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Trust Juris Chambers is made up of seven lawyers and is a member of the W-AKILI AFRICA strategic alliance network of law firms, which operates in Kenya, Tanzania, Rwanda and Burundi, and intends shortly to expand its network to Democratic Republic of Congo, Uganda and South Sudan. The firm specialises in many areas, including corporate and commercial, investment, construction, energy (petroleum, electricity and mining), telecommunications,

banking and finance, and transport. The firm advises clients on energy matters, especially relating to energy regulations, licence requirements and costs, energy tariffs, contract negotiations, PPP structuring and drafting, etc. The firm recently advised an international organisation established in Belgium and specialised in the energy sector on regulatory, tax, investment incentives and energy law.

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1. General Structure and Ownership of the Power Industry

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

In Burundi, the law that governs the ownership and structure of the electricity industry is Law No 1/13 of 23 April 2015 on the reorganisation of the electricity sector in Burundi (Electricity Act).

The link to the website is as follows: <https://presidence.gov.bi/2015/04/23/loi-n1-013-du-23-avril-2015-portant-reorganisation-du-secteur-de-lelectricite-au-burundi/>

Under Article 69 of the Electricity Act, the production, transmission and distribution of electricity is an industrial and commercial public service under the responsibility of the State. Nevertheless, the same provision provides that the State may entrust the management of the public electricity service, in the form of a public service delegation, to one or more legal persons governed by public or private law.

In addition, electricity production activities from primary or renewable energy sources established in the public domain are subject to the PPP regime.

The electricity sector in Burundi is made up of vertically integrated entities. Currently, only Régideso (Régie de Production et de Distribution d'Eau et d'Electricité), a State-owned company, controls the production, transmission and distribution of electricity.

1.2 Principal State-owned or Investor-owned Entities

In Burundi, the main electricity producer is the public company Régideso. According to a local newspaper, Régideso produces and operates more than 97% of the electricity; ie, 30.8 MW of electricity from hydropower and 5.5 MW of electricity from thermal sources. The remaining 3% is produced by the Office du Thé du Burundi (OTB), ABER (Agence Burundaise d'Electrification Rurale) and the private company Brarudi (the largest and oldest brewery in Burundi) for its exclusive consumption.

1.3 Foreign Investment Review Process

Investment in the electricity sector is liberalised in Burundi and the new Electricity Act of 2015 is favourable to foreign investment. Indeed, from the very first article of the law, the legislator emphasises: "The purpose of this law is to create a legal framework favourable to investment in the electric energy sector and to liberalise this sector while respecting the conditions of fair and equitable competition and the rights of users and operators."

Thus, there are no restrictions on foreign investment in this sector.

The Investment Act provides international arbitration as a dispute resolution mechanism between the State and the investor. And Article 13 of the Investment Code prohibits any nationalisation and expropriation of investments as well as any measure of equivalent effect. In exceptional cases of expropriation in the public interest, the Act guarantees investors to benefit from a lawful procedure, and fair and prior compensation, and provides, where appropriate, for legal remedy and domestic or international arbitration.

Since 2011, Burundi has carried out several reforms to attract foreign investment and improve the business climate in the country. In addition to having a legal framework favourable to international arbitration, the law provides tax incentives for foreign investors that can benefit from zero taxation for at least five years from the establishment of the foreign company.

1.4 Principal Laws Governing the Sale of Power Industry Assets

See 1.1 Principal Laws Governing the Structure and Ownership of the Power Industry.

1.5 Central Planning Authority

Régideso, a State-owned company, is responsible for the production, transmission, distribution and marketing of electricity throughout the country. Régideso ensures exclusive distribution to end users of the interconnected national grid.

1.6 Recent Material Changes in Law or Regulation

No significant new laws or regulations in the power industry have been enacted in the past year.

1.7 Announcements Regarding New Policies

Since 2000 and very recently (from 2015), the government of Burundi has initiated a new policy of opening up to private investors in the energy sector, which has long been dominated by the State monopoly. The novelty is therefore the creation of a legal framework favourable to investment in the electricity sector and the liberalisation of this sector while respecting the conditions of fair and equitable competition, and the rights of users and operators.

1.8 Unique Aspects of the Power Industry

With the new reform, private investors are protected against nationalisation and expropriation of investments as well as any measure of equivalent effect. An attractive and non-discriminatory Investment Act has been enacted, guaranteeing the protection of investors and investments.

In addition, the energy sector is one of the priority sectors for investment, as the city of Bujumbura is being expanded (a Bujumbura 2045 project has been made up at the initiative of the government of Burundi), and modern housing and economic activities are also being expanded.

Some opportunities for private investors in hydroelectric development are worth mentioning:

- hydroelectric power with an untapped commercial potential of 300 MW;
- geothermal energy with an untapped commercial potential of 18 MW on six sites;
- magnetic energy still unknown;
- wind energy possible on the shores of Lake Tanganyika and on the plateaus; and

- great potential for the development of solar energy.

2. Market Structure, Supply and Pricing

2.1 Structure of the Wholesale Electricity Market

The principal law that governs the structure and function of the wholesale electricity market is the Electricity Act of 2015 (see before).

In Burundi, there is no competitive wholesale electricity market. With regard to the main electricity operator, the State or a public entity managing the transmission and distribution network shall determine the methods for setting the electricity feed-in tariff.

In addition, according to regulation (Decree No 100/130 of 23 June 2016), an independent operator in an isolated area may build a transmission line to reach the main operator's grid in order to conclude a contract with the main operator for the purchase of electricity from its production.

Both capacity and energy markets exist. For the energy market, the main operator is required to conclude with the operator of a self-generating installation an electricity purchase contract for the purchase of surplus electricity from grid-connected self-generating electricity installations recovering household waste or using renewable energy. And for the capacity market, any increase in the production capacity of a production installation must be subject to a new prior authorisation.

Besides, there is a nodal tariff provided for in Decree No 100/132 of 23 June 2016 on the procedure for the development of a power plant for exclusive and commercial use.

2.2 Imports and Exports of Electricity

Burundi benefits from electricity imported from the RUZIZI I hydroelectric power plant, owned by SNEL, of the Democratic Republic of the Congo (DRC), and the RUZIZI II hydroelectric power plant, managed by the SINELAC community company, owned by Burundi, the DRC and Rwanda.

In Burundi, supply is lower than demand and the import is about 29% of the energy supplied to the grid by the National Electricity Company (Régideso). The deficit has been estimated at 67 MW in 2015.

2.3 Supply Mix for the Entire Market

The main source of electricity in Burundi is hydroelectric power (more than 70%). The other source of energy is formed by petroleum products.

2.4 Principal Laws Governing Market Concentration Limits

The principal law that governs market concentration limits is the Electricity Act of 2015.

By virtue of Article 46 of the Competition Act, concentration of economic power takes place in particular through mergers, acquisitions and any other form of horizontal, vertical, heterogeneous or joint venture control: (i) the merger is characterised by a transfer of assets from one or more companies to another, resulting in a new company or the absorption of the company that transfers its assets; and (ii) the acquisition is characterised by a transfer of all or part of the shares, assets, rights and obligations of one or more companies to another company, enabling the latter to exercise a decisive influence on all or part of the activities of the companies being transferred.

And in accordance with Article 9 of the Competition Act, the authority in charge is the Independent Competition Commission. Other rules may be applicable under international law.

2.5 Agency Conducting Surveillance to Detect Anti-competitive Behaviour

The principal law that prohibits anti-competitive behaviour and establishes a market surveillance and enforcement process is the Electricity Act of 2015.

The regulator or authority responsible for market surveillance and enforcement is the Competition Commission.

The Competition Commission is responsible in particular for:

- proposing to the Minister responsible for trade guidelines in the various areas of application of this law;
- ruling on any other competition issue;
- ruling on cases that fall within its jurisdiction, in particular those relating to collective anti-competitive practices as defined by this law;
- giving opinions at the request of sectoral regulatory agencies, bodies or authorities on matters within their competence;
- consulting those agencies, bodies or regulatory authorities when it receives requests for opinions or complaints concerning the conditions for the exercise of competition in these sectors;
- developing, in conjunction with such agencies, bodies and authorities, procedures for the settlement of disputes and the transmission of complaints that may be submitted to them; and
- imposing sanctions and injunctions or any other measure of a provisional nature following a contradictory procedure.

The Competition Act provides for several anti-competitive behaviours, including cartels, abuse of dominant position, concentration, monopolies, resale at a loss, dumping, etc.

Minutes recording collective anti-competitive practices are examined by the Competition Commission in order to conclude that the infringement has occurred and to determine the applicable sanctions.

The sanctions retained by the Competition Commission after examination of the infringements shall be notified to the parties concerned by letter. The parties concerned and the Minister responsible for trade may challenge the decisions taken by the Competition Commission.

3. Climate Change Laws and Alternative Energy

3.1 Principal Climate Change Laws and/or Policies

The principal climate change legal texts are the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the United Nations Convention to Combat Desertification, the Constitution of the Republic of Burundi, the Water Act, the Land Act and the Environment Act.

In addition, the Burundian government has set up, in particular, (i) a National Climate Change Policy and (ii) a National Action Plan for Adaptation to Climate Change.

Burundi has the capacity to move quickly towards a low-carbon future. Indeed, an overview of current and planned development projects in the energy, transportation, agriculture and forestry sectors reveals that very few of them contribute significantly to the increase in greenhouse gas emissions. To this end, the strategic actions that Burundi will implement consist of:

- favouring the development of hydroelectric potential through the construction of micro-hydroelectric power plants and investment in renewable energies to meet modern energy needs;
- promoting energy efficiency and energy-saving measures, in particular by promoting the import/use of energy-efficient equipment;
- improving the wood-energy sector while protecting the environment;
- adopting and implementing a systematic reforestation policy to compensate for wood cutting for energy purposes;
- promoting R&D in the field of renewable energies;
- integrating solar photovoltaic electrification into the construction of schools and health centres far from the electricity grid; and
- exempting solar equipment from import duties.

(Source: The National Climate Change Policy Axis 2. Mitigation of greenhouse gas emissions and low-carbon development.)

The National Climate Change Policy aims at limiting producers' carbon emissions by building national capacity to calculate the available carbon stock at the national level and monitor its evolution over time (source: The National Climate Change Policy Axis 4. Capacity building). However, as it stands, the carbon limitation mechanism does not seem to be operational.

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

This situation is not regulated in Burundi.

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

The Electricity Act encourages the development of renewable energies. In addition, the government is taking certain initiatives to promote the development of alternative energy sources; in particular, the energy policy letter and opportunities in the renewable energy sector in Burundi Ministry of Energy and Mines.

Capacity objectives for alternative energies include:

- developing a better knowledge of the hydraulic resource in order to allow its exploitation;
- establishing a stable legal framework to encourage private investment in energy;
- developing the use of solar photovoltaic energy;
- evaluating and using wind energy where possible; and
- making firewood a renewable energy source through energy efficiency measures.

The alternative energies targeted include solar, wind, geothermal and biomass energy.

In accordance with the national energy policy and the development of alternative energies, the government is directly involved in the following initiatives:

- mobilising donors and the various development partners more and more strongly and densely around the financing of the energy sector;
- using access to the Heavily Indebted Poor Countries (HIPC) initiative to invest in the sector;
- ensuring better co-ordination of development assistance (loans and grants); and
- taking appropriate measures to develop the capacity of the sector's actors to act.

According to the National Energy Policy (NEP) developed by the government, the ongoing monitoring of the achievement of the NEP's objectives will be ensured through per-

formance indicators and an implementation matrix that will be clearly indicated in the action plans. A National Steering Committee of the NEP will mobilise and co-ordinate all stakeholders for the ownership of the development process of Burundi's energy sector by 2020. It will be supported by a Technical Committee to Monitor the Implementation of the NEP.

Several actors are involved in the development of the NEP. These include, in particular:

- the World Bank, through the Multisectoral Water and Power Project (PMEE);
- the African Development Bank (AfDB), through the Electricity Infrastructure Rehabilitation Project (PRIE); and
- the EU, through its multifaceted assistance programme for the sector and its future interventions planned under the tenth European Development Fund (EDF).

4. Generation

4.1 Principal Laws Governing the Construction and Operation of Generation Facilities

The principal law governing the construction and operation of generation facilities is the Electricity Act of 2015.

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

The authorisation to operate an electricity production facility is issued by the Minister of Energy, taking into account, in particular, the following criteria:

- the safety of people and property, and the safety of public electricity networks;
- site selection, land use and public domain use;
- energy efficiency;
- compatibility with public service principles and missions; and
- compatibility with the technical requirements for electricity produced by independent operators.

Electricity production activities from primary or renewable energy sources, established in the public domain, are subject to the PPP regime. And the public service of electricity is provided in compliance with the rules and standards governing the protection of the environment.

The approval must be granted in a period not exceeding 30 days.

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

The conditions for approving constructions are:

- the safety of people and property, and the safety of public electricity networks;
- site selection, land use and public domain use;
- energy efficiency;
- compatibility with public service principles and missions; and
- compatibility with the technical requirements for electricity produced by independent operators.

Any change in the characteristics or operating conditions of electrical installations must be noticed.

4.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

For the construction and operation of a production facility, the public electricity service delegate may occupy, free of charge, the public domain outbuildings of local authorities assigned to direct or public use, in agreement with the said local authorities, in compliance with the provisions of the Specifications, the Land Act and with the laws and regulations enacted in matters of public domain, urban planning, health and public safety. The delegate is even entitled to ask the public authorities to use expropriation procedures in the public interest in accordance with the Land Act.

4.5 Requirements for Decommissioning

The dismantling procedure is not regulated.

5. Transmission

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

5.1.1 Principal Laws Governing the Construction and Operation of Transmission Facilities

The principal law that governs the construction and operation of transmission lines and associated facilities is the Electricity Act of 2015 (Act No 1/13 of 23 April 2015 on the reorganisation of the electricity sector in Burundi).

Article 2 of the Electricity Act provides: "This Act applies to the production, transmission, distribution and marketing of electricity."

The authorisation to operate an electricity production facility is issued by the President of the Republic or the Minister of Energy, as the case may be.

The President of the Republic is the only person who can grant a licence to produce, transmit and distribute electricity in the context of a PPP contract or concession.

The Minister of Energy grants all other electricity production, transmission and distribution authorisations. The

Minister may order any person operating an electricity production, transmission or distribution facility to take any measure likely to guarantee the safety of persons and property. In addition, the Minister may prohibit, after consultation with the Control and Regulatory Agency, any activity of production, transmission, distribution or marketing of electricity that presents a serious danger to persons or property.

Besides, the Control and Regulatory Agency contributes to the proper functioning of electricity markets for the benefit of final consumers. In particular, it shall ensure that conditions of access to the electricity transmission and distribution networks do not hinder the development of competition. In addition, it shall ensure that operators and owners of electricity transmission and distribution networks, and companies operating in the electricity sectors comply with their obligations. It helps to ensure the effectiveness of consumer protection measures.

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

The authorisation to operate an electricity production facility is issued by the Minister of Energy, considering the following criteria:

- the safety of people and property, and the safety of public electricity networks;
- site selection, land use and public domain use;
- energy efficiency;
- compatibility with public service principles and missions; and
- compatibility with the technical requirements for electricity produced by independent operators.

Electricity production activities from primary or renewable energy sources, established in the public domain, are in principle subject to the PPP regime. It is therefore a mechanism that allows collaboration between the State or public persons and any person governed by private law.

The law stipulates that the operation must comply with the legal and regulatory provisions relating to environmental protection. Also, the application for authorisation to build a power transmission line must include an environmental impact study when required by environmental legislation.

In addition, any person operating or wishing to build or operate a production unit must apply for an operating permit.

Furthermore, no PPP contract, concession, authorisation or declaration may be granted without prior consultation with the local authorities in the territory within which the energy is to be produced.

The decision must be taken within 30 days.

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

The terms and conditions to build and operate a power plant include:

- technical requirements for electricity produced by independent power producers;
- site selection, land use and public domain use;
- safety of people and property, and safety of public electricity networks;
- protection of health, safety and the environment;
- compliance with employment standards;
- technical, economic and financial capacities of the applicant; and
- technical references.

The request for renewal of the authorisation or modification of an existing direct line must be addressed to the Minister of Energy and the Control and Regulatory Agency. The application must be accompanied with a certain number of documents. The Control and Regulatory Agency diligently examines the file and sends its opinion to the Minister of Energy, who will then decide whether to grant the approval.

5.1.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

For the construction and operation of a production facility, the public electricity service delegate may occupy, free of charge, the public domain outbuildings of local authorities assigned to direct or public use, in agreement with the said local authorities, in compliance with the provisions of the Specifications, the Land Act and with the laws and regulations enacted in matters of public domain, urban planning, health and public safety. The delegate is even entitled to ask the public authorities to use expropriation procedures in the public interest in accordance with the Land Act.

In addition, the right of way is guaranteed. In the event of a conflict, the Main Operator or Independent Operators may benefit from easements to allow the passage of lines necessary for the transmission or distribution of electricity. The easements in question do not result in any dispossession. A compensation is allocated to persons holding a regular title deed or ownership of the land. Failing amicable agreement, the compensation shall be determined in accordance with the texts in force by the administrative authority.

5.1.5 Transmission Service Monopoly Rights

In accordance with Article 46 of the Electricity Act, the management of the transmission and distribution network is entrusted, on an exclusive basis, by the State to a legal person governed by public law for the interconnected national network or by private law for networks in secondary centres

or isolated areas, and the latter private law person (company) must be entitled to benefit from a public service delegation.

These exclusive rights are obtained under the Electricity Act.

5.2 Regulation of Transmission Service, Charges and Terms of Service

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

The principal law that governs the provision of transmission service and the regulation of transmission charges and terms of service is the Electricity Act (Act No 1/13 of 23 April 2015 on the reorganisation of the electricity sector in Burundi).

The Act applies to the production, transmission, distribution and marketing of electricity.

The major regulators are the Electricity Control and Regulation Agency, and the Ministry of Energy.

5.2.2 Establishment of Transmission Charges and Terms of Service

The feed-in tariffs stipulated in the power purchase agreements are proposed by the Control and Regulatory Agency to the decision-making authority in consultation with the main operator.

The average rate must cover all costs of electricity transmission, production and distribution. And the feed-in tariffs stipulated in the power purchase agreements are proposed by the Control and Regulatory Agency to the decision-making authority in consultation with the main operator.

It is not regulated under Burundian laws and no right of appeal is provided.

A complaint process to challenge existing rates, and terms and conditions of service does not exist under Burundian laws.

5.2.3 Open-access Transmission Service

According to Article 53 of the Electricity Act, the public transmission service operator shall operate and maintain the public electricity transmission service. It is responsible for its development in order to allow the connection of producers and consumers, connection with public distribution networks and interconnection with the networks of other countries. The law provides for the possibility of connection but does not specify its terms.

Decree No 100/132 of 23 June 2016 provides that any operator of a self-generated electricity production plant wishing to sell the surplus self-generated electricity must file an application to obtain a prior approval from the Regulatory Agency. The applicant must compile a file containing a number of documents and send it to the Regulatory Agency.

The transmission, distribution and marketing of electricity on national territory is an industrial and commercial public service under the responsibility of the State. The concession for the management of the public electricity distribution network is granted by the State to the operator of the public electricity distribution network. Thus, users of the transmission service do not acquire a right to the service per se.

6. Distribution

6.1 Regulation of Construction and Operation of Electricity Distribution Facilities

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

The principal law that governs the construction and operation of electric distribution facilities is the Electricity Act (Law No 1/13 of 23 April 2015 on the reorganisation of the electricity sector in Burundi).

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

To distribute electricity in Burundi, an application for authorisation to build and operate a power plant must be submitted to the competent authority. The approval of this application (including distribution facilities) takes into account, in particular, the compatibility with the technical requirements relating to electricity produced by independent operators, the choice of sites, land use and use of the public domain, and the technical, economic and financial capacities of the applicant.

Electricity production activities from primary or renewable energy sources, established in the public domain, are subject to the PPP regime. Public hearings are not provided, projects are subjected to a detailed environmental review and the regulator itself does not have the authority to grant the required authorisation.

The time limit is 30 days from the filing date of the application.

6.1.3 Terms and Conditions Imposed in Approvals to Construct and Operate

The conditions for approving constructions include, in particular:

- safety of people and property, and safety of public electricity networks;
- site selection, land use and public domain use;
- energy efficiency;
- compatibility with public service principles and missions; and
- compatibility with the technical requirements for electricity produced by independent operators.

6.1.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

For the construction and operation of a production facility, the public electricity service delegate may occupy, free of charge, the public domain outbuildings of local authorities assigned to direct or public use, in agreement with the said local authorities, in compliance with the provisions of the Specifications, the Land Act and with the laws and regulations enacted in matters of public domain, urban planning, health and public safety. The delegate is even entitled to ask the public authorities to use expropriation procedures in the public interest in accordance with the Land Act.

In addition, the right of way is guaranteed. In the event of a conflict, the Main Operator or Independent Operators may benefit from easements to allow the passage of lines necessary for the transmission or distribution of electricity. The easements thereof do not result in any dispossession.

6.1.5 Distribution Service Monopoly Rights

In accordance with Article 46 of the Electricity Act, the management of the transmission and distribution network is entrusted, on an exclusive basis, by the State to a legal person governed by public law for the interconnected national network or by private law for networks in secondary centres or isolated areas, and the latter private law person (company) must be entitled to benefit from a public service delegation.

The exclusive rights are provided for in legislation.

6.2 Regulation of Distribution Service, Charges and Terms of Service

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

The principal law that governs the provision of electric distribution service and the regulation of electric distribution

system charges and terms of service is the Electricity Act (Law No 1/13 of 23 April 2015 on the reorganisation of the electricity sector in Burundi).

6.2.2 Establishment of Distribution Charges and Terms of Service

The distribution of electricity is subject to a tariff determined by application of the provisions of the public service delegation contract concluded between the State and the National Electricity Company, which is the exclusive delegate for the transmission, distribution and marketing of electricity. Then the tariff is made public for the users' information by the delegate after approval by the Control and Regulatory Agency.

No appeal is provided to challenge the decision of the regulator in setting rates, and terms and conditions of service. However, the Regulatory Agency settles conflicts between the various stakeholders on the one hand and conflicts between the various stakeholders and users on the other hand.

A complaint process to challenge existing rates, and terms and conditions of service is not provided by the law or the regulations. However, the Regulatory Agency settles conflicts between the various stakeholders on the one hand and conflicts between the various stakeholders and users on the other.

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