energy saving equipment are all exempt from VAT and import customs duties, provided that they are used by taxpayers for their own production purposes and that no domestic alternatives of such goods are available in Ukraine. The list of such equipment and materials is provided by the CMU.

## **8. CONTRACTUAL RELATIONS**

### **8.1 Electricity**

Before the new regime for the electricity market (as discussed above) is fully implemented, the suppliers may purchase electricity in the Wholesale Electricity Market from the wholesale electricity supplier or from generating companies directly based on bilateral agreements (the share of such direct purchases is very insignificant). If a supplier intends purchasing electricity in the Wholesale Electricity Market, such a supplier should firstly join the Wholesale Electricity Market, which operates based on the agreement between the Wholesale Electricity Market members.

For the purposes of transmitting electricity via the transmission network, suppliers are required to enter into an agreement with a transmission company.

The supply of electricity to customers is performed based on direct contracts under flexible prices. In certain limited cases, the prices shall be subject to regulation by NEURC.

After the implementation of the new electricity market, bilateral electricity trading shall take place based on contracts for the sale and purchase of electricity. Ukrainian law does not establish any requirements as to the template form of the contract and, subject to certain limitations, the parties are free to negotiate the terms of such contracts.

The above-mentioned agreements may be entered into between the generating companies, electricity suppliers, transmission/distribution system operators, electricity traders, guaranteed purchasers of electricity and consumers. Traders are not allowed to directly supply electricity to consumers.

After launching the fully-fledged electricity market, the following submarkets will become existent: (i) day-ahead market; (ii) intraday market; (iii) balancing market; and (iv) market for ancillary services.

In order to participate in the day-ahead and intraday markets, a licensee is required to enter into the relevant agreement (under the approved model (template) form) with the respective market operator. The electricity sale and purchase at these markets are to be performed based on the agreement between the market participant and the market operator in accordance with the rules of the respective market.

In order to provide balancing services, the market participant shall enter into the relevant agreement (based on the NEURC-approved model (template) form) with the transmission system operator.

## **8.2 Natural Gas**

A licensee involved in the supply of gas generally operates based on the following contracts (i) a contract for the purchase of gas from a gas owner; (ii) a contract for gas transportation with the operator of the gas transportation system; (iii) a contract for gas supply with consumers; and (iv) a contract for gas storage with the operator of gas storage facilities.

The supply of gas to household consumers or by the so-called “last resort” supplier shall be carried out based on the relevant NEURC-approved model (template) form of contracts. The supplier in such a case cannot propose contractual terms which are different than the ones provided for in the model contract.

In other cases, the terms of the gas supply contract are largely free to be negotiated by the parties. Such contracts, however, shall contain all essential contractual terms established by Ukrainian law (e.g. EIC code of the supplier, name of the gas transportation/distribution system operator with whom the consumer has entered into the respective agreement, etc.). In addition, certain specific contractual requirements are established for non-household gas consumers.

Furthermore, a licensee is required to enter into contract(s) for the creation of a security reserve of gas in the amount not exceeding 10% (ten percent) of the planned monthly volume supply to consumers for the next month. The exact amount of such reserve shall be established by the CMU on an annual basis. For 2017 this amount was established at the level of 0% (zero percent). However, in certain emergency circumstances on the gas market, the suppliers may be obliged to create a security reserve of gas at the level of 10% (ten percent) of their next monthly supply.

In cases when it may be necessary to limit or terminate gas supplies to consumers, a licensee should also have a contract with the gas transportation/distribution system operator to perform such actions.

## **9. REPORTING OBLIGATIONS**

### **9.1 Electricity**

Depending on the types of activities, a licensed company is obliged to prepare and submit to NEURC relevant monthly/quarterly/half-yearly/annual reports based on the forms approved by NEURC, as well as their financial reports on a quarterly / annual basis. Annual financial reports of certain companies shall be audited by an independent auditor.

For most licensees, in case of any change of information that was provided for in the documents submitted when applying for a licence, such changes shall be reported to NEURC in accordance with and during the time frames established by the respective licencing terms.

In addition, NEURC is authorised to conduct audits to verify the licensee's compliance with its licensing terms. If non-compliance is discovered as a result of such inspections, the following sanctions may be applied by NEURC:

- warning of the need to eliminate violations;
- imposition of a fine;
- suspension of the licence; or
- cancellation of the licence.

## 9.2 Natural Gas

Companies operating in the natural gas market (except for consumers) must provide NEURC with the relevant monthly/quarterly/annual reports (based on the forms approved by the NEURC) in respect of each of their licenced activities in the gas market, as well as their annual financial reports. The annual financial reports of certain companies shall be audited by an independent auditor.

The company must keep accounting records on each of its licensed activities separately.

In case of any change of information, reflected in the documents submitted when applying for a licence, such changes shall be reported to NEURC in accordance with and during the time frames established by the respective licencing terms.

In addition, NEURC is authorised to conduct audits to verify the licensee's compliance with its licensing terms. If non-compliance is discovered as a result of such inspections, the following sanctions may be applied by NEURC:

- warning of the need to eliminate violations;
- imposition of a fine;
- suspension of the licence; or
- cancellation of the licence.



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