

Regulatory approaches to non-payment in the Central Asian electricity sector

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Structure

- The challenge of “non-payment”
- Energy as “commodity”: implications under property and investment law
- Social protection
- Non-payment mitigation mechanisms
- The role of FDI and investment law



The challenge of “non-payment”

- Historical context: non-payment in the post-Soviet restructuring of energy markets

Difficult transition from low energy prices as a quasi “human right” to energy as a “good” or “commodity” traded at market-based conditions

Diverging approaches to non-payment in the former SU – with varying successes in addressing the

- Commercial losses

Non-payment of energy bills – debt, delay in payment

Collection of bills by intermediary (communal/municipal services) – followed by bankruptcy

Theft and illegal connection to the grid

Illegal re-connection to the grid – including by employee of network / supplier



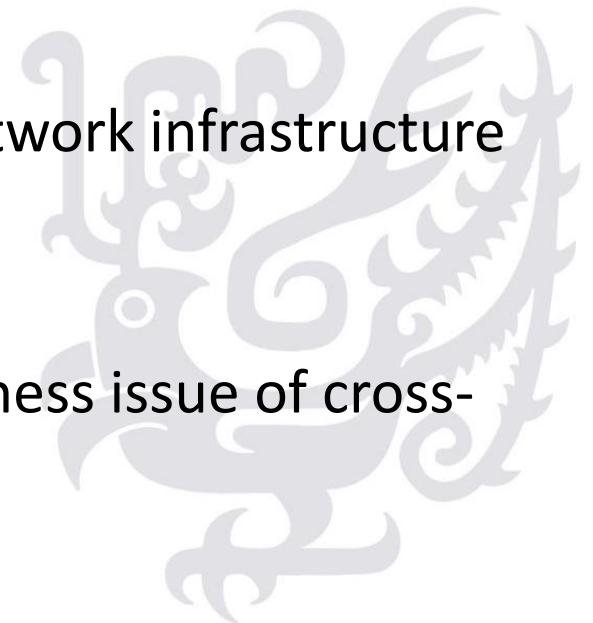
- The impact

Energy inefficiency and pressure on supply-demand adequacy in the absence of consumption incentives

Limited investment attractiveness affecting privatization objective (FDI participation)

Low modernization of production and network infrastructure because of limited revenues

Impact on other (paying) consumers: fairness issue of cross-subsidies



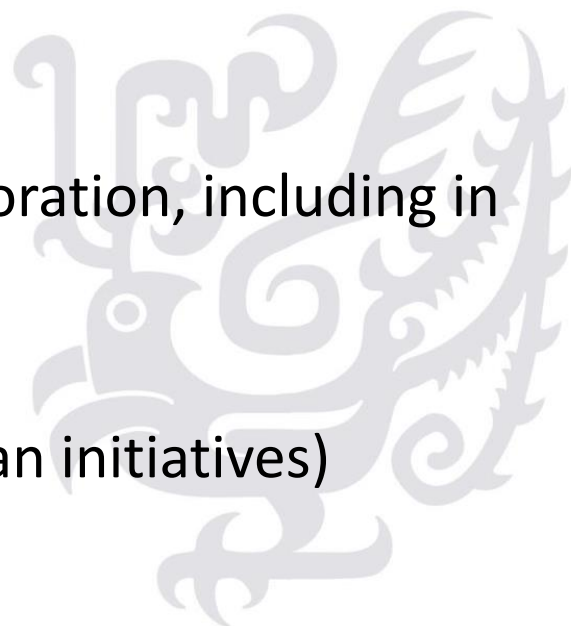
- Current situation

Varying degrees of non-payment in the Central Asian countries – depending on measures taken

Varying degrees of non-payment depending on type of consumers (vulnerable consumers, non-disconnectable, intermediaries, network companies)

Alarming situation – with worrying deterioration, including in Russia

Regulatory intervention (see recent Russian initiatives)



• Causes

- Social situation
- “Non-disconnectable” consumers
- Mentality / payment discipline – independent from vulnerability
- Reliability of supply
- Intermediaries (communal services)
- In some cases, reluctance of network / supplier / employee to disconnect
- Supplier – network company
- Difficulty of enforcement through courts



Energy as a “good” under property and investment law

- Energy (electricity) is explicitly recognized as a “good” / “commodity” under national electricity law
- Goods are protected under the constitutional right to property (against expropriation - interference)
- Energy trade is key to investments – protected under the right to property and investment law

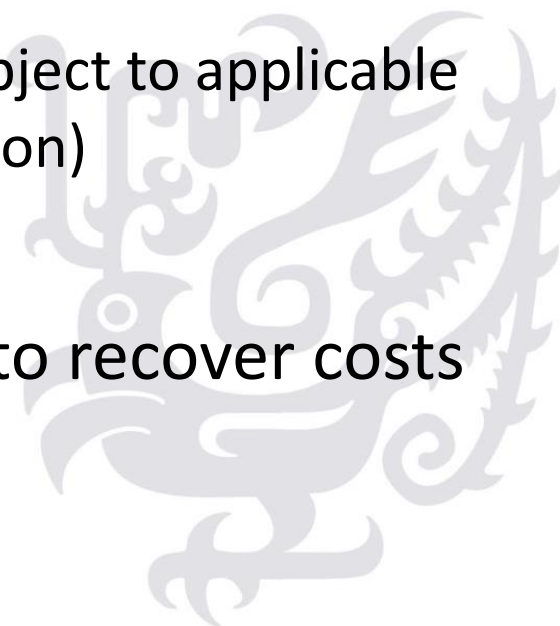


- BUT energy trade is subject to regulatory framework set by the state – attribution to the state of interference / limited protection

Key role of “public contracts” for energy trade on retail markets: suppliers must enter into energy agreements at conditions set by the state

Right of supplier to recover payment is subject to applicable regulatory mechanisms (eg on disconnection)

- DILEMMA: balance right of investors to recover costs with affordability / social protection



Social protection guarantees

- The starting point: protect vulnerable consumers in relation to access to essential commodity

Differentiated (preferential) tariff policy

Suppliers of last resort / guaranteeing suppliers

Prevention, follow-up



Mitigation measures

- Financial/bank guarantee for non-disconnectable consumers (incl. by municipal/public authorities)
- Prepayment and meters: use prepayment to cover debt
- Access to meters
- Fine / financial sanction
- Disconnection, with interdiction to reconnect
- Delayed disconnection for non-disconnectable consumers
- Admin. responsibility (sanction) of network co./ supplier
- “Personal responsibility” of employees
- Independence of regulation
- Settlement centers



- Private payment collectors – private investment

- Kazakh experience: take over debt (reduced take over price) and accelerates payment collection

- Russian experience: risk of bankruptcy of intermediaries

- Uzbek experience – need for external protection guarantees against revision of collection tariffs



The role of FDI, donors and investment law

- *Petrobart and Energorynok* cases:

Energy trade can be covered by ECT investment regime

- *Duke Energy Electroquil v. Ecuador* (non-ECT)
 - State guarantee in relation to payment trust
 - No establishment of payment trust as requested by PPA
 - Violation of fair and equitable treatment standard (legitimate expectations of investor)

- ADB financing of Talimarjan power project:

Uzbekistan “shall ensure that Uzbekenergo has adequate legal powers and enforcement mechanisms to effectively collect service fees and penalize defaulters in order to improve the collection efficiency, deter non-payment and ensure sustainability of Uzbekenergo’s operations.”



Conclusions

- Non-payment is an issue of increasing relevance
- Success of privatization and liberalization depends on it
- Role of the state in addressing non-payment
- Mitigation measures available – lessons from regional comparative analysis
- Direct relevance for FDI – and donors
- Investment law: role in balancing investors – consumers rights



Thank you for your attention

