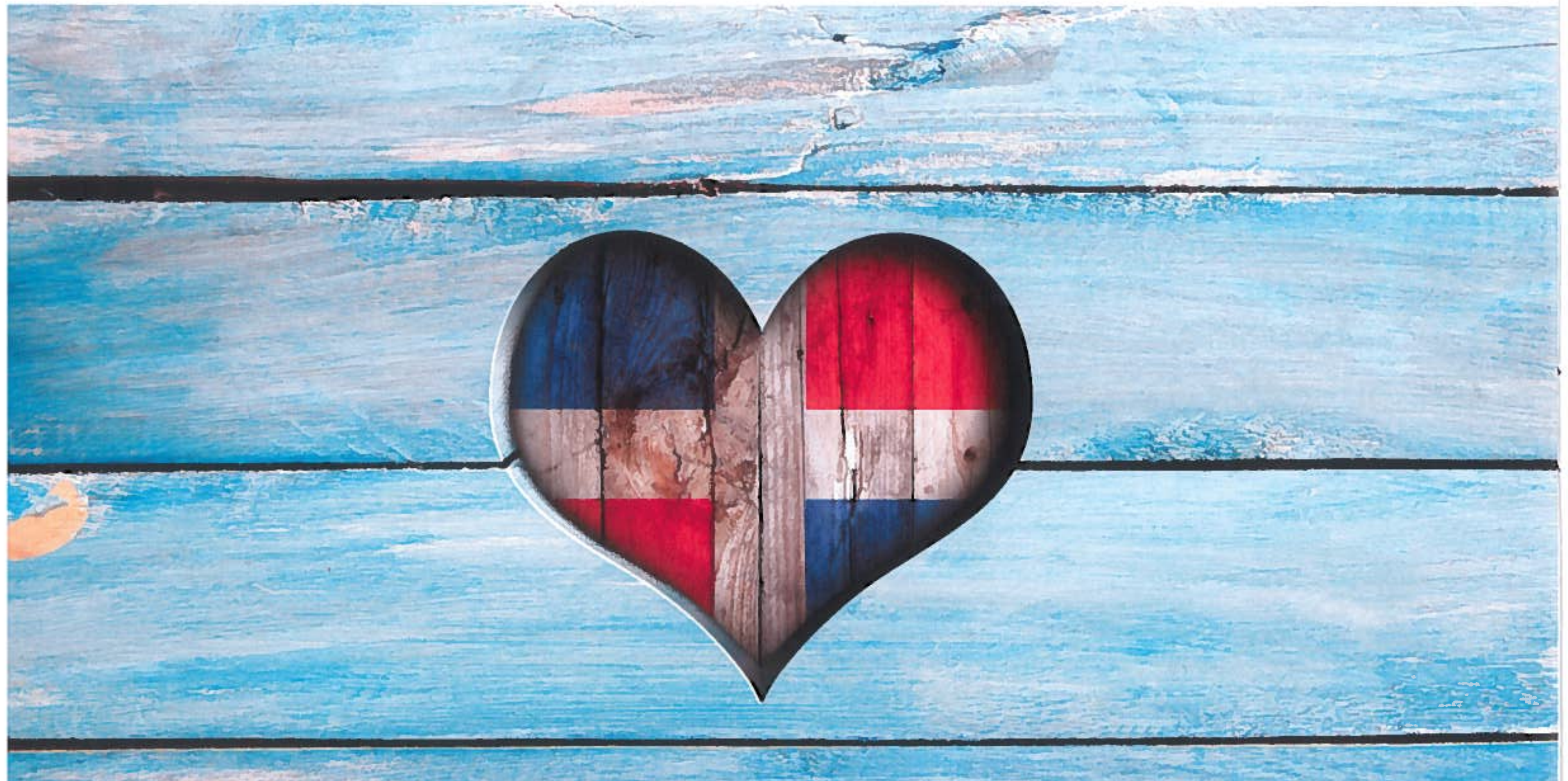

A blossoming sector

The Dominican Republic's national pact for the reform of its electricity industry is expected to boost investment opportunities

The Dominican Republic stands as the most thriving economy in the Caribbean and is one of the few Latin American countries that has been able to enjoy continuous economic growth over the past few years.

This, alongside its unparalleled location, favourable climate, the hospitality of its people, its beautiful beaches and mountains, political and social stability, as well as its efficient communication system, makes the Dominican Republic a prime location for foreign investment.

However, the country has experienced failures in the provision of electrical energy for decades. Electrical services were monopolised by the state from 1955, the year in which the Dominican state bought the enterprise formerly known as *'Compañía Eléctrica de Santo Domingo'*, until 1999 when the monopoly was broken down into five major capitalised companies. Of these, three were tasked to undertake energy distribution, and the other two were tasked with the generation process.

This operation was performed as per the provisions of Law number 141-1997, a special law that followed the Bolivian capitalisation model, as opposed to a privatisation model. Through this model, a private investor could acquire up to 50% of the shares of the enterprises that were created, subsequently assuming the management of those enterprises. Under this law, transmission and generation of hydraulic energy remained in hands of the state.

The positive effects of this law were apparent after a brief period of time. Investment flowed and modern, alternative fuel generation plants were built, such as the Punta Caucedo 300 MW natural gas plant which was built by AES Corporation, as well as the combined cycle plant built by Monte Rio Power Corporation, a joint venture between Caterpillar and a local investor.

However, predominantly political factors due to public pressure and the need to overcome high levels of non-technical distribution losses (as a consequence of energy theft) motivated the repurchase of the distributing enterprises by the Dominican state, two of them in 2003 and the last one in 2009.

Despite the improvements achieved in the generation area, with important investment that diversified the country's energy matrix, the repurchase provoked, among other things, a chronically inefficient and highly deficient electricity sector due to the cash flow issues of the distributors.

Electricity in the Dominican Republic is currently produced by five sources, whereas in the year 2000 it could only be produced by two. According to information provided by the Dominican Association for the Electrical Industry (*Asociación Dominicana de la Industria Eléctrica*, or ADIE), in 2014 electricity was produced with petroleum (43%); natural gas (30%); carbon (16%); water (9%); and, wind (2%).

Under Law number 01-2012 for the National Development Strategy 2030, a national pact for the reform of the electricity sector has been on the table for over a year and is under discussion by all relevant players: public, private, social and unions. Through this means it is hoped that the structural crisis of the electricity sector can be solved, and the relevant changes to the regulatory and institutional framework made, so as to facilitate the investment needed to supply the energy demanded by the rate of development of the country.

Investment opportunities

We understand that once the pact is in agreed form, investment opportunities will blossom. Private investments are so far limited by the law to the areas of generation and distribution, although the latter has been controlled by the Dominican state for over 10 years.

The hope of the Dominican's private sector is that generation and distribution activities will be privatised, leaving the role of the Dominican state solely as a regulator, and exempting activities involving hydroelectric generation and transmission. Under Dominican law, the latter can only be carried out by the state. There have been no agreements reached in this regard.

There is discussion regarding the possibility of a transition that would provide distributing enterprises running at a deficit the opportunity to recover, after which private funding would be tendered. In the meantime, commercialisation and collection services would be subcontracted to private enterprises, in which case bids would need to be invited.

The Dominican government has invested in two 660 MW carbon plants and the president has publicly invited the private sector to invest in those plants, although the terms and conditions for this investment have not yet been specified. The private sector's proposal consists of bidding on the property as well as the operations of the plants. To date, bids have only been called in relation to the operation and maintenance of the plants.

Likewise, officials of the electricity sector have publicly stated that the government is considering the construction of liquefied natural gas plants (LNG), including a regasification terminal, to produce around 660 MW to fulfil the demand. However, no details have been provided on a call for bids, nor on the way in which private and public sectors would participate.

This is due to the fact that there is a considerable amount of energy not served, given that the distributors ration the demand. As per statistics published by the ADIE, the total amount of energy not served by the distributors in 2015 was 2,371.90 Gwh.

Renewable energy has been developing in the Dominican Republic after the passing of Law number 57-07 on renewable energy. In addition to eolic projects, a photovoltaic plant of 30 MW was recently inaugurated, and numerous other projects are developing. Due to the optimum solar and wind conditions that the Dominican Republic enjoys, these are areas with potential for investment.

Recently, San Pedro Bio Energy, the country's first biomass power plant was inaugurated. It will generate 30 MW using sugar cane bagasse from the factory owned by the same group. The Dominican Republic has land available for the planting of trees that could be used for plants that are operated through biomass, which is why it is expected that other projects will be developed in the very near future.

Electricity sector officials have stated that the government is considering the construction of liquefied natural gas plants

Ultimately, there are investment opportunities in the Dominican electricity sector. Local and international agents are very keen to see the pact come to fruition, as it is hoped that it will lay the groundwork needed to promote investment and allow the Dominican Republic to finally overcome the deficiencies which for years have tarnished its economic performance and the competitiveness of its productive sectors.

The manner in which these investments are to be carried out is still undefined. The General Electricity Law states that in order to undertake generation activities, a definite concession must be granted by the executive branch, which has no correlation with obtaining a power purchase agreement (PPA). However, except for two plants that were inaugurated in early 2000, a short time after the capitalisation, few investments have been performed this way, with the exception of those that have been installed by generators already present in the market.

The Dominican Republic does not have a law regarding public-private partnerships (PPPs). Recently a bill has been drafted and is under discussion.

That said, Law 141-97 on the reform of the public enterprise concerned a specific framework that ruled the public-private partnership, but the scope of this law was limited to mixed enterprises that had emerged from reformed public enterprises.

Both local and foreign investors anxiously await the finalisation of the pact, in the hope that it presents a definite solution to the arduous and costly deficit that exists in the Dominican energy sector. The possible influx of investment depends on this becoming a reality. But even more anxious are the millions of Dominican citizens that live under the effects of an inefficient energy sector; hopefully the pact will provide relief to both.

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About the author

Marisol Vicens is a senior partner at Headrick Rizik Alvarez & Fernández, and head of the firm's energy and corporate practices.

She attained a Doctor in Law (*summa cum laude*)at Universidad Iberoamericana (UNIBE), Santo Domingo (1987); a Masters in civil law (*summa cum laude*)at L'Université de Droit, d'Economie et Sciences Sociales de Paris, France (1989); and, a Masters in general private law (*magna cum laude*) at L'Université de Droit, d'Economie et Sciences Sociales de Paris, France (1990).

She acts as a representative of the private sector before the support committee in charge of structuring the methodology and coordinating the enforcement of the National Pact for the Restructuring of the Electric Sector in the Dominican Republic. She is also a member of the Board of the National Council of Private Enterprises (CONEP); former president of the Dominican Confederation of Employers Federation (COPARDOM) (2010-2012) and of the National Association of Young Entrepreneurs (ANJE) (2003); a legal consultant of the Industrial Association of the Dominican Republic (AIRD); and a member of the International Bar Association (IBA).

She speaks English, French, Spanish and Italian.