



Greenland – overview of national regulation on hydropower activities

National regulation on Hydropower activities: Greenland Parliament Act no 5 of 27. November 2018 (The Hydropower Act)

May 2022
Case no. 2022-11165
and 2021 – 7493

The transfer of all legislative and administrative powers in the area of hydropower as decided by Greenland Parliament Act no 14 of 6 November 1997¹ became effective on 1 January 1998. In connection with the transfer of powers, the former Danish Act on Hydropower in Greenland was repealed. The present Greenland Parliament Act no. 5 of 27 November 2018² became effective on 1 January 2019 (the Hydropower Act). It regulates prospecting, and exploitation of hydro for production of energy and related activities.

Postboks 1614
3900 Nuuk
Tlf. (+299) 34 50 00
E-mail: pan@nanoq.gl
www.naalakkersuisut.gl

The purpose of the Hydropower Act and its general principles governing hydropower activities are stated in section 1. The purpose is to ensure appropriate prospecting and exploitation of hydropower or purposes relating to the use of hydropower for production of energy. The Act further aims to ensure that activities under the Act are performed properly as regards safety, health, the environment, resource utilisation and social sustainability as well as appropriately and in accordance with acknowledged best international practices under similar conditions.

Section 2 and 3 states two fundamental rules of the regulation of hydropower resources for production of energy. Pursuant to section 2 the Government of Greenland has the proprietary right to deal with (exercise control of and use) and exploit all hydropower resources for production of Energy. Under section 3, activities comprised by the Act, including prospecting and exploitation of all hydropower resources for production of Energy may generally be performed only under a licence granted by the Government of Greenland.

Administration of the Hydropower Act and all activities under it is generally carried out by the Ministry for Agriculture, Self-Sufficiency, Energy and

¹ In Danish: "Landstingsforordning nr. 14 af 6. november 1997 om energiforsyning":

<https://lovgivning.gl/lov?rid={22EC4BC8-5976-4A1B-A1B2-D609876D7498}>

² In Danish: "Inatsisartutlov nr. 5 af 27. november 2018 om udnyttelse af vandkraftressourcer til produktion af energi": <https://lovgivning.gl/lov?rid={83DD2BC5-DB3B-4E08-BB2D-970999A94AB7}>

Environment. It approves activities in connection with prospecting and exploitation licences (to the extent approval is required), licensee's provision of security for performance of their obligations, and plans for establishment of hydropower plants, exploitation (production and use of hydropower plants). Furthermore, the Ministry for Agriculture, Self-Sufficiency, Energy and Environment supervises and inspects activities under licences and other activities covered by the Act.

Under the provisions of the Hydropower Act, the Greenland Government has issued government order on reimbursement of expenses in connection with administration concerning hydropower Resource activities ('reimbursement order'). The order applies when it is provided in a licence that the licensee shall reimburse expenses in connection with administration, including supervision, concerning hydropower resource activities under the licence. The reimbursement requirements cover such expenses of the Greenland Government including expenses in connection with use of external advisers and service providers (irrespective of whether they are employed in another governmental agency or public institution or are professional advisers or service providers).

Legal instruments relating to Hydropower Act and its rules on licences, activity plans and approvals

Under the Hydropower Act, licences are granted on specific terms, including terms on activities comprised by the licence, on the licence period and termination of the licence, on consideration (for example fees or royalties) to be paid to the government and on performance of activities.

In addition to the provisions of the Hydropower Act, main parts of the regulation concerning prospecting and exploitation (production) of energy are set out in the Greenland Government's licence for prospecting and Greenland Government's licence for exploitation and related documents.

The licence terms contain requirements in relation to safety, health, the environment and social sustainability. Other regulated matters are liability for non-performance and damage and loss, including pollution and environmental damage, and security for fulfilment of obligations and liabilities under and in relation to the licence.

Pursuant to section 4, prospecting licences are non-exclusive and granted for a period of up to five years at a time. They are granted on 'Standard terms for

prospecting licences for hydropower resources in Greenland. A licence for prospecting may be extended for further prospecting by up to five years at a time

Pursuant to section 5, an exploration licences are nonexclusive but can be granted on an exclusive basis, if dictated by qualifying circumstances relating to the relevant water resources covered by the licence. A qualifying circumstance could be that the planned activities and the planned energy production require water extraction on such a scale that the licensee needs exclusivity to ensure the necessary inflow of water to the geographical area specified in the licence. Due to major investments in plants and infrastructure, the licensee may need an exclusive exploitation licence.

Sections 8, 9, 10 and 11 of the Hydropower Act contain rules on some possible main licence terms on financial and related matters in licences for exploration for and exploitation of hydrocarbons or minerals.

Pursuant to section 11, an exploitation licence may lay down the extent to which the licensee must use Greenland labour. However, to the extent necessary for the activities, the licensee may use foreign labour if labour with corresponding qualifications does not exist or is not available in Greenland. Similarly, an exploitation licence may lay down the extent to which the licensee must use Greenland enterprises for contracts, supplies and services. Other enterprises may be used if Greenland enterprises are not technically or commercially competitive.

The Greenland Government has used these authorities to set such terms, on use of Greenland labour and Greenland enterprises in the exploitation licences. In most largescale hydropower projects, the licensee must make and perform an impact benefit agreement with the Greenland Government and the local authority of the municipality where the project activities are carried out.

Pursuant to section 11.4, an exploitation licence may also determine the extent to which the licensee must carry out studies and prepare and implement plans to ensure that exploitation of hydropower resources is socially sustainable. Such studies and plans are subject to approval of the Greenland Government. The Greenland Government has used this authority to set such terms: general terms in licences and more specific terms in approvals of plans for activities under licences. (Environmental Impact Assessment; EIA, and Social Impact Assessment, SIA).

Pursuant to section 15, The Greenland Government may lay down licence terms concerning the reversion of an exploitation licence on expiry and on termination. Any reversion of a hydropower plant includes all facilities directly related to the

hydropower plant, including infrastructure, accommodation facilities, technical facilities and equipment constructed and purchased in relation to operate the hydropower plant. Reversion cannot take place earlier than when the exploitations licence expires, unless otherwise agreed between the Greenland Government and the licensee.

Pursuant to section 19, activities under a licence may be performed only in accordance with required plans, including plans for the activities and for matters relating to safety, health and the environment. All plans are subject to approval of the Ministry for Agriculture, Self-Sufficiency, Energy and Environment

Approvals are generally made on specific terms regarding the activities, their performance and other matters comprised by the plans or otherwise related to the activities. Activities may not be performed before all required plans have been approved. Plans must be amended when required due to changes regarding factual, technical, operational, legal or other matters, including standards and requirements in relation to safety, health, the environment and climate matters.

Pursuant to section 24, The Greenland Government lays down general rules on liability for damage and loss and security for payment of compensation. A licensee must compensate damage and loss caused in connection with operations or activities under the licence. But the compensation may be reduced or excluded (forfeited) if the aggrieved party contributed to the damage or loss intentionally or by gross negligence.

Hydropower exploration licences are granted for a period of up to 40 years. Pursuant to section 14(2) a licence may be extended for further exploration for a period up to 20 years at a time. The provision in section 14(3) allows for an extended licence period of a total of 80 years. An extension of the licence period for more than 40 years may be granted on modified terms.

The general selection criteria for granting exploitation licences are the company's technical capability and experience, its financial capability, and its intended exploitation activities including the intended use of the energy for industrial purpose.

Several companies may apply for and be granted a licence jointly. They are then jointly and severally obligated and liable pursuant to the licence and for activities performed under it.

In large hydropower projects, the licensee must make and perform an impact benefit agreement with the Greenland Government and the local authority of the municipality where the project activities are carried out.

Other agreements related to a hydropower project are generally not governed by the Hydropower Act or other legislation specific for hydropower projects or activities. Parties participating or otherwise involved in the projects may thus make and use any agreements they find appropriate for the project. Such agreements will be governed by general rules on commercial agreements and any special rules on specific types of agreements used. Accordingly, hydropower projects may generally be financed in any manner preferred by the licensee company and the other parties involved in the financing, for example by loan to or investment in the licensee company or a combination or variation of these manners of financing.

Direct or indirect transfer of a licence from a licensee to a third party requires approval by the Greenland Government. Indirect transfer means any transfer of ownership interest in the licensee company which will affect the controlling interest.

The Hydropower Act and the licences generally do not contain any special requirements or restriction as to the use of the energy produced under licences. But the Greenland Government may lay down specific terms especially in the case, where an applicant seeks an exploitation licence on an exclusive basis as a prerequisite for financing and operating an off-take industrial project connected to the hydropower plant. In that case an exploitation licence may lay down condition for an industrial project agreement covering the establishment of the hydropower project and the connected offtake industry or commercial project.

Environmental protection and liability

Greenland Parliament Act no 9 of 22. November 2011 on Environmental Protection³. Hydropower activities and a connected offtake industry project are comprised by the Environmental Protection Act. The Environmental Protection Act lays down the main statutory rules regarding the environment, including climate matters, and related liability for pollution and emissions, including emissions of greenhouse gases. Activities must be performed in accordance with acknowledged best international practices in the area under similar conditions. This requirement also comprises protection of the environment and mitigation of emissions and their impacts.

³ In Danish: "Inatsisartutlov nr. 9 af 22. november 2011 om beskyttelse af miljøet":
<https://lovgivning.gl/lov?rid={DD908A25-E80F-47EA-BF4D-FF8EF8473250}>

When the government decides on the granting of a licence or on an approval of an activity or of the establishment and operation of a facility, the government must have regard to the objective of avoiding impairment or any other negative impact on the environment.

The Environmental Impact Assessment (EIA) process

If a hydropower plant or a connected industrial project must be considered to have a significant negative impact on the environment, the government may grant a licence, or an approval based on an assessment of the impact of the activity or facility on the environment. An assessment is then made pursuant to the rules on environmental impact assessment (EIA).

The project proponent/developer in charge of a Project is required to submit a written notification regarding the Project to the Ministry of Agriculture, Self-Sufficiency, Energy and Environment. Based on the information contained in the notification, the Ministry then determines whether an EIA is required for the Project.

If it is decided that an EIA is required, the project proponent/developer must then apply for EIA approval. This application consists, firstly, of 'Terms of Reference' followed by an actual EIA. The Terms of Reference consist of a detailed description of the Project as well as the scope of the EIA. The purpose of the Terms of Reference is to delimit the environmental issues that will or will not be assessed in the EIA (must be scientifically well-founded). Additionally, the Terms of Reference must include a description of the surveys/data that will form the basis of the assessments in the EIA.

The EIA must be prepared based on the Terms of Reference. The EIA must describe and assess the various parts of the environment that may be impacted by the Project. The EIA must include, e.g., alternatives to the Project, and/or alternative locations for the Project. Additionally, the EIA must contain a description of the preventative measures, which may prevent or reduce any significant negative impacts on the environment.

Once the Ministry has determined that the draft EIA is satisfactory, a Greenlandic and Danish version of the EIA is then subject to an 8-week public consultation. The consultation includes all appendices to the EIA. During the consultation period, the Proponent is required to host one or several public meetings concerning the project.

Following the public consultation, a draft EIA approval is prepared. The draft EIA approval will set out terms, the purpose of which is to avoid or reduce any

significant negative environmental impacts stemming from the project. Following a stakeholder consultation, the draft EIA approval is submitted to Naalakkersuisut for its political consideration.

The EIA approval will contain several conditions, which must be complied with during the construction and operational phases of the project. Several permits may be incorporated in/covered by an EIA approval, such as a regular environmental approval, a dumping approval, an effluent discharge approval, etc.

The Environmental Plan (re. the construction phase) and the Emergency Response Plan (re. the operational phase) as well as other such plans, which are incorporated as conditions in the EIA approval, must be prepared by the Proponent and be approved by the Ministry of Agriculture, Self-Sufficiency, Energy and Environment, prior to the initiation of the Project.

The government may lay down specific provisions on protection of the environment and the matters, including provisions on the application of national or international rules, agreements or guidelines concerning climate protection. For approvals of exploitation activities and measures, the Greenland Government may set terms to ensure fulfilment of the licensee's obligations to clean up and monitor affected areas. The terms may require provision of security for fulfilment of these obligations. When required by changed circumstances, including extension of facilities, the government may set modified terms, including terms on changed security. If a licensee does not comply with an order or enforcement notice to implement measures related to these obligations, the government may implement them for the licensee's account and at its risk.

For approvals of exploitation activities and measures, the Greenland Government may set terms to ensure fulfilment of the licensee's obligations to clean up and monitor affected areas. The terms may require provision of security for fulfilment of these obligations. When required by changed circumstances, including extension of facilities, the government may set modified terms, including terms on changed security. If a licensee does not comply with an order or enforcement notice to implement measures related to these obligations, the government may implement them for the licensee's account and at its risk.

Social responsibility, sustainability

Activities comprised by the Hydropower Act and licences issued under the Act must be performed properly as regards safety, health, the environment, resource utilisation and social sustainability as well as appropriately and in accordance with acknowledged best international practices under similar conditions.

If any such activity must be assumed to have significant impact on social conditions, a license for and approval of the activity may be granted only when a social sustainability assessment (SSA) has been made and an SSA report has been approved by the Greenland Government. The report must appropriately demonstrate, describe and assess the direct and indirect impacts of the activity on social conditions as well as the interaction between the conditions, mutual impact between the conditions and cumulative effects of impacts on the conditions.