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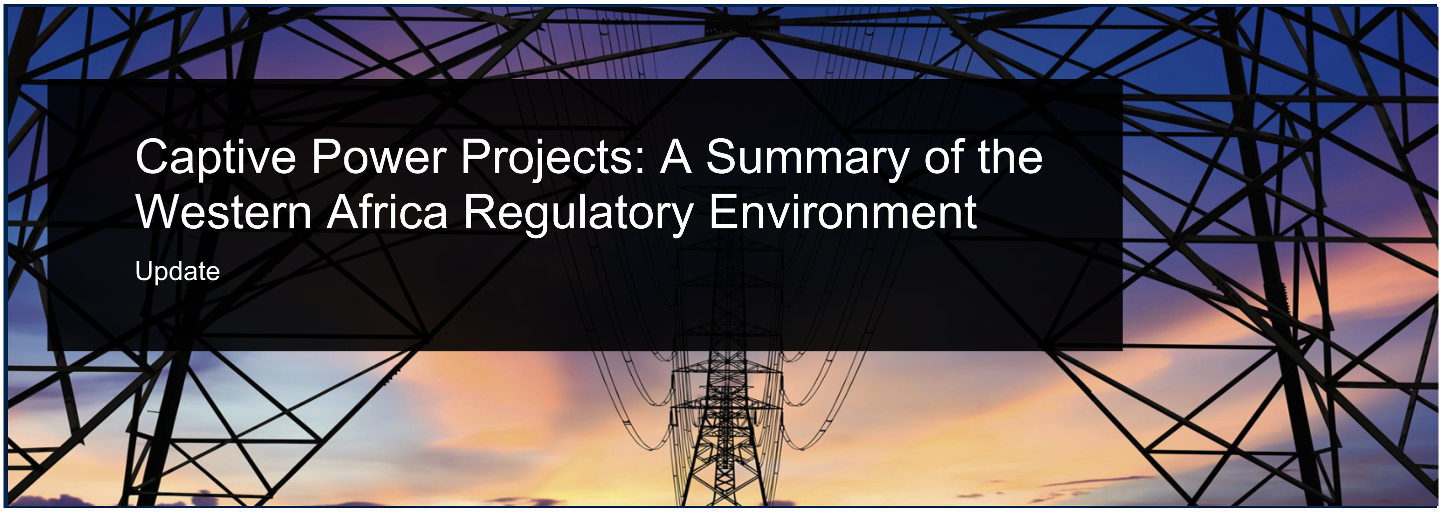

Captive Power Projects: A Summary of the Western Africa Regulatory Environment

Update

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Recent increases in construction and financing costs are directly affecting the development of energy projects across Africa. Captive power projects (CPPs) offer the possibility of mitigating this challenging landscape for both the developers themselves and those funding them. For those unfamiliar with the concept, CPPs are a type of power plant which provide a localised source of power to the end consumer. They are typically used in power-intensive industries for which a continual and consistent energy supply is paramount. In West Africa, CPPs are of particular interest to mining companies looking for reliable sources of energy. However, the successful development of CPPs in the region will be largely determined by the level of liberalisation in the country's energy sector, and the right of non-state entities to develop, construct, operate and maintain these projects.

The energy sector across Western Africa has traditionally been restricted to a public monopoly closely associated with the sovereignty of a country, designed to protect the national utility company. When this type of regulatory framework prohibits or inhibits the production, transport and supply of electricity, two structures are usually considered:

1. where the development, construction, operation, and maintenance of a CPP serves the company's own needs and this is permitted by the state's regulation, the project falls under the self-production model (SPM) and the company can, as is often the case, subcontract with energy companies to ensure the supply of energy; or
2. where the relevant regulation permits development, construction, operation, and maintenance of a CPP for the purpose of supplying electricity to a separate private company, the project falls under the independent producer model (IPM) and can supply energy via off-grid infrastructure.

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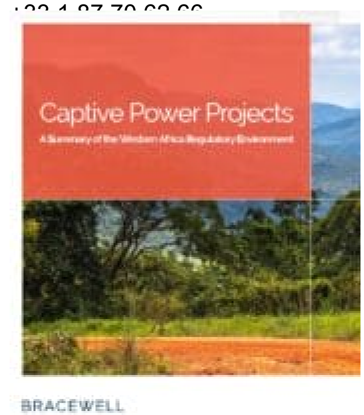

DOWNLOAD CAPTIVE POWER PROJECTS: A SUMMARY OF THE WESTERN AFRICA REGULATORY ENVIRONMENT

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Bracewell has prepared a report summarising the applicable regulations for the two models outlined above which covers the following 11 countries: Benin, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Democratic Republic of Congo, Guinea (Conakry), Mali, Mauritania, Sénégal and Togo.

This report provides a high-level overview of existing and proposed regulation based on available sources. It is not a substitute for bespoke legal advice from lawyers in the jurisdictions concerned. Due to the nature of the region, the relatively recent development of the CPP landscape, and the inherent uncertainty in the interpretation of these regulations, we recommend a thorough technical and legal analysis of projects which should consider specific location and bankability issues prior to committing to a CPP project.

As the report illustrates, the energy sector of several countries — such as Burkina Faso, Mali and Togo — remains largely monopolised by the national electricity company, even where the company's monopoly has been officially terminated by new legislation. In other counties — such as the Republic of Guinea — the legislation remains under development, so while the current framework gives limited guidance, there are no prohibitions laid down either. In contrast, many regions in West Africa have renovated the structure and essence of their energy legislation, demonstrating an intentional and welcome movement away from state-governed monopolies. Countries including Mauritania, Benin, Cameroon and Côte d'Ivoire have all implemented (to varying degrees) a legal framework or, as often called, electricity or energy codes, that allow freedom of energy production. These enable the development of CPPs via either of the two models outlined above. However, it is worth noting that the transmission (rather than production) of the electricity is often still state-regulated. In some countries, such as Chad, while the transmission is under state monopoly, the distribution and construction of CPPs can be carried out by private actors.

In several regions, the relevant authorisations, concessions and/or licences for off-grid production in relation to IPMs are dependent on power purchase agreements being entered into with entities that constitute "Eligible Clients," a term usually defined in the relevant energy code which shows a maintained, albeit reduced, level of control on the part of the state. The authorisation of SPMs is largely dependent on the installed capacity of the CPP, where sale of surplus is authorised, but the amount is capped by reference to a restricted percentage of the project's installed capacity. The identity of the buyer is also often restricted, as above, to an entity constituting an "Eligible Client" or, in some jurisdictions, such as Togo, the grid operator. The various authorisations and concessions are granted by the relevant ministerial committees responsible for the state's energy sector.

For the sake of comprehensiveness, references in the report are occasionally made to regimes with installed capacity thresholds that are likely too low to support the development of a CPP project.

While the report has outlined some of the trends we are seeing as regulations develop, the details for each state vary, with some requiring further investigation with the relevant administration. It is therefore important to ensure that each CPP proposal is tailored and considered in line with the relevant state's particular legislation and restrictions.