



# ***“Proposed Regulatory Principles to Promote Trade & Investment in the SADC Electricity Sector”***

*by*

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# *Presentation Outline*

- Background
- Origins of the Proposed Principles
- High-level Regulatory Principles
- Application of the Principles
- Conclusions

# *Background*

## Some of the Challenges for Utility Regulation in Africa

- **Improving performance of some of the State-Owned Utilities**
- **Inappropriate pricing & unsustainable subsidies due to competing interests**
- **Regulation being a relatively new concept**
- **Limited public sector finance for new infrastructure**
- **Limited private sector participation**
- **Low levels of access to services**

# *Origins of the Proposed Principles*

- **The African Forum for Utility Regulators (AFUR) identified the development and promotion of a common framework for utility regulation in Africa as one of the organisation's key strategic initiatives**
- **Commissioned the preparation of a Position Paper on the subject with assistance from PPIAF through the World Bank**
- **At the 1<sup>st</sup> Annual General Assembly (AGA) of AFUR, held in Yaounde, Cameroon from 11 – 13 November 2003, AFUR officially adopted "A Framework for Utility Regulation in Africa"**

# *Origins of the Proposed Principles*

- **Framework builds on previous work undertaken by AFUR, most importantly a comprehensive 2002 survey of 27 African utility regulators on regulatory governance**
- **It also takes its cue from a comprehensive body of international experience in terms of best practise utility regulation, adapted as appropriate to meet African prerogatives and priorities in terms of regulation**
- **RERA adopted the AFUR Framework on 27 Oct 2005**

# *High-Level Regulatory Principles*

**AFUR Framework represents a recommended high-level set of principles and approaches to be applied as a guide by African utility regulators, as well as by governments when considering the establishment of new regulators**

# *High-Level Regulatory Principles*

- ✓ **Minimum regulation (to achieve regulatory objectives)**
- ✓ **Transparent decision-making and due process**
- ✓ **Independent / autonomous regulation, where possible**
- ✓ **Accountability towards government, investors and end-users**
- ✓ **Non-discrimination when not in conflict with policy prerogatives**
- ✓ **Investor protection against physical & regulatory expropriation**
- ✓ **Promotion of competition by limiting anti-competitive behaviour**

# *Minimum Regulation*

- **Utility regulator established for a particular purpose**
- **Regulatory activities to be tailored to this purpose**
- **Regulation should focus on addressing purpose only**
- **Regulatory focus on:**
  - ◆ **Needs of 'captive' customers**
  - ◆ **Ensuring third-party access to monopoly infrastructure**
  - ◆ **Addressing unfair competition and monopoly abuse**
- **Apply mixture of statutory prescription (in legislation) and regulatory discretion**
- **Include periodic review to ensure adherence to minimum regulation principle and use of appropriate regulatory designs and methodologies**

# *Due Process & Transparency*

## ● **Guiding principle:**

- *'Regulatory approaches and practises should be objective, fair and open. Justice must not only be done, but also be seen to be done'*

## ● **Common principles to be applied:**

- **Any party subject to regulation has a right to participate**
- **Decisions without a right to be heard are not desirable**
- **Justification of decisions towards any affected party**
- **Strict adherence to law of country**

## ● **Regulator to keep general public informed about its actions, with regulatory proceedings being open to the public**

# *Independent Regulation*

- **True regulatory independence ensures independent decision-making by regulator**
- **Independence less important if legislation is detailed and prescriptive than where regulator has wide discretionary powers**
- **Regulatory independence also defined by independence of regulatory processes**
  - ✿ **Preferably based on strong legal system**
  - ✿ **Alternatively make use of credible and independent adjudication mechanisms - including appeal, tribunal and review**

# *Independent Regulation*

- **Regulatory independence is defined by:**
  - ✿ **Relationship between regulator and government**
    - **Government appointing members to governance structure**
    - **Government acting in shareholder capacity (of regulated entities)**
    - **Government as funder of regulator and regulatory activities**
  - ✿ **Relationship between regulator and regulated parties (risk of regulatory capture)**
    - **Regulated party contributing to funding of regulator**
    - **Governance structure dominated by persons with background from regulated entity**
    - **Regulated entities in position to offer better terms and conditions to their staff than what regulator can offer**

# *Accountable Regulation*

- **Regulatory independence must be complemented by accountability**
- **Regulator to exercise powers in a justifiable manner and be held responsible for its actions**
  - ✿ Reporting obligation to parliament via a responsible ministry/department
  - ✿ Appropriate mechanisms to facilitate interaction and accountability vis-à-vis 'executive' arm of government
    - Reporting to go beyond financial and accounting issues, e.g. including work plans and activity reports
    - Reports to be made available to general public
    - Possible establishment of 'shareholder compact' setting out government's expectations of deliverables by the regulator
    - Use of public hearings and meetings open to general public

# *Non-Discrimination*

- **Key principles include:**
  - ✿ **Non-discrimination by the regulator between the same classes of regulated entities**
    - **Regulatory processes, e.g. license application and sanctions, must be designed to be non-discriminatory**
    - **Some regulatory discretion may be required at times**
    - **Cases of 'public merit' to be dealt with separately and transparently**
  - ✿ **Regulator to be 'technology neutral', but may impose certain 'minimum standards'**
  - ✿ **Regulator to ensure that it (indirectly) does not unduly discriminate against any classes of consumers**

# *Investment Protection*

## ● **Regulators must contribute to acceptable investment risks**

- ✿ Consistency in regulatory approaches and practises
- ✿ Predictability of regulatory decisions

## ● **Additional mechanisms required:**

- ✿ Clear and unambiguous definition of regulatory instruments
- ✿ Careful balance between regulatory discretion and detailed legal provisions
- ✿ Inclusion of transparent review and/or appeal mechanisms
- ✿ Adherence to principle of no expropriation (physical and regulatory) without compensation

# *Competition*

- **Most African utility industries are monopolies & offer less opportunity for 'regulation through competition'**
- **Regulation hence to focus on limiting anti-competitive behaviour:**
  - ✿ Removal of monopoly rights
  - ✿ Compulsory, non-discriminatory third party access
  - ✿ Ring-fencing or separation of different elements of the industry value chain
  - ✿ Price regulation of services provided by incumbents (to own affiliates and external parties)
  - ✿ Price regulation of services with limited or no competition

# *Application of the Principles*

- **Framework is being used to focus RERA initiatives and activities vis- à-vis:**
  - ✿ member regulators
  - ✿ future regulator members
  - ✿ host governments
  - ✿ Appropriate national, regional and international fora
- **RERA Members are expected to act as 'ambassadors' to promote the AFUR Framework Principles**
- **Consideration will be given to establishing a 'peer review' mechanism for assessment of progress being towards the adoption of the principles**

# *Conclusions*

- **RERA, working in conjunction with other regulatory organizations such as AFUR, is committed to facilitating a firm foundation for effective utility regulation in the SADC region**
- **Adoption of the AFUR Framework by RERA is a clear manifestation of its commitment to promote sound and transparent principles and approaches to electricity regulation in the region**

## *Conclusions (Cont'd)*

- **RERA has embarked on further elaboration of AFUR Framework to respond to the electricity sector specific challenges in the SADC region**
- **Adoption of these principles is expected to contribute towards creating a conducive environment for electricity infrastructure development in the SADC region**

Thank You