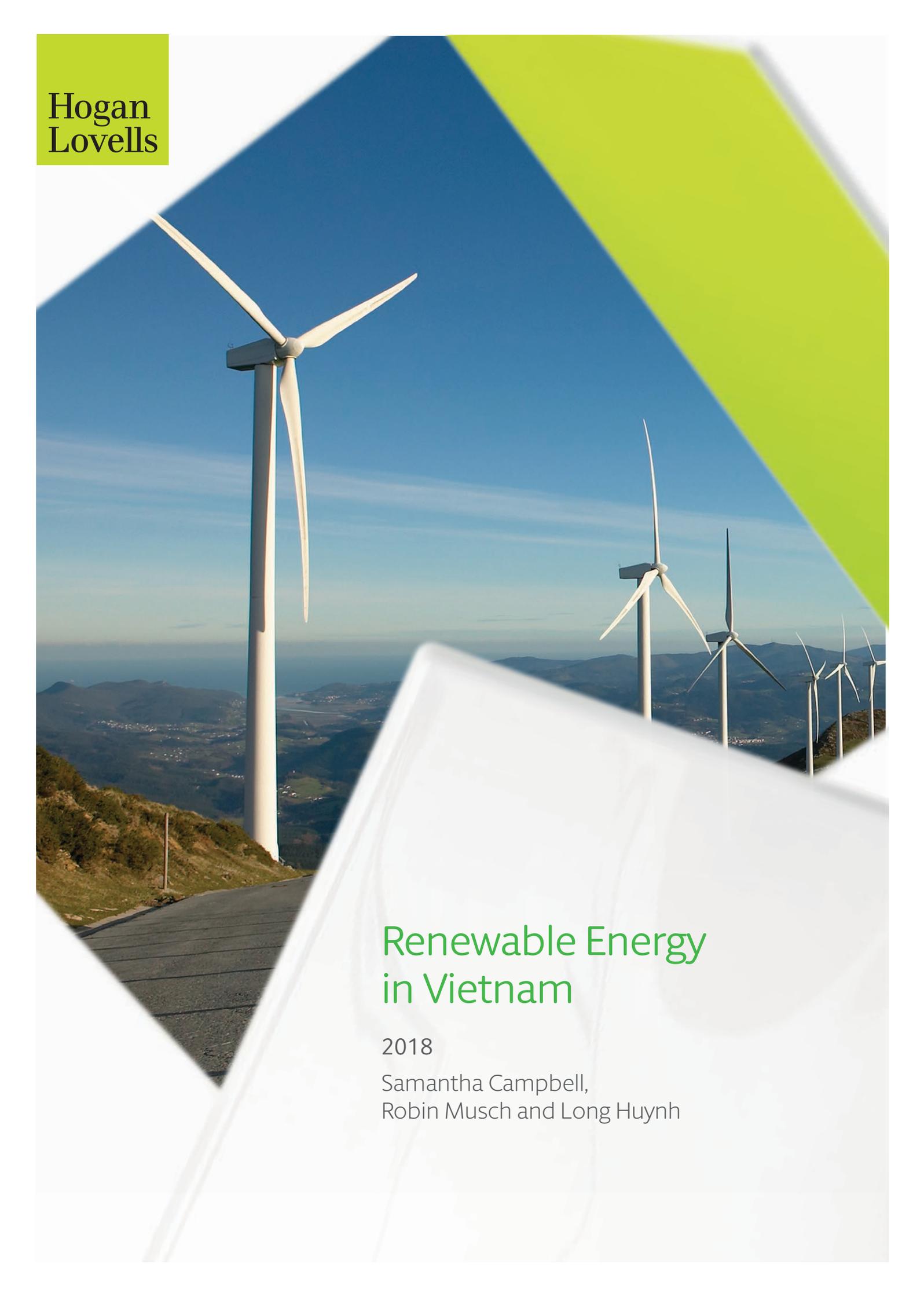


The logo for Hogan Lovells, consisting of the name in a serif font on a lime green rectangular background.

Hogan
Lovells

A photograph of several white wind turbines on a grassy hillside overlooking a valley. The sky is blue with some light clouds. The image is framed by a large, stylized graphic element in the top right corner, which is a combination of blue and lime green geometric shapes.

Renewable Energy in Vietnam

2018

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Introduction

We are pleased to provide you with this memorandum on renewable energy in Vietnam. This sets out a general overview of the power sector in Vietnam and an overview of Vietnam's renewable energy sector and current legal framework, including in particular details of investment initiatives.

The Appendix sets out in tabular form our analysis on the potential bankability issues contained in the standard power purchase agreement (the "**PPA**") issued by the Vietnam Ministry of Industry and Trade ("**MOIT**") for use on wind and solar power projects.

The term "renewable energy" in this Memorandum excludes large- and small-scale hydropower projects.



Power sector overview

Background

Vietnam is one of the world's best performing frontier markets with average annual GDP growth of 6.68% in Q4 2016 (up from 6.56% in the previous quarter) and an overall economic growth of 6.21% in 2016. Manufacturing, exports, imports and retail sales all saw significant growth in 2016 and foreign direct investments increased 9% to USD15.8bn.¹ The revised Power Development Master Plan (PDMP) VII, issued in March 2016 (the "**Revised PDMP VII**"),² shows a requirement for investment in an amount approaching USD150 billion (generation and grid) for the period up to 2030 in order to keep up with a 10-12% annual demand growth.

A state-dominated sector

The power market in Vietnam is heavily State-dominated.

The Government has begun taking steps to transform the power market and, in particular, Decision 63 issued in November 2013 ("**Decision 63**")³ set out a roadmap to restructure the power market and establish a competitive market-driven environment. This comprises three levels:

- Level 1 – The establishment of a competitive power generation market by the end of 2014, which – according to authorities – was completed on schedule.
- Level 2 – The establishment of an initial pilot competitive electricity wholesale market during 2015 and 2016, with purchasers including State-owned Electricity of Vietnam ("**EVN**") and other permitted wholesale purchasers. The foundations for this, including relevant regulations and the (on paper) simulated pilot model, have now been put in place. The pilot competitive electricity wholesale market itself was expected to be launched in 2017. This should then be followed by a second phase, which contemplates a complete competitive wholesale electricity market by 2021.

- Level 3 – The establishment of a competitive retail electricity market.

However, to date, EVN remains the unchallenged dominant electricity off-taker and distributor in Vietnam.

EVN owns the vast majority of generation capacity, with State-owned PetroVietnam also owning and operating significant plants. Investment by the private sector tends to be limited, in the case of local participants, to the hydro sector. There are also a handful of very large-scale foreign invested independent thermal power plants, notably the Phu My 2-2 and Phu My 3 gas-fired power projects and Mong Duong 2 coal power project (all established in Build-Operate-Transfer ("**BOT**") form), and a handful more (Nghi Son 2, Vung Ang 2 and Van Phong 1) that are expected to achieve financial close this year or in 2018.⁴

EVN remains the sole offtaker in legal and practical terms – the only exception to this rule is that power purchasers other than EVN may purchase power from: (i) BOT plants, (ii) wind or geothermal projects, and (iii) projects located in industrial zones if they are themselves based in the relevant industrial zones.

The credit of EVN is therefore a key consideration in any power project in Vietnam. Up until now, its obligations under the PPAs for large-scale foreign invested or financed power plants have been backstopped by the Government.

¹ <https://www.bloomberg.com/news/articles/2016-12-28/vietnam-s-gdp-growth-quickens-to-6-68-in-4th-quarter>.

² Article 1.3(a), Decision 428/QD-TTg on master plan on the national electricity development in the period of 2011 to 2020 with vision to 2030 dated 18 March 2016, which replaced Decision 1208/QD-TTg by the Prime Minister approving the national master plan for power development in the 2011-2020 period, with considerations to 2030, dated 21 July 2011.

³ Decision No. 63/2013/QD-TTg by the Prime Minister regarding electricity market formation roadmap, dated 8 November 2013.

⁴ The USD412 million Phu My 3 GTCC project (740MW) was fully commissioned in March 2004 (originally owned and operated by BP, which sold its entire shareholding in the plant to Sembcorp in 2013). The USD400m Phu My 2-2 GTCC project (715MW) is owned and operated by Mekong Energy Limited, a consortium of EDF, Sumitomo and TEPCO, and was fully commissioned in October 2005. Mong Duong 2 is the latest constructed BOT power plant, with total cost of USD2.1 billion, controlled and operated by a consortium led by AES Corporation. Mong Duong 2 was fully commissioned in May 2015.

Vietnam's power generation mix

The traditional source of power generation in Vietnam has been large and small hydropower plants, which have been estimated to be responsible for approximately 40% of total installed power generation capacity. In recent years, there has also been significant development in coal fired power plants (which account for approximately 33% of total installed capacity and are mostly located in the North and central regions of Vietnam) as well as gas-fired plants in the South (which account for approximately 19% of total installed capacity).⁵ Power from renewable energy plants (mostly wind and bio-energy plants) is estimated at below 1% of total installed capacity.

Despite COP 21 and the need to import coal for projects in the south of Vietnam, coal fuels the recent and current wave of slow moving "mega-projects" and is anticipated to make up more than 53% of the country's generation capacity by 2030.

Given that most large hydropower plant projects have already been developed and are contributing to environmental concerns, the relatively slow development of the natural gas industry and the Government's recent decision to suspend nuclear power development, renewable energy (other than hydropower) is generally viewed as a viable alternative to meet Vietnam's future power needs.⁶

⁵ Figures taken from the website of the Ministry of Industry and Trade. <http://baocongthuong.com.vn/nhiet-dien-than-van-la-giai-phap-chu-yeu-nham-dam-bao-du-dien-cho-dat-nuoc.html>

⁶ Position Paper VBF, Annual Vietnam Business Forum 2015, 1 December 2015.



Renewable Energy overview

Background

Renewable energy accordingly appears to be increasing in importance in the Government's official agenda. It has taken several steps to promote the development of the sector and encourage investment in recent years.

Vietnam's Electricity Law⁷ requires national power development master plans to be established for ten year periods. The Government set out its initial development plan for the period from 2011 to 2020 in the original power development master plan VII (the "**Original PDMP VII**")⁸ issued in 2011. This emphasised, among other considerations, the development of renewable energy sources. In particular, the Original PDMP VII sets out a goal for a 4.5% share of the total power generation capacity to be covered by renewable energy by 2020, and 6% by 2030. In the Revised PDMP VII in 2016, these figures have been revised to 7% and 10%, respectively.

To promote the goals set out in the Original PDMP VII, the Prime Minister issued a Decision in November 2015⁹ approving a renewable energy source development strategy, including steps to be implemented by 2030, with a view to longer-term considerations up to 2050 (the "**Renewable Energy Decision**"). The Renewable Energy Decision includes various incentives to be developed by the MOIT for renewable energy projects, including, in particular, higher tariffs, tax incentives, land related incentives and subsidies to be granted for research in relation to renewable energy, all as discussed in more detail below.

⁷ Law No. 28/2004/QH11 on Electricity dated 3 December 2004, as amended by Law No. 24/2012/QH13 dated 20 November 2012.

⁸ Decision 428/QĐ-TTg on master plan on the national electricity development in the period of 2011 to 2020 with vision to 2030 dated 18 March 2016, which replaced Decision 1208/QĐ-TTg by the Prime Minister approving the national master plan for power development in the 2011-2020 period, with considerations to 2030, dated 21 July 2011.

⁹ Decision 2068/QĐ-TTg on 25 November 2015.

General renewable energy incentives

Under the Law on Investment,¹⁰ renewable energy projects are eligible for special investment incentives, as follows:

- **Corporate income tax preferences** – Income from new investment projects for renewable energy production will be subject to corporate income tax at the rate of 10% for the first 15 years.¹¹ By comparison, the lowest tax corporate income tax rate available to regular companies is 20%.¹²
- **Import duty preferences** – There is an exemption from import duty in respect of goods imported in order to construct or form fixed assets, such as raw materials, manufactured materials and other components.
- **Land related incentives** – Investors may be entitled to exemption from the land use fee that would usually apply for 11 years or, in cases where the investment project is in a region facing extreme socio-economic difficulties, 15 years.¹³ In addition, during the capital construction period of a project (being the period of construction of a new building or plant for up to 3 years from the effective date of the land lease contracts), investors are entitled to exemption from land rents and water surface rents.¹⁴ Furthermore, land clearance compensations and support will be provided, in accordance with the Law on Land.¹⁵ All land lease and land allocation for renewable power projects are handled by the relevant provincial People's Committees.

There are also additional incentives for specific types of renewables projects, as set out below.

Foreign participation

There are currently no foreign ownership restrictions in relation to renewable energy projects.

However, the renewables sector is predominantly locally invested and projects are generally equity financed or benefit from local bank financing (which may not be on a non- or limited-recourse basis as understood internationally). There are no precedents of internationally project financed renewables projects to draw from, although we understand that a number of foreign investors are looking at potentially significant development opportunities.

Security over land and assets

In addition, the following should be borne in mind when financing a renewable power project in Vietnam.

Under the Law on Land, security over "land and assets attached to the land" may only be granted to credit institutions operating in Vietnam.

In addition, where the project is exempted from land use rental payments (which would be the case for a wind or solar project if the project company avails itself of the possible exemption), then it can only mortgage the assets attached to the land (and not the land use rights themselves) with credit institutions authorized to operate in Vietnam.

Structuring options may be available, and this is an area where practice is evolving.

¹⁰ Articles 15.1 and 16, Law on Investment. Please also see footnote 6 above.

¹¹ Article 15, Decree No. 218/2013/ND-CP, Detailing and guiding the implementation of the Law on Corporate Income Tax.

¹² Article 13.3, Law No. 32/2013/QH13 on the amendments to the Law on Corporate Income Tax.

¹³ Article 19.3, Decree No. 46/2014/ND-CP, Regulations on collection of land rent and water surface rent.

¹⁴ Article 19.2, Decree No. 46/2014/ND-CP, Regulations on collection of land rent and





Wind

Overview

Vietnam has enormous potential for developing wind energy projects, having a coastal line of 3,400 kilometres with an average wind speed of 6 meters per second.

The total power generating potential for wind energy is estimated to be 500 to 1000kWh per m² per year.¹⁶

There are very few operational wind power plants in Vietnam – less than a handful. According to the Revised PDMP VII, the Government aims to increase energy supply from wind power (as a percentage of total power generation capacity) to 0.8% by 2020 and 2.1% by 2030.

Incentives

In June 2011, the Prime Minister issued a Decision to support the development of wind power projects in Vietnam (the “**Wind Decision**”).¹⁷ Pursuant to this, the Government provides the following investment incentives in relation to wind projects:

- **EVN off-take obligation and duration** – EVN has the obligation to purchase all on-grid wind power produced for a period of 20 years from the date of commencement of commercial operation, with provision for extension.¹⁸
- **Tariff** – There is a fixed electricity tariff for wind power, which provides the following advantages: (i) the tariff is set at VND1,614 (an amount equivalent to USD0.078) per kWh, which is substantially higher than the conventional power tariff (approximately USD0.048 per kWh in 2015), and (ii) the tariff is adjusted in line with the VND/USD exchange rate, which protects wind power developers from the depreciation of VND. In addition, the Government will provide developers with an additional subsidy through the Vietnam Fund of Environmental Protection, currently at a rate of VND207 per kWh (USD0.01).¹⁹
- **Investment capital** – Investors in wind projects are eligible for State credit for investment,²⁰ in the form of credit extended by the Vietnam Development Bank.²¹

- **Corporate income tax, import duty and land-related incentives** – Investors enjoy the corporate income tax, import tariff and land related incentives set out above.²²

Additional considerations

In August 2014, the Prime Minister issued a Decision approving a program for “planning the development of wind power in Vietnam”,²³ which is being financed by EUR3.7 million as Official Development Assistance (“**ODA**”) capital from the German government via KfW Development Bank. This is due to be implemented by the end of 2018 and involves support on three main areas of wind power development: (i) wind speed measurement and the evaluation of wind power potential, (ii) the preparation of several (pre-) feasibility studies on the development of wind projects, and (iii) the preparation and completion of national and regional development plans for wind power projects. The Government’s aim is for this program to generate a “wind data map” for Vietnam in a manner similar to the “maps for solar resource and potential in Vietnam” issued in January 2015.²⁴

The standard PPA and bankability concerns

In November 2012, the MOIT issued a Circular on the development of wind projects (“**Circular 32**”),²⁵ together with a standard PPA for wind projects (the “**Wind PPA**”). Among other points, this Circular only permits investors to invest in wind projects that have been approved by the MOIT.

The Wind PPA clearly contains several bankability issues, which have been of concern for international investors, although more easily accepted by local developers and banks.

The PPA may, however, be supplemented through clarifications to clarify the rights and obligations of the parties. Please refer to the Appendix to this memorandum for our analysis of the Wind PPA.

16 <http://nangluongvietnam.vn/news/en/nuclear-renewable/expectations-on-renewable-energy-development.html>.

17 Decision 37/2011/QĐ-TTg dated 29 June 2011.

18 Article 11.2(a) of the Wind Decision.

19 Articles 11 and 14 of the Wind Decision.

20 Article 12 of the Wind Decision.

21 Articles 1 and 3, Decree 32/2017/ND-CP of the Government on State investment credit, issued on 31 March 2017 and effective on 15 May 2017.

22 Articles 12 and 15 of the Wind Decision.

23 Decision 1539/QĐ-TTg dated 30 August 2014.

24 See footnote 37.

25 Circular 32/2012/TT-BCT dated 12 November 2012.

Solar

Overview

Vietnam's potential for solar projects is reportedly very attractive as it benefits from natural solar energy intensity of 5kWh per m² on average. Theoretically, the potential for solar in Vietnam is 60-100 GWh per year for concentrated solar power and 0.8-1.2 GWh per year in case of photovoltaic systems.²⁶

Despite the potential, there are only a few small projects in operation to date,²⁷ mainly due to the fact that no feed-in tariff was put in place for solar projects until April 2017. There are, however, thousands of small off-grid solar power systems in operation, mainly in rural and remote areas.

The Revised PDMP VII sets out a Government aim to increase energy supply from solar power (as a percentage of total power generation capacity) from the current negligible rate to 0.5% by 2020 and 3.3% by 2030, or, 850MW solar capacity by 2020, increasing to 12GW by 2030.

Incentives

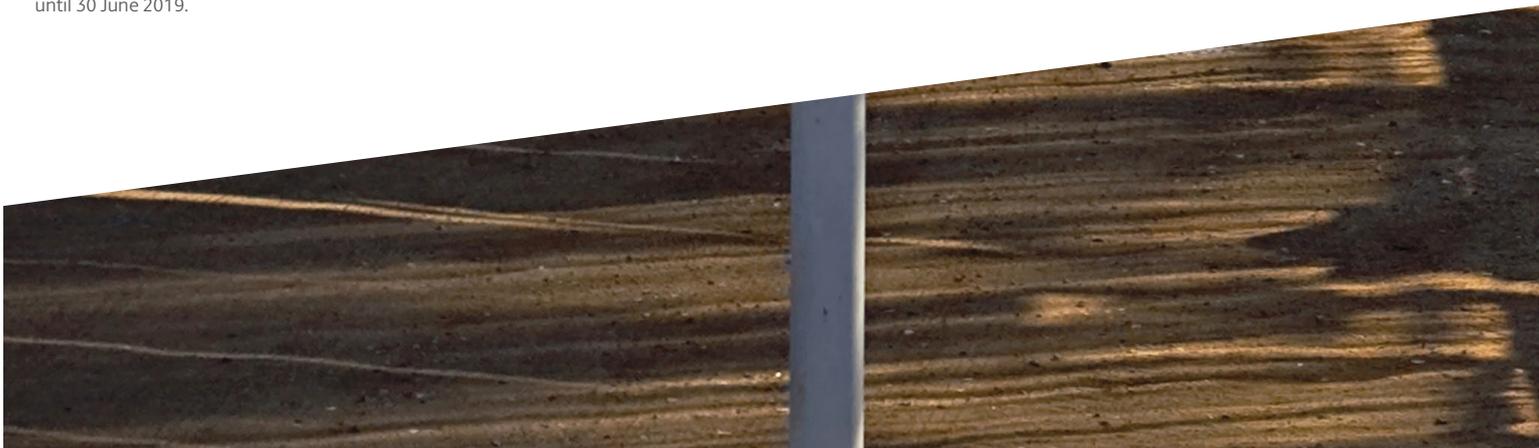
To support the Government's ambitious target, the Prime Minister issued on 11 April 2017 a decision regarding feed-in tariffs for solar energy (the "**Solar Decision**"), valid until 30 June 2019.²⁸ The Solar Decision contains several incentives for solar power investment:

- **EVN off-take obligations and duration** – EVN will have the obligation to purchase all on-grid solar power generated for a period of 20 years from the commencement of operation, based on a standard PPA.
- **Tariff** – The electricity price is set at VND2,086 (equivalent to 9.35 US cents) per kWh, based on the VND/USD central exchange rate set by the State Bank of Vietnam on April 10, 2017, excluding value added tax. This rate applies to on-grid solar projects with solar cell efficiency of more than 16% or with solar module cumulative efficiency of 15% or higher. It will also apply to excess power generated from rooftop solar installations beginning commercial operation before 30 June 2019 and sold to EVN.
- The Solar Decision treats the tariff adjustments for on-grid and excess roof-top power differently. For on-grid solar projects, the Solar Decision provides that the rates will be adjusted in accordance with the model PPA (as discussed below). However, this does not appear to have been dealt with in the current PPA (please see our comments on this in the Appendix). For excess roof-top power, it provides that the MOIT will review the purchase price annually, based on the VND/USD central exchange rate of the last day of the preceding calendar year.

²⁶ Report "Maps of solar resource and potential in Vietnam" dated 21 January 2015, MOIT.

²⁷ https://energypedia.info/wiki/Solar_Energy_Country_Analysis_Vietnam.

²⁸ Decision No. 11/2017/QĐ-TTg supporting the development of solar power projects in Vietnam in relation to solar energy development dated 11 April 2017 and valid until 30 June 2019.



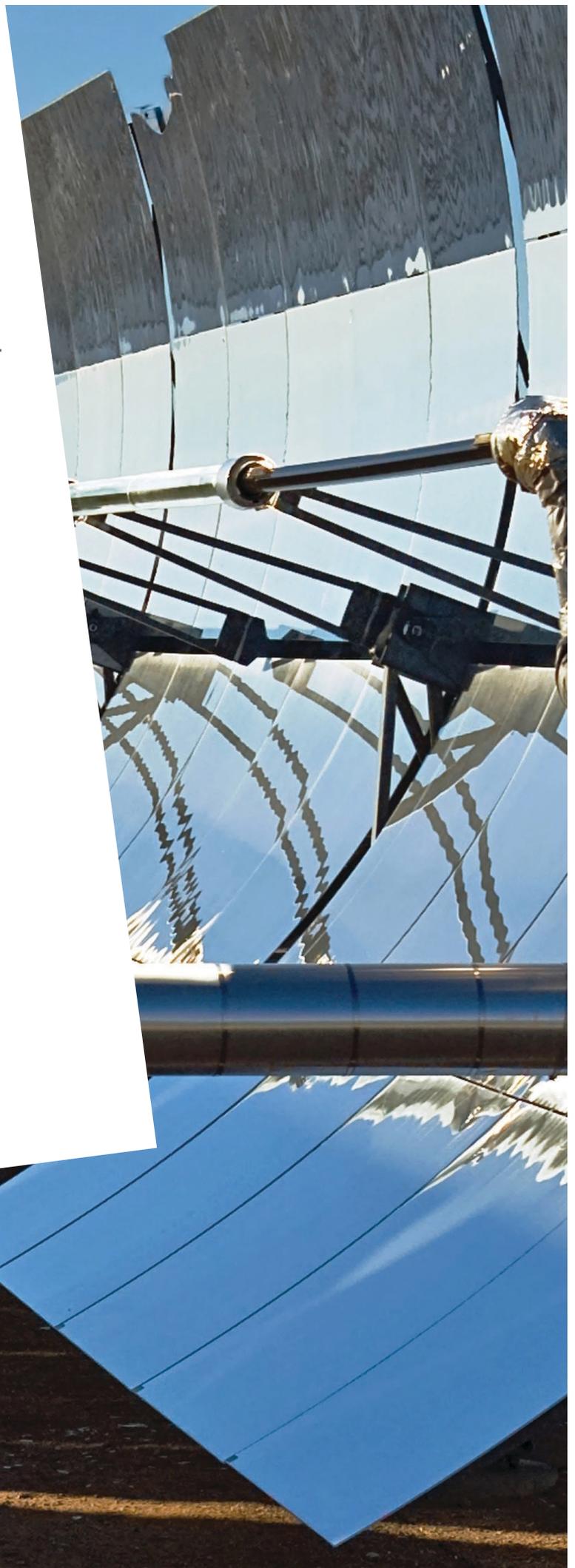
- **Corporate income tax, import duty and land-related incentives** – The Solar Decision confirms that the existing incentives in relation to corporate income tax, import duty and land generally applicable to renewable projects, as set out above, shall apply to the solar sector.

The standard PPA and bankability concerns

On 12 September 2017, the MOIT issued Circular 16/2017/TT-BCT for implementation of the Solar Decision on solar power projects in Vietnam (“**Circular 16**”). Effective from 16 October 2017, Circular 16 includes detailed guidelines on the formulation and approval of national and provincial solar power development plans, technical requirements, and tariff structure for both grid-connected projects and rooftop projects.

In addition, Circular 16 includes a set of three templates of model power purchase agreements for grid-connected projects (“**Solar PPA**”), residential rooftop and commercial/industrial rooftop projects.

Please see the Appendix to this Memorandum for details of the differences between the Solar PPA and the Wind PPA, and the principal bankability issues.



Appendix

Wind PPA and Solar PPA – Key differences and bankability concerns

Issue	PPA Article	Wind PPA Provision
1. Take and Pay	Art 2.1 (Wind PPA & Solar PPA)	The Wind PPA is based on a "take and pay" basis for a firm period of 20 years – EVN is obliged to purchase the entire power output connected to the grid at the tariff (see item 2 below). There are no capacity payments.
2. Tariff	Art 2.2 (Wind PPA & Solar PPA)	<p>The tariff is fixed at VND1,614 (an amount equivalent to USD0.078) per kWh (exclusive of VAT). Note:</p> <ul style="list-style-type: none"> – the power price is adjusted according to the fluctuation of the USD (although the rate and mechanism is not referenced); and – there is no inflation or other price escalation mechanism. <p>An additional subsidy through the Vietnam Fund of Environmental Protection, currently at a rate of VND207 per kWh (USD0.01), also adjusted according to the fluctuation of the USD, will be paid to the Seller.</p>
3. Billing	Art 1.11, 4.1, 4.2 (Wind PPA) Art 1.8, 4.1, 4.2 (Solar PPA)	The Seller issues the electricity monthly and EVN has the obligation to pay the amount due under the electricity bill within fifteen (15) days from the date of receipt.
4. Power distribution price	Art 4.2(d) (Solar PPA)	The Wind PPA is silent on any obligation to pay the power distribution price.
5. Interest on late payment	Art 4.2(b) (Wind PPA & Solar PPA)	Interest is payable on late payments at a rate of 1.5 times the average interbank trading interest rate for one month.
6. Interruption	Art 2.7 & 2.9 (Wind PPA & Solar PPA)	<p>EVN is not obliged to purchase electricity in the following cases:</p> <ul style="list-style-type: none"> – If the Seller's power plant operates and is maintained not in compliance with the provisions of operation of the national electricity system and standards, technical regulations of electric industry; – During the time that EVN installs equipment, repairs, replaces, inspects or examines the grid directly related to the connection of the power plant of the Seller; – If the transmission grid and the distribution grid connected to EVN's grid encounters incidents or grid devices directly connected to the transmission grid and distribution grid of EVN encounters difficulties; or – If EVN's grid requires remedies to recover after any incidents in accordance with the provisions of operation of the national power system and the standards, technical regulations of the electric industry.

Solar PPA Provision	Comments
No material differences between the Wind PPA and the Solar PPA.	<p>The obligation for EVN to purchase the electricity generated from the project for a term of 20 years is enshrined in the law as well as the contract.</p> <p>Wind/solar conditions are a risk of the developer (the "Seller"). There is no clause permitting EVN to request that the plant be offline at any time for a limited period (but please note carve-outs to EVN's purchase obligations below).</p>
<p>The tariff is fixed at VND2,086 (an amount equivalent to USD0.0935) per kWh (exclusive of VAT).</p> <p>This applies to: (i) on-grid solar projects with solar cell efficiency of more than 16% or with solar module cumulative efficiency of 15% or higher, and (ii) excess power generated from rooftop solar installations and sold to EVN. In addition, this tariff applies only to on-grid projects and rooftop projects coming into commercial operation before 30 June 2019 and will remain within 20 years from the commercial operation date.</p>	<p>Both Decisions provide that tariff adjustment in relation to VND/USD currency fluctuations will apply, although neither PPA contains clear tariff adjustment mechanisms in this respect.</p> <p>There is no reference to any price escalation mechanism, such as the Consumer Price Index (CPI) to address inflation risks in either PPA.</p>
No material differences between the Wind PPA and the Solar PPA.	<p>The PPAs do not specifically provide in which currency payment shall be made by EVN, but as a matter of generally applicable Vietnamese law, the tariff must be payable in VND and then converted to be remitted offshore as dividends or repayments of shareholder loans in the case of a foreign investor.</p>
The Seller shall pay the power distribution price to EVN under a relevant contract (if any).	It is unclear from the Solar PPA or the relevant regulations what the power distribution price relates to and how it is calculated.
Interest is payable on late payments at the average interbank trading interest rate for one month.	
No material differences between the Wind PPA and the Solar PPA.	<p>The Seller bears the risk of transmission or distribution interruptions, which are beyond its control. There is no time cap for these interruptions and neither PPA contains any provision for any deemed commissioning or dispatch payments or other compensation in cases of such interruption.</p> <p>EVN is required to notify the Seller of any such interruption in advance and to minimize the period of interruption.</p>

Issue	PPA Article	Wind PPA Provision
7. Termination rights	Art 6.2, 6.3 and 10 (Wind PPA) Art 7.1, 7.2 and 11 (Solar PPA)	The Seller has a right to terminate the PPA in the case of EVN payment default, continuing breach of contract and breach of representations in relation to authorisation and compliance with law.
8. Compensation on termination	Art 6.5 & 6.6 (Wind PPA) Art 7.4 & 7.5 (Solar PPA)	<p>Upon termination for breach of contract, the Wind PPA provides that the party in breach is obliged to compensate the innocent party for: (i) the direct and actual loss it has suffered as a result of the breach, and (ii) the direct benefits that the innocent party would have received in the absence of the breach.</p> <p>However, in case of termination by the Seller due to EVN's breach of the PPA, the Wind PPA appears to limit the termination compensation to the value of the Seller's actual power output for the year leading up to the date of termination.</p>
9. Force majeure events	Art 5.1 (Wind PPA & Solar PPA)	<p>Force majeure events are defined very broadly and include events related to the state and/or of a political nature, as well as natural events. In particular, they include:</p> <ul style="list-style-type: none"> – any decision of a state authority affecting the performance of a party – nationalization, expropriation or confiscation of assets of the Seller – violence, riots, war, resistance, sabotage, embargo, siege, blockade, war, or hostilities – failure by the Seller to obtain all necessary approvals from State authorities after the date of commercial operation despite reasonable effort – natural disasters, fires, explosions, floods, tsunamis, epidemics or earthquakes. <p>There is a catch all for "other causes beyond the control and not the fault of the party relying upon the event of force majeure".</p>
10. Consequences of a force majeure event	Art 5.2-5.4 (Wind PPA & Solar PPA)	During a force majeure event, the Parties shall be released from any liability for failure to perform their respective obligations under the PPA.
11. Change in law and change in tax	N/A	There are no Seller protections against unfavourable changes in law or applicable tax regimes.

Solar PPA Provision	Comments
No material differences between the Wind PPA and the Solar PPA.	There are no termination rights available to the Seller in case of other typical events, such as in the event of insolvency of the other party or default under another material project document.
No material differences between the Wind PPA and the Solar PPA.	<p>Although precise termination payment calculations are typically included in conventional power PPAs in Vietnam; a precise calculation mechanism is not provided in the PPAs, except in case of termination by the Seller.</p> <p>In the case of termination for EVN's default, the termination payment is limited to the preceding year's actual power output.</p>
<p>The Solar PPA provides that only the following events are considered as force majeure events:</p> <ul style="list-style-type: none"> – natural disasters, fires, explosions, floods, tsunamis, epidemics or earthquakes and – violence, riots, war, resistance, sabotage, embargo, siege, blockade, war or hostilities. 	Force majeure events under the Solar PPA are narrower than those under the Wind PPA.
No material differences between the Wind PPA and the Solar PPA.	Neither PPA contains any provision for any deemed commissioning or dispatch payments or other compensation in cases of a force majeure event (including for a force majeure event of a political nature).
No material differences between the Wind PPA and the Solar PPA.	<p>There is a risk that the Seller would have to bear the risk of all additional costs incurred by it in order to comply with changes in law or tax obligations.</p> <p>The Seller may have remedies under generally applicable Vietnamese law (including the Law on Investment).</p>

Issue	PPA Article	Wind PPA Provision
12. Grid connection costs and connectivity risk	Art 2.6, 2.7 & 3 (Wind PPA & Solar PPA)	The Seller bears the costs and risk associated with connecting to the grid.
13. Lender step-in rights	Art 8.1 (Wind PPA) Art 9.1 (Solar PPA)	The Wind PPA appears to enable the Seller to transfer the PPA or provide step-in rights to lenders without written approval from EVN, provided that it notifies EVN immediately in writing, although the drafting is unclear.
14. Governing law	Art 9.4 (Wind PPA) Art 10.3 (Solar PPA)	The PPA is governed by Vietnamese law.
15. Dispute resolution procedure	Art 7 (Wind PPA) Art 8 (Solar PPA)	<p>This PPA provides that the parties must first negotiate to settle any dispute within 60 days. If this is unsuccessful, disputes should be settled by the following procedures (although the drafting is unclear as to the order to be followed):</p> <ul style="list-style-type: none"> – referral to the General Directorate of Energy (now restructured as the Department of Electricity and Renewable Energy) for assistance in settling such dispute; or – referral to the Electricity Regulatory Authority of Vietnam (the "ERAV") in accordance with Circular 40/2010/ TT-BCT ("Circular 40"). <p>Circular 40 provides a settlement mechanism for disputes in the electricity market. Either party that does not agree with the conclusion of the ERAV has the right to refer the dispute to initiate a lawsuit at the Court for settlement.</p> <p>Note that Circular 27/2013/TT-BCT ("Circular 27") dated 31 October 2013 postdates the form Wind PPA and Circular 40 and seems to allow for the party in disagreement to refer the dispute to commercial arbitration.</p>

Solar PPA Provision	Comments
No material differences between the Wind PPA and the Solar PPA.	This could be a significant concern in cases where the project is located in a relatively remote area, requiring transmission lines to be run over long distances.
There is no such exception under the Solar PPA.	Lender step-in rights are generally accepted in conventional power PPAs.
No material differences between the Wind PPA and the Solar PPA.	<p>In conventional power projects in Vietnam, lenders typically insist that foreign law should apply, as the legal system in Vietnam is still evolving and there is some uncertainty in interpreting it.</p> <p>However, based on Article 9.4 and 10.3 respectively, it is unlikely that it would be possible for the PPA to be governed by any law other than Vietnamese law. In addition, as a legal matter, Vietnamese law must apply to contracts between two Vietnamese entities (including a foreign invested special purpose vehicle), unless the PPP regime applies in which case there is some leeway.</p>
The equivalent provision in the Solar PPA contains the same dispute resolution procedure, save that as an alternative to referring the case to the ERAV under Circular 40, the parties may agree to select a dispute settlement agency to settle the dispute in accordance with relevant laws directly.	<p>Dispute resolution by the Vietnamese authorities or state agencies may not be viewed as an impartial mechanism, particularly in view of EVN being a State-owned entity related to the regulator.</p> <p>The ability to refer a dispute to the Vietnamese courts might also not provide adequate comfort as to impartiality.</p> <p>The Wind PPA directs parties to use the settlement mechanism under Circular 40, i.e. referring the case to the ERAV, and allowing either party to resort to litigation (and possibly under Circular 27, commercial arbitration) if it does not agree with the decisions of the Electricity Regulatory Authority of Vietnam.</p> <p>However, the Solar PPA provides for resolution by a dispute settlement agency directly (without going to ERAV first), which seems to include arbitration, subject to the agreement of both parties in the PPA.</p>

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