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On The Horizon — Renewable Energy in Asia

A PRACTICAL GUIDE

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On The Horizon – Renewable Energy in Asia

A Practical Guide

Prepared by Meritas Lawyers in Asia

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About this Book

On The Horizon — Renewable Energy in Asia was prepared by lawyers in Asian Meritas firms. It offers practical insights targeting foreign investors and business people who are interested in pursuing opportunities throughout Asia. The twelve chapters provide general information, not legal advice. Do not rely upon the materials without prior consultation with legal advisors familiar with the specifics of your particular areas of interest.

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HKD	Hong Kong Dollar	SGD	Singapore Dollar
INR	Indian Rupee	TWD	New Taiwan Dollar
IDR	Indonesian Rupiah	THB	Thai Baht
JPY	Japanese Yen	USD	United States Dollar
KRW	Korean Won	VND	Vietnamese Dông
MYR	Malaysian Ringgit		

ON THE HORIZON — RENEWABLE ENERGY IN ASIA

As this book goes to press, the global economy is still struggling to climb out of its worst downturn since the Great Depression. At the same time, Japan faces its most significant crisis since 1945 as it deals with the impact of the tsunami and damaged nuclear reactors at Fukushima. While some countries such as China, Singapore, and India have successfully rebounded, most nations are facing dual threats of exceptionally slow economic growth combined with chronic levels of high unemployment. Unlike past recessions, this one has hit developed economies just as hard as less developed countries, which have traditionally borne the brunt of economic downturns.

No matter how the world economy performs over the next few years, two factors stand out that will strongly influence global economic prospects over the next decade. One factor is population growth. Most experts predict that the world's population will grow from 6.9 billion today[1] to 8 billion by 2025 and will add another billion by 2050. This projected increase is as many people who currently live in China and India. Continual population growth places high demands on the world's resources, as more people are demanding more goods and services. Equally significant, the large and rapidly growing economic powerhouses like China and India are accelerating their demand for energy and the goods and services it provides. Between just these two countries, over 3.5 billion people will be pushing their governments to promote rapid industrialization in order to meet the demands of their burgeoning middle classes. These are pressures that neither China nor India, nor any government for that matter, can resist for political reasons.

Economics aside, the combination of these two factors is also putting a heavy strain our world's delicate environmental balance. The problem is that the energy resources supplied today to meet a growing population's increasing needs for goods and services are mainly derived from carbon-based sources that have significant long-term impacts on the environment. Coal is the dominant fuel in Asia and accounts for 54 percent of energy used today. While this share will go down over time (to an estimated 44 percent share in 2030), the use of coal in developing Asia is expected to increase by nearly 40 percent by 2030.[2]

[1] U.S. Census Bureau estimate at www.census.gov/main/www/popclock.html

[2] Estimates from USAID ECO-Asia Clean Development and Climate Program, based on data from International Energy Agency, Asian Development Bank, and Asia-Pacific Energy Research Center

For example, the Peoples Republic of China in 2011 is over 70 percent dependent on coal for its total energy needs, and it is the fastest growing economy in the world. As energy needs increase, so does the degradation of the environment. Adding another 2.5 billion people over the next 40 years will magnify the imbalance even more.

Another consideration involves the political climate where carbon-based energy is extracted and consumed. For example, much of the global oil supply is located in geographic areas that regularly experience bouts of political instability. Think about Venezuela, Nigeria, Libya, and points throughout the Middle East. As we have seen time and time again since the oil crisis of the 1970s, any even minor disruption in the assured supply of oil, gas, or other energy sources can and will have a significant impact on global prices.

And the trends of oil import dependency are going in the wrong direction. Over the past decade, oil imports to Asia have increased by 140 percent, and in 2010 the Asia region imported 60 percent of its oil.[3] China's dependence on foreign oil is expected to keep rising, reaching 65 percent by 2015 and 80 percent by 2030.[4]

For all of these reasons, the current global energy mix, which is primarily carbon-based, is untenable over the long run. China, India, and other nations need to find alternate ways to fulfill their energy demands. The only real answer — and our best chance to bring balance back to the environment — is to turn toward alternative sources of energy, which can at least in part replace existing coal and oil sources.

The most cost-effective way of weaning ourselves from fossil fuels is through energy efficiency, and this can be done by taking actions to make homes, buildings, factories, and our transport systems more efficient.[5] But at the same

[3] National Association of State Energy Officials, "What's Hot in Trade and Imports," available at: http://www.naseo.org/committees/energyproduction/oil/Trade_Hot.htm#What's%20Hot:%20The%20Asian%20Magnet

[4] Estimates for China's oil import dependency in 2030 range from 75%-82% based on these references: The World Bank, "Winds of Change: East Asia's Sustainable Energy Future," available at: http://www.recoalition.com/re2010/userfiles/files/Winds%20of%20Change%20(Full%20Text).pdf and Japan Times, "What is Beijing willing to do to secure oil and gas supplies?" (stating US Dept. of Defense predicts oil imports will amount to four-fifths of oil consumption by 2030), available at: http://search.japantimes.co.jp/cgi-bin/eo20101227mr.html

[5] Based on estimates in International Energy Agency (IEA), World Energy Outlook 2010

time, it is also important to aggressively develop the most feasible alternatives for supplying sustainable fuel and power directly – through renewable energy. Some examples of renewable energy with real potential are solar, wind, hydro, biomass, biogas, and tidal. While some of these technologies have been commercialized and entered the market, none of them has yet reached anywhere near their full economic and market potential.

Such renewable energy sources cannot become commercially viable without long-term financial incentives and comprehensive pricing policies backed by national governments around the world. Just the sheer size of the capital investments required in order to develop and exploit renewable energy demands that governments underwrite part of those costs, at least initially. This includes government-backed targeted incentives and grants for research and development of these emerging technologies, funding renewable energy demonstration projects, and adopting tax regimes for renewable energy that will attract private investors over the long run. Without the right policies and regulatory incentives, renewable energy sources are unlikely to succeed in Asia or elsewhere.

Globally, investments in clean energy have quadrupled over the past five to six years, from USD46 billion in 2004 to USD173 billion in 2008, and then falling slightly to USD162 billion in 2009.[6] And the upward trend is expected to continue, as technological developments, in combination with the policies and incentives mentioned above, boost the market for clean energy. The total expected investment in clean energy, for just the G-20 countries alone, is expected to be USD2.3 trillion over the next 10 years.

The real growth in global energy demand will occur in developing Asia — most notably China and India — which will demand access to greater and greater levels of energy over the next several decades. The overall demand for energy in the developing Asia region is expected to increase by 65 percent in the next 20 years, and electricity consumption is expected to increase by 114 percent.

Given these strong trends, we wanted to find out where key countries in Asia stand now on renewable energy as a workable alternative and what we can expect in the future.

[6] UNEP, 2010, Global Trends in Sustainable Energy Investment 2010. Sustainable Energy Initiative (SEFI), in cooperation with Bloomberg New Energy Finance

In order to find the answers, we approached 12 of the leading Asian law firms and asked each to comment on 10 basic questions about renewable energy policies and the regulatory framework in their individual countries:

1. *What are the driving factors for increasing renewable energy production?*
2. *Which renewable energy sources are viewed as the best opportunity for your country and why?*
3. *What role does your government play in regulating the energy industry? Describe the regulating environment and trends in deregulation in your country.*
4. *What agencies or bodies of government oversee the energy sector? What goals or mandates has your government set for electricity generation or fuels production from renewable sources?*
5. *What are the opportunities for private ownership (vs. public ownership) in clean energy development and technologies?*
6. *What is the level of government investment or what incentives are in place to support these goals and targets?*
7. *What kind of emphasis is placed on researching and developing renewable energy technologies versus looking to outside energy resources?*
8. *Is your country on track to be a clean energy importer or exporter from the standpoint of power production supply and manufacturing?*
9. *How developed is your country's workforce to support innovation, development and the production of renewable energy?*
10. *What are the key barriers to increasing renewable energy as a part of your country's energy mix?*

Each chapter of this book is devoted to insights on a specific country in Asia. Our hope is that this book will spark the beginning of an ongoing dialogue among government officials and planners, venture capitalists, individual entrepreneurs, researchers, multinational corporations in the energy sector, and NGOs as they focus their attention on how best to accelerate the deployment of renewable energy resources in Asia and elsewhere. The stakes are high for all of us. We cannot afford to step back from the challenges and ignore the great opportunities renewable energy technologies offer.

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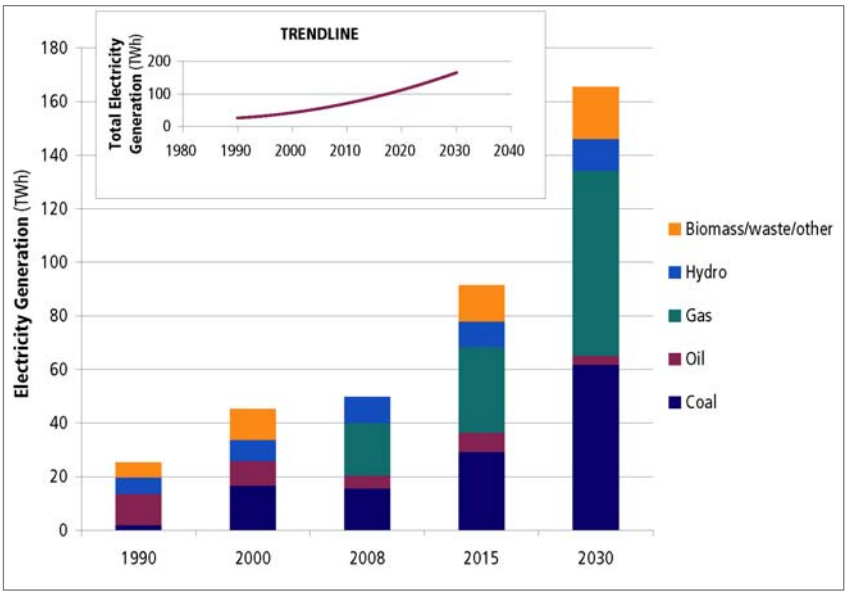
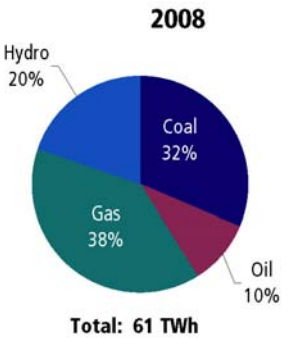
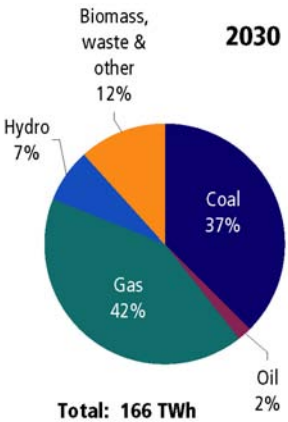
USAID's ECO-Asia CDCP program uses policy and market interventions to promote the scale up of investment and implementation in clean energy in developing Asian economies. The program is active in China, India, Indonesia, the Philippines, Thailand, and Vietnam. ECO-Asia CDCP partnered with Meritas in the development of this guide as part of its Asia Clean Energy Policy and Regulatory Dialogue, which is aimed at building capacity in the region to design and implement effective policy, regulatory, and legal frameworks for energy efficiency and renewable energy.

Electricity Generation by Fuel Type: Philippines







Source: Asian Development Bank, International Energy Agency, Asia-Pacific Energy Research Center, and The World Bank

The world has recently witnessed some of the most catastrophic natural events in human history — extreme hurricanes, severe droughts, and unexpected hailstorms, among others — causing economic and social disruption. The Philippines has not been spared, having experienced fierce typhoons over the past several years. Many attribute these extreme weather conditions to global warming or climate change, caused by emissions of carbon dioxide from the combustion of fossil fuels. The rise of climate change issues, coupled with ever-increasing oil prices, raises concerns about energy security. To address these issues, the Philippines has followed an increasing global trend toward developing legislation and financial incentives to support the scale-up of renewable energy (RE) resources.

1. What are the driving factors for increasing renewable energy production in the Philippines?

The Philippines enacted Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008 (the RE Act),[1] on 16 December 2008 as the country's comprehensive legislation on RE development.

The RE Act is an investor-friendly piece of legislation, as it improves previous policies and regulations and provides attractive incentives relating to RE activities. It encourages robust growth in the Philippines' RE sector through the use of both fiscal and non-fiscal incentives.

2. Which renewable energy sources are viewed as the best opportunity for the Philippines and why?

The Philippines is blessed with a wide array of RE resources such as biomass, solar, wind, hydropower, geothermal, and ocean energy resources.

Among its many RE resources, hydropower, geothermal, and biomass are in the Philippines' top list for exploration, utilization, and availability. The

[1] The RE Act took effect on 30 January 2009, while its Implementing Rules and Regulations embodied in the Philippine Department of Energy (DOE) Circular No. DC2009-05-0008 were promulgated on 25 May 2009.

Philippines is an archipelago surrounded by bodies of water and remains primarily an agricultural country. The agricultural by-products available from all agricultural sectors create immense biomass resources. Moreover, the Philippines ranks second in the world when it comes to geothermal energy resources.

With respect to wind resources, the Philippines has the technical potential to produce more than 70,000 MW of wind power and the short-term economic potential to develop at least 10 to 20 percent of these wind energy resources. At present, the Philippines' Department of Energy (DOE) targets to produce 500 to 1,000 MW of wind power. Furthermore, the Philippines also has one of the largest potentials for solar energy in the region. To date, about 500 MW of solar photovoltaic panels have been installed in the Philippines.

3. What role does the government play in regulating the energy industry? Describe the regulating environment and trends in deregulation.

By virtue of the country's constitutional mandate, RE resources may only be explored, developed, and utilized by private entities through, and pursuant to, RE service contracts entered into with the Philippine government.

The Electricity Power Industry Reform Act (EPIRA), passed by the Philippine Congress in 2001, deregulates generation and supply of electricity. EPIRA includes provisions that call for the restructuring of the electricity supply industry and the privatization of the National Power Corporation. The restructuring scheme separates the different components of the power sector, namely, generation, transmission, distribution, and supply. On the other hand, the National Power Corporation involves the sale of the state-owned power firm's generation and transmission assets to private investors. These two reforms encourage greater competition and attract more private-sector investments in the power industry.

4. What agencies or bodies of government oversee the energy sector? What goals or mandates has the government set for electricity generation or fuels production from renewable sources?

The DOE is the lead government agency that primarily regulates the exploration and development of energy resources in the Philippines. However, the DOE's authority does not exclude the authority of other government agencies, such as the Energy Regulatory Commission (with respect to the generation, transmission and distribution of electricity), the Department of Environment and Natural Resources, the National Water Resources Board, the National Commission on Indigenous Peoples, the Department of Public Works and Highways, concerned local government units, and other relevant government agencies. These other government agencies can partake in matters relating to the exploration, development, and utilization of RE operation systems.

With respect to the generation of electricity, the Philippine government expects to double its present installed capacity in 20 years. Of this, RE is to account for 10.6 GW by 2030. Currently, RE accounts for 5.27 GW of total renewable electricity and comprises 43 percent of the total energy mix.

As part of its plans to increase RE capacity, the Philippine government has launched the Alternative Fuels Program. This Program is one of the key elements in attaining the country's mandate of 60 percent energy self-sufficiency by 2010. Subprograms include the Biodiesel Program, the Bioethanol Program, the National Gas Vehicle Program for Public Transport, and the Autogas Program. Overall targets include increasing bioethanol blends to 10 percent by 2011.

5. What are the opportunities for private ownership (vs. public ownership) in clean energy development and technologies?

The state retains ownership of the RE resources found within Philippine territory. Thus, RE resources in the Philippines may only be explored, developed and utilized by private entities through RE service contracts entered into with the Philippine government.

The Philippines, under the RE Act, has set a policy to increase the utilization of renewable energy by institutionalizing the development of national and local capabilities in the use of renewable energy systems. The RE Act also promotes efficient and cost-effective commercial application by providing fiscal and non-fiscal incentives to private entities such as RE developers, manufacturers, fabricators, and suppliers of locally produced RE equipment and components.

6. What is the level of government investment or what incentives are in place to support these goals and targets?

Income Tax Exemption

An RE developer is fully exempt from income taxes levied by the national government for seven years from the start of the commercial operation. Thereafter, it shall pay income tax at the rate of 10 percent instead of the usual income tax rate of 30 percent. An RE developer is not subject to the minimum corporate income tax, which is normally equivalent to two percent of gross income payable beginning on the fourth taxable year of its business operations.

Purchase of Machinery, Equipment, Materials, and Parts

The importation of machinery, equipment, materials, and parts directly, actually, and exclusively used in RE facilities is exempt from customs duties within the first 10 years from the date the importer is certified as an RE developer. Tax credits are also granted to a certified RE developer who purchases RE machinery, equipment, raw materials, and parts from a domestic manufacturer, fabricator, or supplier at the rate of a 100 percent tax credit on value-added tax (VAT) and customs duties on locally produced equipment. Unlike in the case of a duty-free importation, there is no time limit for the availment of such tax credits.

Zero Percent VAT

Certain transactions of an RE developer are subject to zero percent VAT, specifically:

- The purchase of local goods, properties, and services needed for the development, construction, and installation of the plant facilities of RE developers; and
- The purchase of local goods, properties, and services needed for the whole process of exploration and development of RE

resources up to their conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.

Furthermore, the seller in these transactions may, within two years after the close of the taxable quarter from when the transactions are made, apply for issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such zero-rated transactions.

Lower Government Share

The Philippine government has dramatically lowered its share in revenue from RE development projects. From a staggering rate of up to 60 percent before the enactment of the RE Act, the Philippine government now only fixes its share at one percent of the gross income of RE developers in the preceding fiscal year. However, the Philippine government's share for indigenous geothermal energy projects is pegged at 1.5 percent. The government's share is waived for biomass development projects.

Other Incentives

The RE Act grants a set of fiscal incentives to manufacturers, fabricators, and suppliers of locally produced RE equipment and components, such as:

- Tax and duty-free importation of components, parts, and materials, including VAT, subject to certain conditions under the RE Act;
- Tax credit on the purchase of domestic capital components, parts, and materials;
- Income tax holiday for seven years starting from the date of recognition or accreditation; and
- Zero percent VAT on transactions with local suppliers of goods, properties, and services.

Moreover, government financial institutions are mandated to provide preferential financial packages for the development, utilization, and commercialization of RE projects that are duly recommended and endorsed by the DOE. Other incentives for RE developers include:

- A special rate of realty taxes on equipment and machinery;
- A cash incentive for RE developers for missionary electrification; and
- A tax exemption for carbon credits.

7. What kind of emphasis is placed on researching and developing renewable energy technologies versus looking to outside energy resources?

Many RE technologies have already been developed internationally. Since support for the R&D of these technologies entails huge costs, the RE industry and the Philippine government see no significant advantage in reinventing the wheel and conducting domestic research and development. Instead, the long-term goal is to locally fabricate and manufacture RE equipment for the sale and export to neighboring countries in the Association of Southeast Asian Nations (ASEAN), taking advantage of the strategic location of the Philippines.

While inevitably most, if not all, of the utilized RE technologies will be sourced from abroad, the Philippine government wishes to attract and encourage the private sector to put up fabrication and manufacturing facilities in the Philippines. The policy of the government to encourage domestic fabrication and manufacturing is manifest in Section 21 of the RE Act, which provides for incentives for RE commercialization. Incentives include duty-free importation of components, parts, and materials; tax credits on domestic capital components, parts, and materials; an income tax holiday and exemption; and zero percent VAT on transactions.

Nevertheless, the Philippine government, with the help of different institutions, supports further R&D of existing RE technologies and processes, especially those that may be utilized for particular RE sources available in the Philippines.

8. Is the Philippines on track to be a clean energy importer or exporter from the standpoint of power production supply and manufacturing?

The archipelagic nature of the Philippines constitutes a major barrier to the progress of power production and supply and related industries in the Philippines. A few ASEAN agreements indicate the intent of ASEAN member countries to interconnect for the import and export of RE resources. However, these agreements have not yet been implemented. There is also a plan to interconnect power generation and/or transmission

systems within the ASEAN region; however, the implementation of this plan will prove very difficult with respect to the Philippines because of the country's physical detachment from other ASEAN member countries. Consequently, the Philippine government has opted to focus on local development and commercialization of RE, as this is the area where it has the most potential for export. In fact, the Philippines is currently exporting solar wafers to an American-based company that operates a solar wafer manufacturing facility. It should be noted, however, that the Philippines continues to be a net importer of fuel.

9. How developed is the Philippine workforce to support innovation, development and the production of renewable energy?

RE production is technology-driven and expertise is necessarily gained during the research and development of RE technologies, which is usually done offshore.

The Philippines has local RE production facilities and has developed a significant amount of expertise in RE production, especially in the fields of hydro and geothermal energy. Currently, the Philippines is the second largest geothermal energy producer in the world and shares its R&D expertise in RE development with other countries.

To continuously gain expertise in RE production, the Philippine government is pushing for and implementing capacity-building programs for both the government and private sector. Such capacity-building programs include training activities, hiring of experts, and gaining access to and studying various RE technologies.

While the export of this expertise is encouraged, the Philippine government recognizes that there are numerous RE projects in the pipeline in the near future. Thus, there is a necessity to keep a sufficient amount of such expertise in the Philippines.

10. What are the key barriers to increasing renewable energy as a part of the Philippine energy mix?

The enactment of the RE Act attempts to resolve many of the barriers that impeded RE development. Two of the key major barriers that the RE Act attempts to resolve are the cost of RE technologies and availability of financial packages to fund development.

The cost of RE generation in the Philippines is still relatively high compared to the cost of traditional sources of energy, which have benefited from decades of research and development as well as government support and subsidies. Nonetheless, the RE Act will alleviate this barrier through the introduction of the above-discussed incentives, which should make the economics of RE development more attractive. Moreover, the Philippine DOE has established a PHP2 billion (or USD44.4 million[2]) trust fund to support the development of RE in the country.

However, considering that the RE Act is still in its infancy, major barriers remaining after the enactment of the RE Act have yet to be identified.

[2] Rate of PHP 45 / USD 1

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