Tonga Energy Sector Legal Framework

Tonga National Energy Bill

PEAG Meeting, 16th November, 2015

Presenter: Kakau Foliaki
Energy Department

Ministry of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change and Communications
Background

- This project stems from TERM and Cabinet Decision

Key PRINCIPLE of TERM:
- Clear, appropriate and effective institutional, legal and regulatory frameworks that define the roles of Government, TPL and the private sector

Key OBJECTIVE of TERM:
- Urgent reform the energy sector with the aim of updating and consolidating all functions of the sector
  - (Activity 2 under Phase 0 of TERM)

Key TERM-C DECISION:
- In December 2012 TERM-C approves the drafting of an Energy Bill

CABINET DECISION 476 IN May 2015:
- Cabinet approves principles of the reform and for work to progress
Project Team Collaboration

TTL: Roberto Aiello
Senior Counsel: James Neumann
Senior Advisor: Chiara Sorisi

Head of Energy: Solomone Fifita
Petroleum Adviser: Mr Alan Bartmanovich
Policy and Legal Advisor: Yolisaguyau Tom’tavala
Energy Policy Officer: Koin Etuati

Director of Energy: Tevita Tukunga
Director of TERM-IU: ‘Inoke Finau Vala
Energy Officer: Kakau Foliaki

Capacity building is an important bi-product of this cooperation
WB and SPC to assist the Government of Tonga with development of the building blocks that lead to the creation of an Energy Bill

This includes

1. Assistance with the identification of major issues and gaps in the existing legal and regulatory enabling framework
2. Assistance with identification and prioritisation of reforms (i.e. policy) needed to give effect to the Government’s vision and objectives
3. Assistance with the preparation of a new Energy Bill
Three Phases of the Project

- Phase 1: Preparation – to be focused on the analysis of the current energy framework, to identify issues, gaps and priorities for the reform to focus on.

- Phase 2: Identification of policy and reform – to be focused on articulating the proposal for reform from the Energy Department, to be agreed across Government, and

- Phase 3: Preparation of the Bill – to be focused on drafting and approval of the Energy Framework Bill.
This project will be articulated in Phases:

- **Preparation**
  - June – August ‘15

- **Identification of policy and reform**
  - September–December ‘15

- **Preparation of the Bill**
  - January – September 2016

- **Implementation**
  - 2016 (preparation can commence when policy agreed)
## Phase 1: Preparation

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Output</th>
<th>Lead</th>
<th>Support</th>
<th>Timeframe</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Vision and Objective</td>
<td>Government decision on overall objectives for energy reform</td>
<td>MEIDECC</td>
<td>World Bank to advise</td>
<td>April-May</td>
<td>Completed (8 May Cabinet decision)</td>
</tr>
<tr>
<td>2. Overview Assessment</td>
<td>Short report providing energy sector overview in the context of regional and international practice, and identifying areas of potential reform</td>
<td>World Bank</td>
<td>SPC and MEIDECC to provide input MEIDECC to facilitate any clarification needed</td>
<td>July - August</td>
<td>Final Draft</td>
</tr>
<tr>
<td>3. Issues and gaps log</td>
<td>Technical record detailing all issues and gaps identified in the current legislative and institutional framework</td>
<td>MEIDECC</td>
<td>World Bank and SPC to provide guidance and assistance. Local legal support is required</td>
<td>July - August</td>
<td>Final Draft as additional document to the Overview Report</td>
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### Phase 2: Identification of Policy Reform

<table>
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<tr>
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<tr>
<td>4. Reform proposal</td>
<td>Paper detailing the proposed reforms/changes to the energy sector that MEIDECC proposes to introduce. (This can be broken down in separate short papers. For example: Governance; Petroleum; Electricity; et)</td>
<td>MEIDEC C</td>
<td>World Bank SPC to guide and to advise. Local Legal assistance is required</td>
<td>September - October</td>
<td>Working with Chapman Tripp and SCH Law to finalise the TOR to conduct this activity</td>
</tr>
<tr>
<td>5. Internal Consultation</td>
<td>MEIDECC proposal paper(s) are discussed and negotiated with stakeholders. In principle Govt-wide agreement is reached.</td>
<td>MEIDEC C</td>
<td>World Bank SPC to guide and to advise</td>
<td>October - November</td>
<td>Not yet started</td>
</tr>
<tr>
<td>6. Policy sign off</td>
<td>Cabinet decision accepting the proposed energy reforms</td>
<td>MEIDEC C</td>
<td>World Bank and SPC to provide guidance and assistance</td>
<td>November - December</td>
<td>Not started</td>
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## Phase 3: Preparation of the Bill

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<tr>
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<tbody>
<tr>
<td>7. Legal instructions</td>
<td>Paper detailing instructions to lawyer that will draft the Bill. It builds upon Deliverables n.2-3-4-5</td>
<td>MEIDECC</td>
<td>World Bank and SPC to provide guidance and assistance</td>
<td>November-December</td>
<td>Not started</td>
</tr>
<tr>
<td>8. Bill Drafting</td>
<td>Energy Bill draft</td>
<td>Legal consultant</td>
<td>World Bank and SPC to provide feedback on drafting iterations</td>
<td>January - April</td>
<td>Not started</td>
</tr>
<tr>
<td>9. Parliamentary Approval</td>
<td>The draft Bill is handed over to Crown Law, who completes it and takes it through Parliament. Outcome is Parliamentary approval</td>
<td>Crown Law</td>
<td>MEIDECC to liaise with Crown Law and provide any assistance required by Crown Law. World Bank and SPC to advise as required</td>
<td>May - September</td>
<td>Not started</td>
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</table>
What are the progress so far?

This project will be articulated in Phases:

- Preparation
  - June – August ’15

- Identification of policy and reform
  - September–December ’15

- Preparation of the Bill
  - January – September 2016

- Implementation
  - 2016 (preparation can commence when policy agreed)
Development of the Overview Assessment Report

- It provides a detailed institutional, legal and regulatory analysis of the current energy sector, and it means to lay the ground for the formulation of the proposal of policy reform (Phase 2).

- This report confirms the initial recommendations on institutional, policy, legal and regulatory reform from TERM, and goes beyond TERM by presenting analysis of the current enabling environment for the energy sector, and by identifying areas of priority for the development of energy sector reform and the Energy Framework Bill.
What are the Issues: Key Issues 1

- **Role of the Government/Energy Department**
  - Definition of the role of Government in the electricity sector. This is in terms of considering the allocation of functions between central Government and the regulator, but also more widely in terms of the oversight of service delivery.
  - (1) Energy Department current role
  - (2) Functions to migrate from other Government Departments:
  - (3) Oversight and new direction functions to create for the Energy Department to bridge any gaps and increase coordination:
  - (4) Functions to assign to MEIDECC as opposed to the Regulator:
Key Issue 2

- **Policy Imperatives for Electricity Sector**
  
  - Revision, and if necessary update, the way in which electricity is defined and administered in the Kingdom, and in particular whether it is necessary to retain the AC/DC distinction, as well as the on-grid/off-grid regime.
  
  - (1) Role of ED on the Electricity Sector
  
  - (2) Treatment of Electricity (distinction of AC/DC in Electricity Act and RE Act)
  
  - (3) Treatment of on-grid and off-grid

- Promotion of renewable energy generation, both at high level (via principles and potentially a legislated target) and at a more detailed policy level, with the introduction of the role of Independent Power Producers and Power Purchase Agreements as well as mechanism to incentivise small scale on-site renewables (options include Gross-metering/Net-billing, Net metering, Feed-In-Tariffs). This will address both the objectives of Resilience and Affordability.
Key Issue 3

- **Policy Imperatives for Petroleum Sector**
- Consideration of how the outcome of the ongoing Petroleum Study can feed into the Energy Framework Bill and whether there are further areas the Government wishes to consider in terms of petroleum pricing and enhancing resilience.

1. How to shape the relationship between the Government and the Regulator,
2. The functions to assign to the Regulator (service deliver or include pricing as well),
3. Principles and directions the Regulator must abide to.
Key Issue 4

Policy Imperatives for Energy Efficiency Sector

- Promotion of energy efficiency. This can be achieved via both the institutional reform (legal mandate of the Energy Department), but also through policy reform. This includes setting objectives and principles in the Bill, but also in terms of introducing detailed regulations on efficiency measures.

(1) How to shape the relationship between the Government and the Regulator,
(2) The functions to assign to the Regulator (service deliver or include pricing as well),
(3) Principles and directions the Regulator must abide to.
- Study confirmed that the legal, institutional and legislative arrangements in the energy sector are highly fragmented.

- One of the key area for further discussion centres around the need for the Energy Framework Bill to create a centralised oversight function on energy matters in the Energy Department.

- Coupled with discussions over how to shape the legal mandate of the Energy Department, is the need to clarify and shape the role and functions of the regulator, and whether the Energy Framework Bill should create a sector-wide Energy Regulator.

- In order to strengthen and consolidate the overall policy direction for the energy sector, the Government should consider setting in the Energy Framework Bill consistent and clearly defined core principles and objectives, to ensure harmonisation and coordination of any initiative, while retaining flexibility to adapt to evolving priorities.

- On the basis of experience from other Pacific Island Countries, the Government should also consider how to ensure effective implementation of Bill.
What’s Next?

- Energy Department must finalize TOR for consultant to assist the Government of Tonga with achieving deliverables 2 and 3
- GoT must ensure to finalize the Overview Assessment Report as soon as possible to avoid further delay
- GoT need to start working on the policy reform with SPC, Legal Consultant and WB
- Try and meet the deadline without further delay.
Thank you