



Overview of Investment in Renewable Energy in Vietnam

Overview

According to the report of the Ministry of Industry and Trade of Vietnam (MOIT) released on 4 June 2019, the power generation of Vietnam reached about 60,000MW in 2020 with the dominant contribution of the hydro and thermal power. Together, these two power sources accounted for about 87.7% of the total power capacity in Vietnam in 2020 while the other types of small hydro plants and renewable energy made up for the other 9.9% and the remaining 2.4% was imported.

In the amended National Power Development Master Plan VII (PDPVII) for the period 2011-2020 with vision to 2030, Vietnam aims to double its power generation to 129,500MW by 2030. The ratio of power sources is adjusted to reduce the reliance on the conventional fuel sources (e.g. hydro and coal) and increase the available capacity of renewable and gas-fired projects. However, the traditional power still accounts for the majority of the market. Below is the detailed ratio of power sector envisaged in PDPVII as of 2030:

Power sources	Ratio (%)
Hydropower	16.9
Coal fired power	42.6
Gas fired power	14.7
Renewable	21
Nuclear power	3.6
Imported power	1.2
Total	100%

According to MOIT, in 2023 Vietnam may face an electricity shortage of 12 billion kWh. The MOIT proposes that promotion of renewable energy should continue to be a priority in the coming years to resolve the country's shortage of energy.

Most recently on 9 June 2020, the Prime Minister issued letter 693/TTg-CN to MOIT approving, amongst others, the supplement of (i) 6,830MW wind energy capacity; and (ii) new 90 wind power projects to the PDPVII. The list of those projects is set out in MOIT's letter No. 1931/BCT-DL dated 19 March 2020 to the Prime Minister.

Regulators

Prime Ministerial or local-government approval is required for all projects in the national power master plans depending on the scale, social and environmental impacts of the projects (e.g. Prime Minister approval is required for projects with the investment capital of VND5,000 billion (about US\$222 million) or more).

The MOIT is the central regulator being responsible for the overall monitoring of the power sector. Its key functions include:

- drafting laws and issuing subordinate legislation on power sectors;
- approving, and managing the implementation of, electricity development master plans of provinces;
- appraising applications and issuing electricity generation permits to power projects of 3 MW or more;
- acting as the authorised state agency to sign public-private-partnership (PPP) concession contracts with the investors and sponsors in PPP projects; and
- together with the Ministry of Finance, regulating electricity tariffs.

The provincial People's Committees will regulate issues relating to the licensing and operations of the project within the province where the project is located. The provincial People's Committees will

- approve projects that are not subject to the approval of the Prime Minister;
- approve the incorporation of the project companies;
- grant the land use rights to the project; and
- issue regulatory permits required for the construction and operations of the project (except for the issuance of the electricity generation permits of projects of 3MW or more, which will be within the authority of the MOIT as discussed in the preceding paragraph).

Electricity of Vietnam (EVN), a wholly State-owned company, is the only electricity wholesale purchaser. All power projects (except for rooftop power projects with capacity of 1MW or less) will need to sign grid connection agreements and power purchase agreements (PPAs) with EVN or its subsidiaries.

Policies and regulations on investment in renewable energy

An investor can invest in a power project in Vietnam in two forms including (i) a fully private investment (non-PPP projects) under the investment law; and (ii) a PPP investment project where the government and the investor enter into a PPP concession contract (other than the PPA) to allocate the risks associated with a project between the parties. To date all investment projects in renewable energy have been licensed under the investment law regime.

There is no single specific law providing a comprehensive regime for implementing a renewable power project in Vietnam. Investment projects in power sector must comply with a number of laws and regulations including but not limited to the National Power Master Plan, Law on Investment, Law on Enterprises, Law on Construction, Law on Land, Law on Environment Protection, and Law on Electricity.

- Investment Law and Enterprise Law provide procedures for registration of the project and establishment of the project company.
- The Construction Law regulates the formulation of the feasibility study, the application for the construction permit and the construction of the power plant.

- The Land Law governs all the matters relating to the land use rights including the lease of the land, the issuance of the certificate for land use right, the right to use the land and the right to mortgage the land use rights.
- The Law on Environment Protection stipulates the regulatory standards relating to the impact on the environment and the right to use water surfaces.
- The Electricity Law provides the legal requirements applicable to the operation of the power plant, the generation of the electricity and the sale of electricity to EVN.
- Investment in wind energy projects is subject to the Prime Minister's Decision 37/2011/QĐ-TTg (*Decision 37*) on mechanism to encourage wind energy development in Vietnam as amended by Decision 39/2018/QĐ-TTg (Decision 39) of the Prime Minister. The model PPA of a wind power projects is set out in Circular 02/2019/TT-BCT of the MOIT.

Process for development of a privately-financed renewable power project

The table below summarises the process for developing a renewable power project.¹

Step	Action
1.	To apply for the Prime Minister's approval of adding the project to the national power development master plan (NPDP) (if the project has not been on the NPDP)
2.	To apply for the approval in-principle for the project
3.	To carry out the feasibility study of the project
4.	To perform the environment impact assessment and obtain approval decision of the Ministry of Environment and National Resources (MONRE) or provincial Department of Environment and National Resources (DONRE) (depending on the scale of the project) for the environment impact assessment

Step	Action
5.	To apply for the investment registration certificate (IRC) for the project
6.	To incorporate the project company and obtain the enterprise registration certificate (ERC)
7.	To negotiate and sign the agreement on connection to the national grid ²
8.	To negotiate and sign the PPA with EVN or its subsidiary ³
9.	To submit application to lease the land to the provincial DONRE
10.	To carry out land clearance (if necessary)
11.	To obtain the decision of the People's Committee for lease of land to the project company
12.	To sign the land lease agreement with the People's Committee
13.	To pay the land rental and stamp duty to DONRE
14.	To obtain the certificate of land use right from the People's Committee
15.	To apply to Prime Minister, MONRE or the People's Committee (depending on the sea area to be used) for allocation of sea area (applicable to offshore wind projects or other projects that have infrastructure facilities on the sea)
16.	To have the detailed design of fire prevention and fighting appraised and approved by the competent fire prevention and fighting police department
17.	To apply for the construction permit

Step	Action
18.	To apply for environmental permits required for the construction and operation of the project (to the extent applicable): <ul style="list-style-type: none"> • permit for exploiting and using surface water • permit for discharging water • registration of ownership of hazardous waste or disposal of hazardous waste
19.	To commence construction
20.	To complete the construction and installation of the power plant or each power facility
21.	To apply for and be issued the electricity generation permit for the operation of each power facility and for the complete operation of the project
22.	To carry out the commissioning of the plant and interconnection procedures with EVN for agreeing on the COD of the project
23.	To submit the application to the MONRE for approval of the project as a clean development mechanism (CDM) project (optional)

¹ The order of the steps listed in the table indicates the normal chronological process of a project. Depending on the practice of each province and the status of each project, the investors can concurrently carry out multiple steps.

² The negotiation of the grid connection agreement can start as soon as the project approval (i.e. the issuance of the IRC) and may continue in parallel with the land procedures and environment impact assessment process until the financial closing of the project and, will need to be completed before the commencement of the construction.

³ The PPA negotiation can start as soon as the project approval (i.e. the issuance of the IRC) and may continue in parallel with the land procedures and environment impact assessment process until the financial closing of the project and, will need to be completed before the commencement of the construction.

Feed-in-tariffs (FIT)

Solar projects

Grid-connected solar power projects that received investment policy decisions by 23 November 2019 and that achieve commercial operation date (COD) no later than 31 December 2020 will be entitled to the new FITs as follows:

No.	Solar technology	FIT (US Cent/kWh)
1.	Floating system	7.69
2.	Ground-mounted system	7.09
3.	Rooftop system	8.38

This is not as generous as the former FIT regime (which was 9.35 US Cents/kWh for grid-connected projects regardless of technologies) applicable to the first wave of solar projects that achieved COD by 30 June 2019. But it is still viewed as attractive by those who might qualify.

Projects in Ninh Thuan, the province with the highest number of solar projects in Vietnam thanks to its high radiation, have special treatment. Projects in Ninh Thuan (regardless of technologies) that achieve COD by 31 December 2021 will continue to apply the old FIT of 9.35 US Cent/kWh with a capped capacity of 2,000MW.

The FITs applicable to grid-connected projects that miss the above deadlines will be decided through competitive bidding. The MOIT is working on two forms of bidding process. One is based on the capacity of each substations of EVN and the other is for selection of investors in specific solar park projects with capacity of over 100MW.

Wind projects

According to Decision 39 of the Prime Minister, wind tariff is VND1,928 per kWh (8.5 US\$/kWh) and VND2,223/kWh (9.8 US\$/kWh) for onshore and offshore projects respectively. These tariffs will apply to projects that achieve COD no later than 1 November 2021 for a 20-year term.

On 9 April 2020, the MOIT submitted Letter 2491/BCT-DL to the Prime Minister proposing that the Prime Minister approves the extension of the time for application of fixed FITs to wind power projects until end of 2023 and that MOIT will develop new FITs

(different from those set out in Decision 39) applicable to projects that achieve COD between 1 November 2021 and 31 December 2023. The Prime Minister in the letter 693/TTg-CN dated 9 June 2020 instructed MOIT to collect the comments from other Ministries and authorities on such extension.

Incentives

Reduction or exemption of land rental

All investment projects with construction of works (including renewable energy projects) may be entitled to exemption of land rental for up to 3 years for construction commencing on the date of the land lease decision. The actual exemption time will be subject to the approval decision of the competent authority.

As investment in renewable power generation is an “especially encouraged investment sector” in accordance with the investment laws of Vietnam, a renewable energy project will be entitled to additional land incentives as follows

- If a renewable energy project is located in an especially difficult socio-economic area,⁴ the project will be entitled to exemption of land rental for the entire term of the land lease.⁵
- If a renewable energy project is located in a difficult socio-economic area,⁶ the project will be entitled to exemption of land rental for 15 years following the exemption for construction time as discussed above.⁷
- If a renewable energy project is not located in any of the above areas, the project will be entitled to exemption of land rental for 11 years following the exemption for construction time as discussed above.⁸

⁴ The list of especially difficult socio-economic areas is set out in Appendix 2 of Decree 118/2015/ND-CP implementing the Investment Law No. 67/2014/QH13.

⁵ Article 19.1(a) of Decree 46/2014/ND-CP on land rental and water surface rental.

⁶ The list of especially difficult socio-economic areas is set out in Appendix 2 of Decree 118/2015/ND-CP implementing the Investment Law No. 67/2014/QH13.

⁷ Article 19.3(d) of Decree 46/2014/ND-CP on land rental and water surface rental.

⁸ Article 19.3(c) of Decree 46/2014/ND-CP on land rental and water surface rental.

Corporate income tax (CIT)

A renewable power project is entitled to the most favourable tax incentives in Vietnam which include a preferential tax rate of 10% for 15 years from the year the project generates revenue, 4 years exemption and reduction of 50% of the payable tax in the next 9 years. The current standard CIT rate in Vietnam is 20%.

Accordingly and unless the tax regulations are amended, a renewable power project is entitled to 4 years CIT exemption from the year the project generates revenue, followed by 9 years of 5% and then 2 years of a preferential tax rate of 10% before the project is subject to the standard CIT rate.

Key financing issues

No Government Guarantee

There is no government guarantee or credit support from the Government for EVN's off-take obligations or change in law risk under the PPA.

Non-bankable standard PPAs

The PPAs have to follow standard forms issued by the MOIT (*Model PPA*). These forms are not sophisticated or consistent with international standards.

- **Tariffs:** under the Model PPA the tariffs are fixed and are denominated in Vietnamese Dong. The law states that the tariff can be adjusted in accordance with the VND-USD exchange rate fluctuation, however, the Model PPA does not include any escalation provisions relating to an index (e.g. CPA) to account for rising operating costs because of inflation;
- **Offtake obligations, curtailment and dispatch:** EVN (or its subsidiaries) is responsible for purchasing all the power output from grid-connected projects at the delivery point. The Model PPA does not, however, allow for availability or deemed energy / commissioning to allow for the sale of power if the facility (or a part of it) is able to produce power but EVN is unable to take the electricity produced. In particular, the off-taker will not be required to purchase or take electricity generated in the following circumstances:
 - during the time when the purchaser installs equipment, or it repairs, replaces, inspects or examines the grid directly related to its connection to the seller's power plant;
 - when the transmission grid or the distribution grid connected to the purchaser's grid breaks down or grid equipment or facilities directly connected to the purchaser's transmission grid or the distribution grid breaks down;
 - when the purchaser's grid needs support to recover after a breakdown or incident in accordance with the provisions of operation of the national power system and the standards, technical regulations of the electric power industry; and
 - when the power plant of the seller operates or is maintained not in conformity with the regulations on the operation of the national grid and the power industry technical regulations and standards.
- **Governing law and dispute resolution:** The PPAs are governed by Vietnamese law. There is a tiered dispute resolution mechanism which includes mediation and adjudication by MOIT's Electricity Regulatory Authority of Vietnam (ERAV). Any appeals will follow administrative proceeding procedures before Vietnamese courts. The Model PPA does not expressly provide for offshore arbitration (i.e. in a neutral venue in accordance with generally accepted international dispute resolution rules).
- **Compensation on termination:** On EVN default leading to termination by the project company, the project company make a claim for direct and actual damages for breach of contract but otherwise no minimum compensation amount (for example, by reference to outstanding debt and equity). As the dispute resolution process is usually time-consuming, costly and entail significant uncertainty, the lack of a proper termination payment mechanism will expose the sponsors and the project company to material risks in case of default events.
- **Change in law (including tax):** The law does not include any specific provision addressing the risk of changes in law and/or tax (in the form of supplemental tariffs or otherwise) where such changes would, over the life of the PPA diminish the economic returns of the project for the seller. In this respect, currently, under the Investment Law, only a general assurance is provided for protection for existing investment incentives in case of change in law.

- **Transmission and interconnection risk:** under the Model PPA, the seller is required to invest in, operate and maintain interconnection equipment and facilities in order to connect the plant with the power transmission and power distribution grids as well as bear the costs of assembling the metering system at transformer stations.

Convertibility and foreign exchange risk

One of the key issues confronting lenders (and sponsors) is foreign exchange. The Vietnamese government controls the conversion of Vietnam Dong into foreign currencies. The Vietnamese Dong is not a freely convertible currency and may not be taken out of Vietnam. Projects which receive revenue in Dong are exposed to (i) any devaluations in the value of the Dong until such revenues can be converted into foreign currency; (ii) the risk that there is no foreign currency available at the time of conversion; and (iii) the fact that currency cannot be converted or remitted except at specific times (e.g. once a year in respect of dividends).

Licensing issues

Obtaining the relevant permits required to develop a project involves a substantial amount of work. A project cannot be built or operated until all permits, approvals and consents relevant to the construction or operation (as applicable) have been obtained. The procedure to obtain the license (or its amendments) involves a large administrative burden and is time consuming. This results in delays and additional costs to businesses.

Taking Security

Numerous issues can arise in relation to both the structuring and enforcement of security packages for foreign lenders.

At law, project companies are only entitled to mortgage land use rights to lenders if they pay the rent to the state on a one-off lump-sum basis. Projects that are exempt from rent payments (which is likely the case in renewable energy projects) or pay rent annually cannot mortgage their land use rights.

In addition, the mortgage of land use rights and property attached to land can only be made to an onshore licensed credit institution. Foreign lenders are not permitted to take security over land in Vietnam. Given the importance of security over land in a project finance transaction, this can present an obstacle to

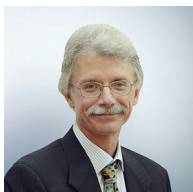
commercial lenders getting comfortable with a security package (though we note that this has not ultimately prevented lenders from lending on previous transactions). A mortgage in favour of foreign lenders via an onshore security agency arrangement is a common alternative in practice, but there is no certainty that this structure would be found to be enforceable by the Vietnamese courts.

Lender step-in right

Step-in right is only recognised by law in the PPP context where the Government authority is a party to the concession contract. In non-PPP projects developed under the Investment Law, the enforceability of such right is subject to substantial uncertainty. This may give rise to concerns from the lenders' perspective.

The successful enforcement of step-in rights will require the co-operation of the relevant licensing authorities to amend the necessary licenses, permits and/or approvals in order to give effect to any enforcement of the lenders' rights. The absence of pre-approval by the relevant authorities for such amendments gives rise to an additional layer of uncertainty for lenders seeking to enforce any step-in right in Vietnam. In major build-operate-transfer power projects, the issue has been overcome by obtaining acknowledgements and consents from the relevant licensing authorities with appropriate undertakings to assist the lenders in enforcement of its rights – though obtaining these consents would be more difficult in the context of renewable projects developed under the Investment Law.

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