

International Energy and Natural Resources Law

RICARDO SILVA, MARCOS RÍOS, MIRO LJUB MAČEŠIĆ, LEONARDO SEMPÉRTEGUI, SEAN F. BURNS, RICHARD SILBERSTEIN, FULYA KAZBAY, OMER GOKHAN OZMEN, AND TOLGA CABAKLI*

I. Angola

Angola's focus on energy during 2010 was characterized by continued interest in oil and gas exploration and production, by the first discussions on bio-fuels projects, and commencement of the works for implementation of the Sonangol Refinery Project ("Sonaref Project") in Lobito, which is expected to produce 200,000 barrels per day (bpd) of fuels for internal consumption and export to regional markets.¹ Several laws were passed throughout 2010 to allow for the implementation of the refinery and the bio-fuels projects, including three Presidential Decrees, covering issues related to the refinery site, one Presidential Legislative Decree with the Project legal framework, as well as a Bio-fuels Law.

The country's oil and labor authorities continued the work commenced in 2009 of re-vamping the rules applicable to the recruitment and training of Angolan nationals by companies engaged in the oil sector, by passing two Ministry of Petroleum Executive Decrees to regulate Decree-Law 17/09 of June 26, 2009, the so-called "Training Decree-Law."² Executive Decree 13/10 covers the recruitment, integration, training, and development of Angolan personnel, as well as the hiring of foreign personnel for carrying out petroleum operations in Angola. In turn, Executive Decree 14/10 further elaborates on the opera-

* Ricardo Silva is a Partner at Miranda Correia Amendoeira & Associados law firm in Portugal. He authored the sections on Angola, Brazil, Equatorial Guinea, Gabon, Mozambique, Portugal, São Tomé e Príncipe, and Timor-Leste. Marcos Ríos, a Partner at Carey y Cia. Ltda in Chile, authored the section on Chile. The section on Croatia was authored by Miroljub Macesic, Senior Partner at the Law Offices Macesic & Partners in Croatia. The section on Ecuador was authored by Leonardo Sempértégui, a Partner at Sempértégui Ontaneda LLP in Ecuador. Sean F. Burns is the Executive Director at Encompass Research Global in New Zealand; he authored the sections on Japan and New Zealand. The section on Spain was authored by Richard Silberstein, a Partner at Gómez-Acebo & Pombo Abogados, S.L.P. in Spain. Fulya Kazbay is a Senior Associate, and Gokhan Ozmen and Tolga Cabakli are Associates at Birsell Law Offices in Turkey; they co-authored the section on Turkey. The Committee's 2009 Year-in-Review article is *available at* 44 INT'L LAW. 367 (2010).

1. See *Country Analysis Briefs: Angola*, ENERGY INFO. ADMIN. (Jan. 2010), <http://www.eia.doe.gov/cabs/Angola/pdf.pdf>.

2. See Paul M. Kiernan et al., *International Energy and Natural Resources*, 44 INT'L LAW. 367, 367 (2010).

tion of the Fund to Train and Develop Angolan Human Resources in the Petroleum Sector as well as on some of the practical aspects of the so-called “training levy” payments.

Finally, 2010 may be seen as the year of change in Angola’s petroleum sector with the world’s eyes turning to the country’s pre-salt potential. Two risk services agreements were entered into by the Angolan State to cover pre-salt exploration and production in Blocks 9 and 21 offshore Angola, and various international oil companies are said to be interested in testing Angola’s pre-salt potential, which is expected to be similar to Brazil’s.

II. Brazil

2010 was a year of intense debate in Brazil over the future structure of its oil and gas regulatory framework, which was brought about by huge discoveries of oil reserves in the country’s pre-salt horizons. There is still uncertainty as to the model for the future legal and contractual regulation of exploration and production activities in Brazil, but it seems certain that there will be a shift to a production-sharing model.

Separately, the National Oil, Gas, and Bio-fuels Agency (ANP) approved Resolution No. 10 of May 9, 2010, on new procedures for the use of ANP’s electronic system. Pursuant to such Resolution, a digital certificate issued by a certifying authority duly accredited by ICP-Brazil is now mandatory for authentication and a digital signature of documents and certain information must be submitted to the Agency, through its electronic system.

In keeping with Brazil’s strong investment in bio-fuel production, the country’s Central Bank issued Resolution No. 3863, which established a credit line in the amount of R\$2.4 billion (approximately US\$1.37 billion) to finance the storage of ethanol fuel in Brazil.³ The credit line is supported by the National Bank for Economic and Social Development (BNDES). The beneficiaries of this credit line include, *inter alia*, plants, distilleries, production cooperatives, and trading companies.

III. Chile

The Ministry of Energy was created in December 2009. In its creation, the new ministry assumed and changed other government entities’ duties on energy matters, such as the authorities of the Ministry of Mining and the National Energy Committee (NEC).⁴ Further, an entire area of the new Ministry of Energy is now devoted to Renewable Non-Conventional Energies.⁵

Prior to the creation of the Ministry of Energy, a new Center for Renewable Energies⁶ was created in August 2009 by the Chilean Production Promotion Agency (*Corporación de Fomento a la Producción*—CORFO) and NEC, with the aim to promote and foster the

3. See Press Release, UNICA Sugarcane Indus. Ass’n, Ethanol Sales by Mills in South-Central Brazil Jump, Reaching 2.15 Billion Liters by the End of May (June 21, 2010), available at <http://english.unica.com.br/noticias/show.asp?nwsCode=%7B58460910-6C29-48E6-8C34-DF0F9511ED70%7D>.

4. Representation of the State of Chile and, in general, the Ministry of Mining’s authority in connection with special oil and gas exploration and exploitation contracts was transferred to the new Ministry of Energy. See Law No. 20402 arts. 5, 6, Transitional Provisions art. 7, Noviembre 25, 2009, DIARIO OFICIAL [D.O.] (Chile), available at <http://www.leychile.cl/Navegar?idNorma=1008692&idParte=0>.

5. See *id.* art. 2(7).

6. See *Sobre el CER: Quienes Somos*, CENTRO DE ENERGÍAS RENOVABLES, <http://www.cer.gov.cl/sobre-el-cer/quienes-somos/> (last visited Jan. 28, 2011).

development of unconventional renewable energy sources. Subsequently, on October 28, 2009, CORFO executed a resolution to create an Unconventional Renewable Energy Finance Committee and promulgated its regulations.⁷ The essential purposes of this Committee include the financing of projects associated with unconventional renewable energy sources and other related matters such as providing information, training, and performing promotional activities related to such energy sources. To that end, this Committee approves State financial assistance to and awards funds for: (i) electric power transmission lines to facilitate the access of energy sources to the grid; (ii) solar power plants; and (iii) deep exploration of geothermal energy resources.⁸

New Law No. 20,365, of August 19, 2009, established a special tax benefit for construction companies in the residential property market.⁹ Under this law, a construction company may deduct from its monthly provisional corporate tax payment the amount spent in solar energy systems used in residential properties, provided that such systems contribute at least thirty percent of the annual average hot water expenditure for the property. This law and its regulations set forth specific requirements for relevant solar energy systems to be eligible for this tax incentive, such as minimum parts, materials, size requirements, etc.¹⁰ The amount of applicable tax benefit will, among other elements, essentially depend on the value of the relevant solar energy system and the price of the property.¹¹ On December 1, 2009, the NEC enacted technical regulations to implement Law No. 20,257,¹² governing unconventional renewable energy sources.¹³ The regulations provide for the means to prove compliance with statutory annual minimums of energy injected to the power grid, produced through renewable energy sources.¹⁴

IV. Croatia

The year 2010 saw a number of political and economic developments in the energy sector. The most significant developments in Croatia concern joining the Russian South Stream Pipeline Project, implementing new energy investment programmes such as the Government's anti-recession measure, and construction of a temporary floating LNG terminal on the island of Krk.

7. Resolution No. 341, Octubre 28, 2009, DIARIO OFICIAL [D.O.] (Chile), available at <http://www.leychile.cl/Navegar?idNorma=1008539&buscar=resolucion+341+corfo>.

8. *Id.*

9. Law No. 20365 art. 1, Agosto 11, 2009, DIARIO OFICIAL [D.O.] (Chile), available at <http://www.leychile.cl/Navegar?idNorma=1005169&buscar=ley+20365>.

10. Decree No. 331 art. 1, Diciembre 31, 2009, DIARIO OFICIAL [D.O.] (Chile), available at <http://www.leychile.cl/Navegar?idNorma=1013622&idVersion=2010-05-26>.

11. *See id.* art. 6.

12. Law No. 20257, Noviembre 27, 2009, DIARIO OFICIAL [D.O.] (Chile), available at http://www.cne.cl/cnewww/export/sites/default/08_Normativas/02_energias/descargable_renovables/2008_ResEx1278_ERNC.pdf.

13. Law No. 20257, Marzo 20, 2008, DIARIO OFICIAL [D.O.] (Chile), available at <http://www.bcn.cl/leyes/pdf/actualizado/270212.pdf>.

14. *See* Decree with Force of Law No. 4/20018 art. 150 bis, Mayo 12, 2006, DIARIO OFICIAL [D.O.] (Chile), available at <http://www.bcn.cl/leyes/pdf/actualizado/258171.pdf>.

On March 2, 2010, Croatia signed a cooperation agreement with the Russian Government on the construction and operation of the gas pipeline in Croatian territory.¹⁵ The South Stream project is a gas pipeline between the Russian company, Gazprom, and the Italian company, Eni, that should enable the transportation of Russian natural gas from the Bulgarian Black Sea coast to Central European countries, including Croatia. The agreement should secure Croatia a supply of natural gas over the next thirty-five years and ensure a support mechanism to the country's long-term economic development goals. According to the agreement, Plinacro, the Croatian gas operator, and Gazprom will form a joint venture in which each will hold fifty percent of the shares. The joint venture will own and operate the pipeline.¹⁶ The agreement covers a thirty year period and, unless otherwise agreed, is automatically renewed for the next five years. The international tender for preparing a feasibility study is on course and the study is planned for completion by December 30, 2010. Based on the results of the feasibility study, Plinacro and Gazprom will decide whether to proceed with the construction of the pipeline.

In September 2010, the Croatian Government accepted eighteen energy investment projects, worth €3.85 billion.¹⁷ The energy projects refer to investments in: two thermal power plants (Plomin, Sisak C); eight hydroelectric power plants (Ombla, Molve 1 i 2, Kosiinj, etc.); reconstruction of several oil terminals (Omišalj, Zitnjak, Gazenica etc.); construction of a new oil terminal near Split; construction of a future storage facility of natural gas near Grubisno Polje in eastern Croatia; and construction of a biomass power plant near Zagreb. The projects are planned to be implemented by state-owned companies and local authorities, including the Croatian national electricity company (HEP), the gas operator Plinacro, and JANAF (an oil pipeline system manager).

One of the most important and promising projects is the construction of a coal-based thermal power plant in Istria called Plomin 3. There are two coal-based thermal power plants at the same location called Plomin 1 and Plomin 2. Plomin 3 will replace Plomin 1. It is expected that Plomin 3 will produce fifteen percent of the total amount of electricity generated in Croatia.¹⁸ The investment is worth approximately €800 million. Potential investors in the project will be invited through a public tender, which is expected to be announced at the end of 2010 or the beginning of 2011 at the latest. The new plant is expected to be put into operation by the year 2016.

Because the construction of LNG terminal in Omišalj has been postponed by investors until 2014, the Government decided to construct a small, "temporary" floating LNG terminal. The total investment is worth €50 million.¹⁹ The terminal's capacity is expected to be six billion cubic meters of gas per annum. Investors will be secured through public tender, which should be announced at the end of 2010. The "temporary" LNG terminal

15. See *Russia and Croatia Sign Agreement on South Stream Gas Project*, GOV'T OF THE REPUBLIC OF CROATIA, Mar. 2, 2010, http://www.vlada.hr/en/naslovnica/novosti_i_najave/2010/ozujak/hrvatska_i_rusija_potpisale_sporazum_o_plinovodu_juznom_toku.

16. *Id.*

17. *Croatian Government Greenlights 30 Public Sector Investment Projects Worth EUR 13.85 bln*, EKONOM, Sept. 27, 2010, <http://www.emg.rs/en/news/region/133831.html>.

18. Miroљub Macesić & Ivana Manovelo, *Energy & Natural Resources – Croatia: Government Approves New Energy Investment Projects*, INT'L L. OFFICE, Nov. 8, 2010, <http://www.internationallawoffice.com/newsletters/detail.aspx?g=250149a4-2234-4b67-9705-032cb538e98f>.

19. *Update 1 – Croatia Plans to Install Floating LNG Terminal*, REUTERS, Oct. 18, 2010, <http://uk.reuters.com/article/2010/10/18/croatia-gas-idUKLDE69H1B320101018>.

will not replace the originally planned large one, but instead represents a temporary solution until construction of the land-based terminal.

Following the new Energy Strategy of the Republic of Croatia passed in 2009,²⁰ Croatia started several important energy projects in 2010, which should ensure Croatia's efficient, safe, and high quality energy supply during the coming years.

V. Ecuador

On June 25, 2010, several reforms to the Hydrocarbons Act were passed²¹ after a controversial process of approval in the National Assembly. These reforms have strongly influenced the landscape of hydrocarbons in Ecuador.

The law intended to generate strong changes in several points of the oil industry: activities of state agencies, the role of the government in the operations of the oil fields, and a model contract to be signed with foreign companies. Additionally, the law established a four and six month mandatory period during which the companies must renegotiate their current contracts with the Ecuadorian government.

First, the model of a state owned company (SOC) that, at the same time, represents the national government through contracts with private companies, has been abandoned. Petroecuador, the SOC that had that dual role, is now only an operator and is only in charge of areas where it has direct operation. The administering of the contracts, as well as of hydrocarbon resources and information, is now an activity of the Secretary of Hydrocarbons.

Second, the law confirms the mandate included in the Ecuadorian Constitution that establishes that non-renewable resources should be exploited by the SOCs, and, only in the event that they do not have enough capacity, the government may then sign contracts with private companies.

Finally, the contract to be signed between the government and private companies has been modified. The government has not adopted the joint operation agreement which is the common model used around the world. Instead, it utilizes the model services contract, under which the private company will receive a U.S. dollar payment per barrel of oil, no matter what the market price is. The contract has several provisions that are intended to protect government rights in case the oil price drops sharply.

Currently, there is a process of renegotiation of the current contracts, which will last until the end of November 2010 or January 2011, depending of the type of contract currently enforceable. If the renegotiation process is not successful, the government will terminate the existing contracts and indemnify the companies for the non-amortized investments.

During the last half of the year, the Republic of Ecuador signed with the Export-Import Bank of China (Eximbank) a contract to finance the construction of "Coca Codo Sinclair" hydroelectric generation project. The amount of the credit is approximately US\$1.682

20. *Energy Strategy of the Republic of Croatia*, OFFICIAL GAZETTE 2009, No. 130, http://narodne-novine.nn.hr/clanci/sluzbeni/2009_10_130_3192.html.

21. *Ley Reformatoria a la Ley de Hidrocarburos y la Ley de Régimen Tributario Interno*, Julio 27, 2010, REGISTRO OFICIAL SUPLEMENTO No. 244 (Ecuador), available at http://www.derechoecuador.com/index2.php?option=com_content&do_pdf=1&id=5670.

million, which represents eighty-five percent of the budget required.²² With the help of national income, the Ecuadorian government will finance the remaining fifteen percent. This credit will be paid out over fifteen years with an interest rate of 6.9%. The Ecuadorian President, Rafael Correa, highlighted that this is one of the major goals of the government because it will become the most important hydroelectric generation project in Ecuador, producing 1500 MWh, reducing the country's dependence on imports and local fuel-generated electricity.²³

To comply with the regulations of the Organic Public Companies Act, enacted in 2009, the Ecuadorian Government transformed the Coca Codo Sinclair S.A. company into the COCASINCLAIR Public Company (EP or *Empresa Publica*).²⁴ The new company has its own working capital and budgetary, financial, economic, and administrative autonomy, with its headquarters in Quito, capital of Ecuador.

VI. Equatorial Guinea

This year was a busy one in Equatorial Guinea's energy sector. The year saw three production sharing contracts being entered into in the country's offshore area (Blocks T, U, and K) and also several oil and gas discoveries, notably by U.S. independent oil company, Noble Energy.

It was also an interesting year in terms of energy infrastructure projects with negotiations ongoing for: the country's second LNG train; the construction of a storage and handling terminal for crude oil and petroleum products; and the projected construction of a 20,000 bpd refinery, designed to produce gasoline, diesel, jet A-1, fuel oil, and possibly asphalt.

A Memorandum of Understanding was also signed on September 24, 2010, between the country's petroleum authorities, the national oil company (GEPetrol), and South Korea's national oil company, the Korean National Oil Corporation (KNOC), aimed at strengthening relations between the two countries to develop opportunities in the hydrocarbons sector.²⁵

Finally, 2010 saw the Ministry of Mines, Industry, and Energy issue long-awaited regulations on Decree 56/2007, of September 9, 2007, which had granted GEPetrol exclusive powers with respect to insurance for oil and gas-related operations. Under Order 3/2010, GEPetrol's privileges and rights relating to the insurance industry are transferred to the newly created GEPetrol Seguros.²⁶ Additionally, the new statute appears to require that all companies doing business in Equatorial Guinea's oil sector must take out and maintain insurance for their operations with GEPetrol Seguros.

22. *Ecuador Sella Credito Chino para Coca Codo*, EL UNIVERSO (Ecuador), June 4, 2010, <http://www.eluniverso.com/2010/06/04/1/1447/ecuador-sella-credito-chino-coca-codo-II.html>.

23. *See id.*

24. *See* Decreto No. 370, Junio 3, 2010, REGISTRO OFICIAL SUPLEMENTO No. 206 (Ecuador), available at http://www.derechoecuador.com/index2.php?option=com_content&do_pdf=1&id=5611.

25. *Cooperation Agreement Between the Ministry of Mines, Industries, and Energy and Korea National Oil Corporation*, EQUATORIAL GUINEA, Jan. 10, 2010, <http://www.guineaequatorialpress.com/noticia.php?id=924&lang=en>.

26. *See* Miranda Correia Amendoira & Asociados, *Guinea Ecuatorial*, NOTICIAS DEL DERECHO (July-Sept. 2010), <http://images.excentric.pt/documentos2/87/25/0002587.pdf>.

VII. Gabon

In a sign that the country's petroleum sector may still have a bright future, 2010 saw Gabon's estimated oil reserves stabilize and, according to some estimates, increase. The country also tried to promote its presalt potential, as part of its coastline was linked to Brazil's during the Triassic Period. In line with this new enthusiasm, a licensing round for the granting of exploration and production rights was scheduled to take place, but was postponed a number of times, and is now expected to kick-off in 2011.

The country also took a major step to optimize its gas potential, while reducing carbon emissions, by means of Ministerial Order 00827/MMPH/SG/DGH/DAEJF, of January 28, 2010, which sets forth penalties for gas flaring. Beginning on January 1, 2011, all gas flaring will be fined and the penalty will be calculated based on the official sale price of the quality of the crude oil extracted from the relevant area of exploitation, increased by 25% (2011), 50% (2012), 75% (2013), and 100% (2014); an equivalent oil barrel being equal to 165 m³, according to the Order. In addition, beginning on January 1, 2015, any amount of gas flared in breach of legal and regulatory provisions shall result in the loss of the rights entrusted within the area subject to a Production Sharing Contract (PSC) or concession. These measures are also applicable to oil companies that dispose of the gas by methods other than flaring. But, flaring required to resolve urgent as well as safety-related situations or for the depressurization of the gas treatment equipment during regular maintenance activities, is still allowed.

VIII. Japan

Renewable energy plays a central role in Japan's energy policy and is assisted by existing government legislation; however, Japan still needs a robust regulatory framework to deliver its Copenhagen Accord commitments of achieving a twenty-five percent reduction of CO₂ from 1990 levels by 2020.²⁷

On March 12, 2010, the Cabinet approved the "Basic Act on Global Warming Counter-measures." The bill "called for reducing 25 per cent of greenhouse gas emissions by 2020, with a 80 per cent reduction by 2050, and raising the share of renewable energy to 10 per cent by 2020, while realizing sustained economic growth."²⁸

The bill was designed to provide a legislative framework to achieve this goal, with the introduction of various measures promoting the use of renewable energy, feed-in tariffs, and a mandatory domestic emission-trading scheme (ETS). The purpose of the bill was:

to address climate change under a fair and effective international framework in which all major economies participate. In light of these points, in order to contribute to the global greenhouse gas emissions reduction and bring about a society that emits as little greenhouse gas as possible, Japan will promote global warming countermeasures while ensuring economic growth, stable employment and stable supply of energy. It

27. See *Japan Technology Transfer to Developing World Way to Cut Greenhouse Gas Emissions, Says UNIDO Director-General*, U.N. INDUS. DEV. ORG., June 16, 2010, [http://www.unido.org/index.php?id=7881&tx_ttnews\[tt_news\]=485&cHash=0a77710afb1951b8253fc23ed6deec79](http://www.unido.org/index.php?id=7881&tx_ttnews[tt_news]=485&cHash=0a77710afb1951b8253fc23ed6deec79).

28. *Id.*

will also contribute to conserving the global environment and to ensuring the present and future healthy and culturally-rich lives of the Japanese people.²⁹

This bill has since drifted in uncertainty due to political confusion caused by Prime Minister Yukio Hatoyama's resignation in June of this year and the subsequent political discord caused by the results of the Upper House elections in July. It failed to pass the National Diet (Japan's bicameral legislation).

Renewable technology and domestic efficiency present significant opportunities for Japanese foreign investment. Development of an investment policy for renewable technology remains a legislative priority in order to facilitate these opportunities, because business and government transactions will have to interface with the developing regulations, which are currently unclear.

IX. Mozambique

Late 2009 and 2010 saw important oil and gas discoveries offshore of Mozambique as well as some significant legislative and regulatory developments.

Through Resolution No. 62/2009, of October 14, 2009, the Council of Ministers approved the Policy for the Development of New and Renewable Energies, with the aim of setting forth the specific principles and objectives to promote the use and exploitation of existing energy resources. It is also intended to create an attractive venue of investment for this sector, generate income, and create more employment, consequently contributing towards the fulfilment of Mozambique's energy requirements, particularly in rural areas. This policy is aimed at supplementing the matters addressed in the Energy Strategy approved by the Council of Ministries Resolution No. 10/09, on June 4, 2009.³⁰

By way of Ministerial Diploma No. 272/2009, of December 30, 2009, the Ministry of Mineral Resources approved the new Licensing Regulations of Petroleum Facilities and Activities, which set forth the procedure, terms, and conditions applicable to the licensing, registration, and certification of petroleum facilities and activities, as well as the requirements for their renewal and transfer.

Through Resolution No. 64/2009, of November 2, 2009, the Council of Ministers approved the Strategy for the Development of the Natural Gas Market. The strategy's stated priorities are (i) the use of natural gas in projects with a major impact on the country's development, (ii) the definition of tariff regulations for distribution grids to ensure reasonable end consumers prices, (iii) the promotion of research to enhance the potential of natural gas and attract prospective investors, (iv) the restriction of exclusive agreements with potential concessionaires and consumers in respect of proven reserves, (v) the disclosure of information to the public in connection with natural gas reserves that may be discovered, and (vi) the promotion of the participation of Mozambican companies in the natural gas industry in Mozambique.

Finally, the Council of Ministers, through Decree No. 67/2009, of December 11, 2009, created the National Agency for Nuclear Energy (ANEA) with the purpose of ensuring

29. *Overview of the Bill of the Basic Act on Global Warming Countermeasures (Provisional Translation)*, MINISTRY OF THE ENV'T, GOV'T OF JAPAN, http://www.env.go.jp/en/earth/cc/bagwc/overview_bill.pdf (last visited Jan. 28, 2010).

30. See Kiernan et al., *supra* note 2, at 372.

the safety and protection of persons, property, and environment against radiation exposure risks.

In order to standardize the mechanisms applicable to the licensing and concessions for the private use of water resources, the Ministry of Public Works and Housing approved the water license and concession model forms by way of Ministerial Diploma No. 7/2010, of January 6, 2010.

X. New Zealand

At the beginning of 2009, New Zealand's Energy and Resources Minister, Gerry Brownlee, said "The government has concerns about security of supply, the affordability of electricity, and duplication of electricity sector governance."³¹

By the end of 2009, New Zealand's Ministerial Review of Electricity Market Performance revealed twenty-nine measures to improve prices for consumers, improve supply, improve governance, reduce costs, and increase market competition. To achieve these measures, legislation to enact the Ministerial Review's recommendations was passed in Parliament on September 23, 2010, ushering in a new era for the electricity sector with the establishment of the Electricity Industry Act 2010.³²

While it is not yet clear how this legislation will impact the New Zealand energy sector, the market is already beginning to shift in anticipation. The legislation will introduce redistribution of State Owned Enterprise generation assets, abandonment of the reserve energy scheme, and the development of a more fluid hedge market through increased competition and standardized contracts.

Changes to the electricity governance regime, outlined in the Energy Industry Act, will require revision to existing level arrangements from November 1, 2010.³³ These arrangements determine how costs governing the industry are allocated to various levels of levy payers. With the establishment of the Electricity Authority and replacement of the Electricity Commission, the new agency is "responsible for promoting competition, reliable supply and efficient operation of the electricity market" of New Zealand.³⁴

In July, Parliament released a Draft New Zealand Energy Strategy (NZES) and a Draft New Zealand Energy Efficiency and Conservation Strategy (NZEECS) for public consultation. This will drive the development of legislation for further focus on the promotion of energy efficiency, conservation, and renewable energy generation.

In the energy retailer subsector, government legislation, as of October 2010, requires retailers "to switch customers within 10 working days of being asked, and half of all

31. Press Release, Gerry Brownlee, Energy and Res. Minister, N.Z., Ministerial Review of Electricity Market (Apr. 1, 2009), available at <http://www.beehive.govt.nz/release/ministerial%20review%20electricity%20market>.

32. See *Implementing the 2009 Electricity Market Review Recommendations*, MINISTRY OF ECON. DEV. (N.Z.), http://www.med.govt.nz/templates/ContentTopicSummary_____43211.aspx (last visited Jan. 28, 2010).

33. Jim Stevenson et al., *Legal Update - Electricity Industry Act—Some Changes for Electricity Lines Businesses*, BUDDLE FINDLAY, Sept. 27, 2010, <http://www.buddlefindlay.com/article/2010/09/27/legal-update-electricity-industry-act-some-changes-for-electricity-lines-business>.

34. Press Release, Gerry Brownlee, Energy and Res. Minister, N.Z., Electricity Authority to be Established on 1 November (Sept. 15, 2010), available at <http://www.beehive.govt.nz/release/electricity+authority+be+established+1+november>.

switches must occur within five working days.”³⁵ Under previous legislation, this rule allowed a switch of retailer to take up to twenty-three working days. This is a push from the government to allow consumers the ability to shop around for the lowest prices and further drive competition in the market.

The largest oil sector development in New Zealand came in January, when the government closed the offer to successful bidder Petrobras with a “five-year exploration permit, covering 12,333 square kilometers” over the Raukumara Basin off the North Island’s East Coast.³⁶ Subsequently, in May, the government announced a major two-year program to promote oil and gas exploration through the contracting of GNS Science to deliver the \$7.6 million Petroleum Exploration and Geosciences Initiative (PEGI) Project.³⁷

Also in May, the government announced plans to join the International Renewable Energy Agency.³⁸ Minister Brownlee stated: “In 2009, 73 percent of our electricity came from renewable sources. The Government . . . [aims] to increase to 90 percent . . . by 2025.”³⁹

Gas industry regulation brought about significant change this year. In November 2010, backstop regulation to address potential difficulties for consumers and the industry came into effect on November 16. This legislation (Gas Governance (Insolvent Retailers) Regulations 2010) establishes a safe path for customers of insolvent retailers.⁴⁰

XI. Portugal

The National Energy Strategy for 2020 (ENE 2020) was approved by the Council of Ministers Resolution 29/2010 on April 15, 2010.⁴¹ The Strategy resolved: (i) to create a Balanced Tariftuf Fund by 2012; (ii) to create an Energy Efficiency Fund (FEE); (iii) to promote the Iberian Gas Market (MIBGAS); (iv) to develop during the first semester of 2010 lines of support for investments in renewable energy sources and promotion of energy efficiency; (v) to create the Iberian Centre for Renewable Energy Sources and Energy Efficiency (CIEREE) in Badajoz by the end of 2012; (vi) to develop in Évora, by the end of 2011, a pilot experiment that includes the decentralised production of energy, smart-charging of electric vehicles; (vii) to promote changes in the legal framework by 2012, in compliance with EC directives, liberalizing the electricity and gas markets, pro-

35. Press Release, Gerry Brownlee, Energy and Res. Minister, N.Z., Switching Power Companies Made Easier (July 27, 2010), available at <http://www.beehive.govt.nz/release/switchingpowercompaniesmadeeasier>.

36. Press Release, Gerry Brownlee, Energy and Res. Minister, N.Z., Petrobras Awarded Big Exploration Permit (June 1, 2010), available at <http://www.beehive.govt.nz/release/petrobras+awarded+big+exploration+permit>.

37. Press Release, Gerry Brownlee, Energy and Res. Minister, N.Z., Major Petroleum Project Begins (May 25, 2010), available at <http://www.beehive.govt.nz/release/major-petroleum-project-begins>.

38. Press Release, Gerry Brownlee, Energy and Res. Minister, N.Z., New Zealand to Join International Renewable Energy Agency (May 11, 2010), available at <http://www.beehive.govt.nz/release/new+zealand+join+international+renewable+energy+agency>.

39. Press Release, Pansy Wong, Ministry of Energy and Res., N.Z., Renewable Energy Core as a Core Option for Low-Carbon Society (June 22, 2010), available at <http://www.beehive.govt.nz/speech/renewableenergycore+option+low-carbon+society>.

40. Press Release, Gerry Brownlee, Energy and Res. Minister, N.Z., Gas Industry Regulations Take Effect (Nov. 16, 2010), available at <http://www.beehive.govt.nz/release/gasindustryregulationsmake+affect>.

41. *Portugal: The Challenge of ENE 2020*, IFLR, Sept. 1, 2010, <http://www.iflr.com/Article/2664254/Portugal-The-challenge-of-ENE-2020.html>.

recting consumers and promoting competition; (viii) to update the regulatory framework for over-equipment installation in wind power stations by simplifying procedures, reviewing applicable fees and providing for the obligation of installation of equipment designed to bear voltage sags; and (ix) to create conditions for the introduction and mass-use of electric vehicles. Over-equipment is the name given to the set of turbines designed to increase the power produced in a given wind farm, which amongst others have the following advantages: (i) it has a minor impact on the environment, compared to the installation of new wind farms and (ii) rationalization of the use of the existing infra-structure.

The Energy Efficiency Fund (FEE) was approved by Decree-Law 50/2010, of May 20, 2010, and aims at financing programs and measures provided for in the National Energy Efficiency Action Plan (PNAEE) included in the Council of Ministers Resolution 80/2008, May 20, 2008.

Decree-Law 51/2010, of May 20, 2010, simplified equipment (wind generators) installation procedures in wind power stations. It also reviewed the respective fee framework. This Decree establishes the duty to install equipment capable of bearing voltage sags in every wind generator and to enable a reactive energy supply during such sags, while maintaining the previously granted possibility of equipment up to 20% of power injection capacity in the Public Electric Network (RESP).

The procedure applicable to the elimination of regulated tariffs in the sale of electricity to end-users of extra high voltage, high voltage, medium voltage, and special low voltage was set forth by means of Decree-Law 104/2010, of September 29, 2010.

Decree-Law 30/2010, of April 8, 2010, which partially transposed into domestic law Directive 2009/29/CE, passed by the European Parliament and the Council on April 23, 2009, has amended the legal framework of greenhouse gas emission permits marketing enacted by Decree-Law 233/2004 of December 14, 2004.

Decree Order 993/2010, of September 29, 2010, sets out the fee due to the Portuguese Environment Agency for access and use of the Portuguese Registry of Emission Licenses (PREL).

XII. São Tomé e Príncipe

After entering the oil and gas scene through its Joint Development Zone with Nigeria in late 2009 and 2010, São Tomé e Príncipe started preparing the legal framework for petroleum activities in the country's Exclusive Economic Zone.

First, the country passed a new Petroleum Activities Law ("PAL"), approved by means of Law No. 16/2009 of December 31, 2009. The PAL deals with such matters as exploration and production access rights, licensing requirements applicable to survey operations, tendering procedures for the award of petroleum contracts, award of petroleum rights by direct negotiation, and minimum content of the Production Sharing Agreements. Under the PAL, the country has also adopted a model Production Sharing Agreement that should be the grounds for negotiation of future petroleum contracts.

By way of Decree-Law No. 52/2009 of December 31, 2009, the São Tomé e Príncipe Government also delineated its Economic Exclusive Zone (EEZ) and created three areas for the exploration and exploitation of petroleum and natural gas. The areas have been offered for competitive bidding of oil exploration and production rights.

Pursuant to the ratification of the U.N. Convention on Climate Change and the Kyoto Protocol, Decree 59/2009 of December 31, 2009, established the National Committee for Climate Change (CNMC) to concentrate, manage, educate, and promote all matters related to climate change, including measures and policies aimed at reducing greenhouse gas emissions.

Published on the same date was the Law passed by the Angolan Parliament to implement "the Vienna Convention and the Montreal Protocol on Substances that Deplete the Ozone Layer, thereby requiring a special authorization (from the Minister of Commerce, after endorsement by the Minister of Environment) for the importation of products included in Annexes A, B, C, and E of the Montreal Protocol."⁴²

XIII. Spain

A. REGULATION OF THE SECURITIZATION OF THE DEFICIT IN THE ELECTRICITY MARKET

The electricity market has suffered a deficit because of the difference between the income and market costs. This imbalance is due to a miscalculation of the annual costs forecast by the Government. This is, in part, due to political decisions. The Government has approved electricity charges since the year 2000 based more on desired costs rather than the real costs of the energy supply. The main reasons why the Government did not approve costs that are more realistic were (i) the inflationary impact on energy costs and (ii) its effect on the competitiveness of those sectors with high-energy consumption.

To finance this deficit, the Government can securitize it by issuing bonds guaranteed by the State, and by assignment of the corresponding collecting rights to a securitization fund (the Securitization Fund of Deficit of the Energy Sector). In this context, Royal Decree 437/2010 regulates the assets and liabilities of the fund.⁴³

The aim of this Royal Decree, regarding assets, is to state the price and assignment conditions of the collecting rights. Regarding liabilities, it provides the basis for a competitive proceeding by means of which the financial instruments of the fund will be issued.

B. AMENDMENT OF ENERGY SECTOR REGULATIONS IN ORDER TO ADAPT THEM TO THE FREE ACCESS TO SERVICES

This year the Spanish Government passed Law 17/2009 incorporating into Spanish legislation Directive 2006/123/CE. The law consolidates regulatory principles to make them compatible with the basic freedoms of establishment and the rendering of services. The main characteristic of this regulation is the principle of that the exceptionality of a requirement for authorizations should be exceptional. The main characteristic of this regulation is the principle of the exceptionality of authorizations.

42. *Id.*

43. Royal Decree 437/2010 (B.O.E. 2010, 6291) (Spain), *available at* <http://www.boe.es/boe/dias/2010/04/21/pdfs/BOE-A-2010-6291.pdf>.

Two Royal Decrees have been enacted to adapt energy sector regulations to Law 17/2009. Royal Decree 197/2010⁴⁴ adapts some provisions regarding the hydrocarbon sector such as the Regulation of the Oil Liquefied Gases Distribution Activity. It eliminates the requirement to obtain an authorization to carry out this activity. Royal Decree 1434/2002, which regulates the transport, distribution, commercialization, supply, and authorizations of natural gas, is also modified by eliminating the requirement to obtain an authorization in order to operate in the sector.⁴⁵

The second Royal Decree that has been enacted is Royal Decree 249/2010.⁴⁶ It modifies provisions of the energy and mining sector. This Royal Decree amends the regulation on Basic Mining Security (Royal Decree 863/1985), with regard to the authorization by the Mining Authority of persons that may make electrical installations. It also amends the Regulation on heating installations (Royal Decree 1027/2007), in order to adapt the regime of these installation companies to the European Directive. It defines the proceeding for the free rendering of these services in Spain and creates a registry for these installation companies, among others.

XIV. Timor-Leste

Although there were no significant legal developments in Timor-Leste in 2010, the country has been buzzing with energy-related developments. On the one hand, oil companies are preparing to commence drilling exploration wells in the country's Exclusive Economic Zone, which are expected to confirm the country's oil and gas potential.

Additionally, after several sessions of hard negotiations, it now seems that there may be a light at the end of the tunnel for the Greater Sunrise gas project. Woodside Petroleum appears to have taken a more flexible approach and will be considering the State of Timor-Leste's preferred route for exploiting the Sunrise gas fields—an LNG plant located on the country's south coast.

On the other hand, the government and regulatory agencies have been preparing various important statutes and regulations to govern the country's energy sector. The National Petroleum Authority (ANP) has been engaged in the preparation of statutes aimed to govern Timor-Leste's downstream petroleum sector, which has lacked supervision and regulation. The government has also started discussing amendments to the country's important Petroleum Fund Law and its oil and gas exploration and production legal framework.

Finally, various government departments have been running pilot programs in the Districts for the use of renewable and alternative energy sources, such as natural gas seeps and biomass, to generate electrical power.

44. Royal Decree 197/2010 (B.O.E. 2010, 4511) (Spain), available at <http://www.boe.es/boe/dias/2009/11/24/pdfs/BOE-A-2009-18731.pdf>.

45. Royal Decree 1434/2002 (B.O.E. 2010, 25421) (Spain), available at <http://www.boe.es/boe/dias/2002/11/24/pdfs/BOE-A-2002-25421.pdf>.

46. See Royal Decree 249/2010 (B.O.E. 2010, 4514) (Spain), available at <http://www.boe.es/boe/dias/2010/03/18/pdfs/BOE-A-2010-4514.pdf>.

XV. Turkey

The renewable energy market is rapidly growing in Turkey with the promotion of energy investments, notably in the wind energy sector, by the Energy Market Regulatory Authority (the "EMRA"), after the enactment in 2005 of Turkey's first renewable energy law, Law No. 5346 Concerning the Use of Renewable Energy Resources for the Generation of Electrical Energy (the "Law").⁴⁷ Turkey opened up its wind energy market in 2007 and EMRA started to collect license applications for wind energy that resulted in applications in the amount of twice the installed capacity of Turkey, which is 78,000 MW. This deep interest toward wind energy resulted from suspension of the granting of wind energy licenses by EMRA for a while.

Apart from wind energy, Turkey also has considerable potential in solar energy from which electricity generation has not yet been permitted by the EMRA. However, a draft of the amendments to the Law (the "Draft Law") has been finalized and approved by the relevant parliamentary committee and is currently awaiting enactment by Parliament. Presently, there have been no licenses granted for solar energy in Turkey due to the lack of legislation. However, the Draft Law aims to fill such regulatory deficiency in the solar energy market and the EMRA shall begin to grant licenses based on solar energy as of the date of enactment of the Draft Law. Applications for solar energy are expected to be similar in volume to that of wind energy.

The Draft Law designates the Renewable Energy Resource Mechanism (the "RER Mechanism"), which brings number of benefits in favor of the legal entities using the renewable energy resources for the generation of electrical energy. Separate pricing for each renewable energy resource is the most significant benefit of the Draft Law. Currently, the Law sets forth the purchase price of the electricity generated from various renewable energy resources as 5-5.5 Euro cent/kWh.⁴⁸ This price is below the actual market price of the electricity; and accordingly, is not an incentive in practice. However, the Draft Law sets forth separate prices for each renewable energy resource and promotes the price set forth under the Law. Pursuant to the Draft Law, Schedule No.1 (the "Schedule-1") shall apply to generation plants (i) which commence to operate before December 31, 2015 and (ii) which are subject to the RER Mechanism.

Apart from separate pricing for each renewable energy resource, the Draft Law provides that the prices in the Schedule No. 2 (the "Schedule-2") attached to the Draft Law shall be added to the prices in Schedule-1 for 5 years following the operation date, provided that the generation facility using the renewable energy resource (i) commences to operate before December 31, 2015, and (ii) uses mechanic and electronic spare parts, components, and equipment manufactured in Turkey.

In addition to all other incentives, the legal entities using renewable energy resources to generate electricity shall pay system utilization fees with a reduction of 15 percent over a ten-year period, beginning as of the operation date.

47. Law on the Utilization of Renewable Energy Resources for the Purpose of Generating Electrical Energy, Law No. 5346 (2005) (Turkey), available at <http://www.eic.gov.tr/duyurular/YEK/LawonRenewableEnergyResources.pdf>.

48. *Hydropower in Turkey: Potential and Market Assessment*, INTPOV (2010), available at http://www.econ.no/stream_file.asp?iEntityId=4732 (last visited Jan. 29, 2010).

In conclusion, following the enactment of the Law Turkey as well as the EMRA, as the competent authority, took considerable steps in respect to renewable energy use for the generation of electrical power. As a first step, the EMRA opened up the wind energy sector by means of accepting license applications in 2007. Nevertheless, it is envisaged that the electricity generation from solar energy, as the second step of this phase, will be allowed by the EMRA as of the date of enactment of the Draft Law.

