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companies are usually short term in duration, typically one year subject to annual extensions. Under China's Renewable Energy Law, the grid companies are obligated to accept all energy produced by duly licensed and operating solar and wind energy projects. In practice, however, solar and wind energy projects have been subject to curtailment by grid companies due to transmission capacity and other infrastructure constraints.

Solar and wind energy projects owned in whole or in part by foreign entities are also subject to the general foreign investment regulatory regime administered by the Ministry of Commerce, or "MOFCOM," and State Administration of Foreign Exchange. Foreign investment in the solar and wind power industry is currently listed by MOFCOM as an "encouraged" activity, which means new solar or wind energy projects may be developed by a wholly foreign owned enterprise on the same basis as they may be developed by a domestic enterprise. However, if a foreign investor seeks to acquire a solar or wind project (whether operating or under construction), it must obtain the approval of either the national office of MOFCOM or its regional offices (depending on the total monetary value of the project and structure of the acquisition).

Under current Chinese law, acquisition of a solar or wind energy project by a foreign party does not in itself require approval from State Administration of Foreign Exchange, but any foreign loans issued by a foreign party (including shareholder loans) must be registered with SAFE before they may be disbursed.

Brazil

The National Electric Energy Agency, or the "ANEEL," and the Energy Research Company are the predominant regulatory bodies governing electric energy distribution in Brazil. These governmental agencies are responsible for enacting rules and regulations related to, among others, granting licenses to enter the electricity generation market, setting tariff rates, regulating the auction process used to award energy production contracts and establishing the incentive structure for producers of renewable energy.

The electricity sector in Brazil is divided into two markets: (i) the regulated market where electric energy is supplied at rates and tariffs set by a government-owned distribution companies, and (ii) the free market, in which any supplier (generators, distributors, self-producers, independent producers, traders of energy, etc.) can directly sell energy to consumers at market rates with the prior approval of the ANEEL.

With respect to the regulated market, the ANEEL established an auction system for awarding contracts for the production of renewable energy. Domestic and foreign companies (solely or in consortium), private equity funds and special purpose vehicles are eligible to bid at auction. In case of a consortium, the consortium parties are jointly liable for all obligations arising from the auction rules and the resulting PPA. If a foreign company prevails at auction, it must incorporate a Brazilian company to enter into the PPA. Bidders are required to deposit a bid bond equal to 1% of the project estimated cost, which must be declared by the bidder and approved by the ANEEL beforehand. This bond is returned after the contract is signed if the bidder wins the auction; otherwise, it is returned immediately following the auction. Auction winners also need to deposit a project performance bond equal to 5% of the investment cost that is released after certain project milestones are completed.

Several penalties are applicable in the event of delay in achieving certain milestones set in the PPA contract and in the ANEEL authorization. Among other default events, the ANEEL has the right to terminate the contract if a delay in achieving milestones exceeds one year.

Brazilian law does not restrict the foreign ownership of electricity generating companies, but a company participating in the electric energy sector must be incorporated under Brazilian law.